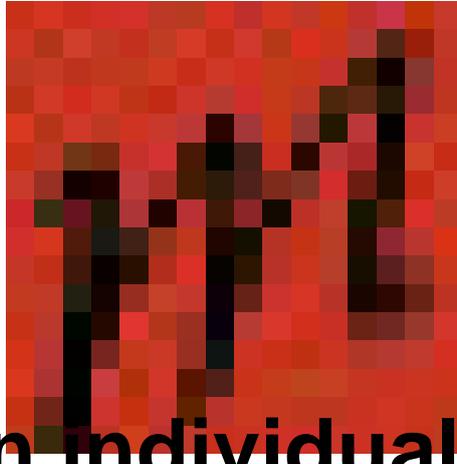


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I.3 On individual laws

- The Spirit of Law - Book I. On law in general -

Publication date: lundi 20 août 2018

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I.3 On individual laws

As soon as men are in society, they lose the sense of their weakness ; the equality that was among them ceases, and the state of war begins.

Every separate society comes to feel its strength, which results in a state of war nation to nation. Individuals in each society begin to feel their strength ; they seek to turn the principal advantages of that society to their own benefit, which makes for a state of war between them.

These two sorts of state of war bring about the establishment of laws among men. Considered as inhabitants of a planet so vast that there will necessarily be different peoples, they have laws bearing on the relationship these peoples have with each other, and that is the law of nations. Considered as living in a society which has to be maintained, they have laws bearing on the relationship between those who govern and those who are governed, and that is political law. They have still others bearing on the relationship of all their citizens with one another, and that is civil law.

The *law of nations* is naturally founded on the principle that the various nations must do each other as much good as they can in peacetime, and as little harm in wartime, without compromising their true interests.

The object of war is victory ; that of victory, conquest ; that of conquest, self-preservation. From this principle and the previous one ought to flow all the laws that make up the *law of nations*.

All nations have a law of nations ; even the Iroquois do, who eat their prisoners. They send and receive embassies ; they recognize rights of war and of peace ; the trouble is that this law of nations is not based on the true principles.

Besides the law of nations with respect to all societies, there is a *political law* for each. No society could subsist without a government. *All of the separate forces together*, as Gravina puts it well, constitute what we call the *political state*. [1]

The overall force can be put in the hands of *one man alone*, or in the hands of *several*. Some have held that, since it was nature that established paternal power, government by one man alone was most in keeping with nature. But the example of paternal power proves nothing. For if the power of a father is analogous to government by one man alone, then after the father's death the power of the brothers, or after the brothers' death that of close cousins, are analogous to plural government. Political authority necessarily entails the union of several families.

It is better to say that the government most in keeping with nature is the one the particular disposition of which relates best to the disposition of the people for which it is established.

The separate strengths cannot join together unless all wills are joined. "The joining of those wills," rightly notes Gravina again, "is what we call the *civil state*."

Law in general is human reason, insofar as it governs all the peoples of the earth ; and the political and civil laws of each nation should be only the particular instances where that human reason is applied.

They should be so well adapted to the people for whom they are made that it is only by extreme chance that the laws of one nation can suit any another.

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They must relate to the nature and principle of the government which is established, or which one intends to establish, either because they constitute it, as do the political laws, or because they maintain it, as the civil laws do.

They must be relative to the *physical facts* of the country, to the icy, torrid, or temperate climate ; to the quality of the terrain, to its situation, its size ; to the life style of its peoples, laborers, hunters, or shepherds ; they must relate to the degree of freedom which the constitution can allow ; to the inhabitants' religion, their inclinations, wealth, number, commerce, morals, and manners. Finally, the laws are related to each other, to their origin, to the legislator's objective, to the order of things upon which they are established : it is from all these perspectives that they have to be considered.

That is what I shall undertake in this book. I shall examine all of these relationships : together they form what we call the spirit of law.

I have not separated *political* laws from *civil* ones, for as my subject is not laws but the spirit of law, and as that spirit consists in the various relationships which laws can have with various things, I have had to follow less the natural order of laws than of those relationships and those things.

I shall first examine the relationships which laws have with the nature and principle of each government ; and as that principle has a supreme influence over the laws, I shall strive to understand it well ; and if I can once establish it, we shall see the laws flow from it as from their source. I shall then go on to the other relations which seem to be more specific.

[1] [Giovanni Vincenzo Gravina, *Origines juris civilis*, 1701–1713.]