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CLASSICS IN THE HISTORY OF LIBERTY

CHARLES LOUIS DE SECONDAT, BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS, 2 VOLS. IN 1 (1777)* VOLUMES I AND II OF THE COMPLETE WORKS OF M. DE MONTESQUIEU

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EDITION USED

The Complete Works of M. de Montesquieu (London: T. Evans, 1777), 4 vols.

- Volume I: The Spirit of Laws
- Volume II: The Spirit of Laws (continued)
- Volume III: Considerations on the Causes of the Grandeur and Declension of the Roman Empire; and the Persian Letters
- Volume IV: Familiar Letters; Miscellaneous Pieces (An Oration, An Essay upon Taste; Of the Pleasures of the Soul; The Temple of Gnidus; Cupid Distressed; Lysimachas; D'Alembert's Analysis of the Spirit of Laws; A Defence of the Spirit of Laws; Some Explanations of the Spirit of Laws)

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**AN EULOGIUM ON PRESIDENT MONTESQUIEU, BY MONSIEUR
D'ALEMBERT.**

THE interest which good citizens are pleased to take in the Encyclopedia, and the great number of men of letters, who consecrate their labours to it, seem to permit us to regard this work as one of the most proper monuments, to preserve the grateful sentiments of our country, and that respect which is due to the memory of those celebrated men who have done it honour. Persuaded, however, that M. de Montesquieu had a title to expect other panegyrists, and that the public grief deserved to be described by more eloquent pens, we would have concealed within our own breasts our just concern, and respect for his memory; but the acknowledgement of what we owe him we hold too dear to permit us to leave the care of it to others. While a benefactor to mankind by his writings, he also condescended to be so to this work, and our gratitude pretends to no more but only to trace out a few lines at the foot of his statue.

Charles de Secondat, baron of La Brede and of Montesquieu, late president *à mortier* of the parliament of Bourdeaux, member of the French academy of sciences and belles lettres of Prussia, and of the Royal Society of London, was born at the castle of La Brede, near Bourdeaux, the 18th of January, 1689, of a noble family of Guyenne. His great great grandfather, John de Secondat, steward of the household to Henry the Second, king of Navarre, and afterwards to Jane, daughter of that king, who married Antony of Bourbon, purchased the estate of Montesquieu for the sum of 10,000 livres, which this princess gave him by an authentic deed, as a reward for his probity and services.

Henry the Third, king of Navarre, afterwards Henry the Fourth, king of France, erected the lands of Montesquieu into a barony, in favour of Jacob de Secondat, son of John, first one of the gentlemen in ordinary of the bedchamber to this prince, and afterwards

colonel of the regiment of Chatillon. John Gaston de Secondat, his second son, having married a daughter of the first president of the parliament of Bourdeaux, purchased the office of president *à mortier* in this society. He had several children; one of whom entered into the service, distinguished himself in it, and quitted it very early in life. This was the father of Charles de Secondat, author of the Spirit of Laws. These particulars may perhaps appear misplaced at the beginning of the *éloge* of a philosopher whose name stands so little in need of ancestors; but let us not envy their memory that éclat which this name reflects upon it.

The early marks of his genius, a presage sometimes so deceitful, was not so in Charles de Secondat: he discovered very soon what he one day would be, and his father employed all his attention to cultivate this rising genius, the object of his hope and of his tenderness. At the age of twenty, young Montesquieu already prepared materials for the Spirit of Laws, by a well-digested extract from those immense volumes which compose the body of the civil law: thus heretofore Newton laid, in his early youth, the foundation of works which have rendered him immortal. The study of jurisprudence, however, though less dry to M. de Montesquieu than to the most part of those who apply to it, because he studied it as a philosopher, was not sufficient for the extent and activity of his genius. He enquired deeply, at the same time, into subjects still more important and more delicate,^{*} and discussed them in silence, with that wisdom, with that decency, and with that equity, which he has since discovered in his works.

A brother of his father, president *à mortier* of the parliament of Bourdeaux, an able judge and virtuous citizen, the oracle of his own society and of his province, having lost an only son, and wanting to preserve, in his own corps, that elevated spirit which he had endeavoured to infuse into it, left his fortune and his office to M. de Montesquieu. He had been one of the counsellors of the parliament of Bourdeaux since the 24th of February, 1714, and was received president *à mortier* the 13th of July, 1716.

Some years after, in 1722, during the king's minority, his society employed him to present remonstrances upon occasion of a new impost. Placed between the throne and the people, he filled, like a respectful subject and courageous magistrate, the employment, so noble, and so little envied, of making the cries of the unfortunate reach the sovereign: the public misery, represented with as much address as force of argument, obtained that justice which it demanded. This success, it is true, much more unfortunately for the state than for him, was of as short continuance as if it had been unjust. Scarce had the voice of the people ceased to be heard, but the impost, which had been suppressed, was replaced by another: but the good citizen had done his duty.

He was received the 3d of April, 1716, into the academy of Bourdeaux, which was then only beginning. A taste for music, and for works of pure entertainment, had at first assembled together the members who composed it. M. de Montesquieu believed, with reason, that the rising ardour and talents of his friends might be employed with still

greater advantage in physical subjects. He was persuaded that nature, so worthy of being beheld every where, found also, in all places, eyes worthy of viewing her; that, on the contrary, works of taste not admitting of mediocrity, and the metropolis being the center of men of abilities and opportunities of improvement in this way, it was too difficult to gather together, at a distance from it, a sufficient number of distinguished writers. He looked upon the societies for belles lettres, so strangely multiplied in our provinces, as a kind, or rather as a shadow, of literary luxury, which is of prejudice to real opulence, without even presenting us with the appearance of it. Luckily the duke de la Force, by a prize which he had just founded at Bourdeaux, seconded these rational and just designs. It was judged that an experiment properly made would be preferable to a weak discourse or a bad poem; and Bourdeaux got an academy of sciences.

M. de Montesquieu, not at all eager to shew himself to the public, seemed, according to the expression of a great genius, to wait for an age ripe for writing. It was not till 1721, that is to say, at 32 years of age, that he published the *Persian Letters*. The *Siamois*, and the serious and comic amusements, might have furnished him with the idea of it; but he excelled his model. The description of oriental manners, real or supposed, of the pride and phlegm of Asiatic love, is but the smallest object of these letters; it only serves, so to speak, as a pretence for a delicate satire upon our manners, and for treating of several important subjects, which the author went to the bottom of, while he only appeared to glance at them. In this kind of moving picture, Usbec chiefly exposes, with as much genteel easiness as energy, whatever amongst us most struck his penetrating eyes: our way of treating the most silly things seriously, and of turning the most important into a joke; our conversations which are so blustering and so frivolous; our impatience even in the midst of pleasure itself; our prejudices and our actions perpetually in contradiction with our understandings; so much love of glory joined with so much respect for the idol of court-favour; our courtiers so mean and so vain; our exterior politeness to, and our real contempt of, strangers, or our affected regard for them; the fantasticness of our tastes, than which there is nothing lower but the eagerness of all Europe to adopt them; our barbarous disdain for the two most respectable occupations of a citizen, commerce and magistracy; our literary disputes, so keen and so useless; our rage for writing before we think, and for judging before we understand. To this picture, which is lively, but without malice, he opposes, in the apologue of the Troglodytes, the description of a virtuous people, become wise by misfortunes: a piece worthy of the portico. In another place, he represents philosophy, which had been a long time smothered, appearing all of a sudden, regaining, by a rapid progress, the time which he had lost; penetrating even amongst the Russians at the voice of a genius which invites her; while, among other people of Europe, superstition, like a thick atmosphere, prevents that light, which surrounds them on all hands, from reaching them. In fine, by the principles which he has established concerning the nature of ancient and modern government, he presents us with the bud of those bright ideas which have been since developed by the author in his great work.

These different subjects, deprived at present of the graces of novelty, which they had when the Persian Letters first appeared, will for ever preserve the merit of that original character which the author has had the art to give them; a merit by so much the more real, that in this case it proceeds alone from the genius of the writer, and not from that foreign veil with which he covered himself; for Usbec acquired, during his abode in France, not only so perfect a knowledge of our morals, but even so strong a tincture of our manners, that his style makes us often forget his country. This small defect in point of probability was perhaps not without design and address: when he was exposing our follies and vices, he wanted without doubt also to do justice to our advantages. He was fully conscious of the insipidity of a direct panegyric: he has more delicately praised us, by so often assuming our own air to satirize us more agreeably.

Notwithstanding the success of this work, M. de Montesquieu did not openly declare himself the author of it. Perhaps he thought that by this means he would more easily escape that literary satire, which spares anonymous writings the more willingly, because it is always the person, and not the work, which is the aim of its darts. Perhaps he was afraid of being attacked on account of the pretended contrast of the Persian Letters with the gravity of his office; a sort of reproach, said he, which critics never fail to make, because it requires no effort of genius. But his secret was discovered, and the public already pointed him out to the French academy. The event demonstrated how prudent M. de Montesquieu's silence had been. Usbec expresses himself sometimes freely enough, not concerning the fundamentals of Christianity, but about matters which too many people affect to confound with Christianity itself; about the spirit of persecution with which so many Christians have been animated; about the temporal usurpation of ecclesiastic power; about the excessive multiplication of monasteries, which deprive the state of subjects, without giving worshippers to God; about some opinions which have in vain been attempted to be established as principles; about our religious disputes, always violent and always fatal. If he appears any where to touch upon more delicate questions, and which more nearly interest the Christian religion, his reflections, weighed with justice, are in fact very favourable to revelation; because he only shews how little human reason, left to itself, knows concerning these subjects. In a word, among the genuine letters of M. de Montesquieu the foreign printer had inserted some by another hand; and they ought at least, before the author was condemned, to have distinguished which properly belonged to him. Without regard to these considerations, on the one hand, hatred under the name of zeal, and, on the other, zeal without discernment or understanding, rose and united themselves against the Persian Letters. Informers, a species of men dangerous and base, which even in a wise government are unfortunately sometimes listened to, alarmed, by an unfaithful extract, the piety of the ministry. M. de Montesquieu, by the advice of his friends, supported by the public voice, having offered himself for that place in the French academy vacant by the death of M. de Sacy, the minister wrote a letter to the academy, that his majesty would never agree to the election of the author of the Persian Letters; that he had not read the book; but that persons in whom he placed confidence had informed him of

their poisonous and dangerous tendency. M. de Montesquieu perceived what a stroke such an accusation might be to his person, his family, and the tranquility of his life. He neither put so high a price upon literary honours, either keenly to seek them, or to affect to disdain them when they came in his way, nor, in a word, to regard the simple want of them as a misfortune: but a perpetual exclusion, and especially the motives of that exclusion, appeared to him to be an injury. He saw the minister; declared to him that, for particular reasons, he did not own the Persian Letters; but that he would be still farther from disowning a work for which he believed he had no reason to blush; and that he ought to be judged after a reading, and not upon an information. At last the minister did what he ought to have begun with; he read the book, loved the author, and learned to place his confidence better. The French academy was not deprived of one of its greatest ornaments, and France had the happiness to preserve a subject which superstition or calumny was ready to deprive her of; for M. de Montesquieu had declared to the government, that, after that kind of affront which they were about to put upon him, he would go among foreigners, who with open arms offered to receive him, in quest of that safety, that repose, and perhaps those rewards, which he might have hoped for in his own country. The nation would have deplored this loss, and the disgrace of it would notwithstanding have fallen upon it.

The late marshal d'Estrées, at that time director of the French academy, conducted himself upon this occasion like a virtuous courtier and a person of a truly elevated mind: he was neither afraid of abusing his credit nor of endangering it; he supported his friend and justified Socrates. This act of courage, so dear to learning, so worthy of being imitated at present, and so honourable to the memory of marshal d'Estrées, ought not to have been forgot in his panegyric.

M. de Montesquieu was received the 24th of January, 1728. His oration is one of the best which have been pronounced upon a like occasion: its merit is by so much the greater, that those who were to be received, till then confined by those forms and by those *éloges* which were in use, and to which a kind of prescription subjected them, had not as yet dared to step over this circle to treat of other subjects, or had not at least thought of comprehending them in it. Even in this state of constraint he had the happiness to succeed. Among several strokes with which his ^{*}oration shines, we may easily distinguish the deep-thinking writer by the single portrait of cardinal Richlieu, *who taught France the secret of its strength, and Spain that of its weakness; who freed Germany from her chains and gave her new ones.* We must admire monsieur de Montesquieu for having been able to overcome the difficulty of his subject, and we ought to pardon those who have not had the same success.

The new academician was by so much the more worthy of this title, that he had not long before renounced every other business to give himself entirely up to his genius and taste. However important the place which he occupied was, with whatever judgement and integrity he might have fulfilled its duties, he perceived that there were objects

more worthy of employing his talents; that a citizen is accountable to his country and to mankind for all the good which he can do; and that he could be more useful to one and the other, by instructing them with his writings, than he could be by determining a few particular disputes in obscurity. All these reflections determined him to sell his office. He was no longer a magistrate, and was now only a man of letters.

But, to render himself useful by his works to different nations, it was necessary that he should know them: it was with this view that he undertook to travel; his aim was to examine every where the natural and moral world, to study the laws and constitution of every country; to visit the learned, the writers, the celebrated artists; every where to seek for those rare and singular geniuses whose conversation sometimes supplies the place of many years observation and residence. M. de Montesquieu might have said, like Democritus, "I have forgot nothing to instruct myself: I have quitted my country and travelled over the universe, the better to know truth; I have seen all the illustrious personages of my time." But there was this difference between the French Democritus and him of Abdera, that the first travelled to instruct men, and the second to laugh at them.

He first went to Vienna, where he often saw the celebrated prince Eugene. This hero, so fatal to France, (to which he might have been so useful,) after having given a check to the fortune of Lewis XIV. and humbled the Ottoman pride, lived during the peace without pomp, loving and cultivating letters in a court, where they are little honoured, and setting an example to his masters how they should protect them. M. de Montesquieu thought that he could discover in his conversation some remains of affection for his ancient country. Prince Eugene especially discovered it, as much as an enemy could, when he talked of the fatal consequences of that intestine division which has so long troubled the church of France: the statesman foresaw its duration and effects, and foretold it like a philosopher.'

M. de Montesquieu left Vienna to visit Hungary, an opulent and fertile country, inhabited by a haughty and generous nation, the scourge of its tyrants and the support of its sovereigns. As few persons know this country well, he has written with care this part of his travels.

From Germany he went to Italy: he saw at Venice the famous Mr. Law, who had nothing remaining of his grandeur but projects fortunately destined to die away in his own head, and a diamond which he pawned to play at games of hazard. One day the conversation turned on the famous system which Law had invented; an epoch of so many calamities and so many great fortunes, and especially of a remarkable corruption in our morals. As the parliament of Paris, the immediate depository of the laws during a minority, had made some resistance to the Scotch minister on this occasion, M. de Montesquieu asked him why he had never tried to overcome this resistance by a method almost always infallible in England, by the grand mover of human actions, in a word, by money. *These*

are not, answered Law, *geniuses so ardent and so generous as my countrymen, but they are much more incorruptible*. We shall add, without any prejudice of national vanity, that a society, which is free for some short limited time, ought to resist corruption more than one which is always so: the first, when it sells its liberty, loses it; the second, so to speak, only lends it, and exercises it even when it is doing so. Thus the circumstances and nature of government give rise to the vices and virtues of nations.

Another person, no less famous, whom M. de Montesquieu saw still oftener at Venice, was count de Bonneval. This man, so known by his adventures, which were not yet at an end, and flattered with conversing with so good a judge, and one so worthy of hearing them, often related to him the remarkable circumstances of his life, recited the military actions in which he had been engaged, and drew the characters of those generals and ministers whom he had known. M. de Montesquieu often recalled to mind these conversations, and related different strokes of them to his friends.

He went from Venice to Rome. In this ancient capital of the world, which is still so in some respects, he applied himself chiefly to examine that which distinguishes it most at present; the works of Raphael, of Titian, and of Michael Angelo. He had not made a particular study of the fine arts, but that expression, which shines in the master-pieces of this kind, infallibly strikes every man of genius. Accustomed to study nature, he knew her again when well imitated, as a like portrait strikes all those who are familiarly acquainted with the original. Those productions of art must indeed be wretched whose whole beauty is only discernible by artists.

After having travelled over Italy, M. de Montesquieu came to Switzerland. He carefully examined those vast countries which are watered by the Rhine. There was nothing more for him to see in Germany, for Frederic did not yet reign. He stopped afterwards some time in the United Provinces, an admirable monument what human industry animated by a love of liberty can do. At last he went to England, where he staid three years. Worthy of visiting and entertaining the greatest of men, he had nothing to regret but that he had not made this voyage sooner. Newton and Locke were dead. But he had often the honour of paying his respects to their protectress, the celebrated queen of England, who cultivated philosophy upon a throne, and who properly esteemed and valued M. de Montesquieu. He was no less well received by the nation, which, however, was not obliged to follow the example of its superiors on this occasion. He formed at London intimate friendships with men accustomed to think, and to prepare themselves for great actions by profound studies; with them he instructed himself in the nature of the government, and attained to a thorough knowledge of it. We speak here after the public testimonies which have been given him by the English themselves, so jealous of our advantages, and so little disposed to acknowledge any superiority in us.

As he had examined nothing either with the prejudice of an enthusiast or the austerity

of a cynic, he brought back from his travels neither a saucy disdain for foreigners nor a still more misplaced contempt for his own country. It was the result of his observations, that Germany was made to travel in, Italy to sojourn in, England to think in, and France to live in.

After his return to his own country, M. de Montesquieu retired for two years to his estate of La Brede He there enjoyed in peace that solitude which our having viewed the tumult and hurry of the world serves to render more agreeable. He lived with himself, after having so long lived in a different way; and, what interests us most, he put the last hand to his work *On the Cause of the Grandeur and Declension of the Romans*, which appeared in 1734.

Empires, like men, must encrease, decay, and be extinguished. But this necessary revolution has often hidden causes, which the veil of time conceals from us, and which mystery, or their apparent minuteness, has even sometimes hid from the eyes of contemporaries.

Nothing in this respect resembles modern history more than ancient history. That of the Romans, however, deserves, in this respect, to be made an exception of; it presents us with a rational policy, a connected system of aggrandizement, which does not permit us to attribute the fortune of this people to obscure and inferior springs. The causes of the Roman grandeur may then be found in history, and it is the business of the philosopher to discover them. Besides, there are no systems in this study as in that of physic; these are almost always overthrown, because one new and unforeseen experiment can overturn them in an instant: on the contrary, when we carefully collect the facts which the ancient history of a country transmits to us, if we do not always gather together all the materials which we can desire, we can at least hope one day to have more of them. A careful study of history, a study so important and so difficult, consists in combining in the most perfect manner these defective materials: such would be the merit of an architect, who, from some curious learned remains, should trace, in the most probable manner, the plan of an ancient edifice; supplying, by genius and happy conjectures, what was wanting in those unformed and mutilated ruins.

It is in this point of view that we ought to consider the work of M. de Montesquieu. He finds the causes of the grandeur of the Romans in that love of liberty, of labour, and of their country, which was instilled into them during their infancy; in those intestine divisions which gave an activity to their genius, and which ceased immediately upon the appearance of an enemy; in that constancy after misfortunes, which never despaired of the republic; in that principle they adhered to of never making peace but after victories; in the honour of a triumph, which was a subject of emulation among the generals; in that protection which they granted to those people who rebelled against their kings; in the excellent policy of permitting the conquered to preserve their religion and customs; and that of never having two enemies upon their hands at once, and of bearing every

thing of the one till they had destroyed the other. He finds the causes of their declension in the aggrandizement of the state itself: in those distant wars, which, obliging the citizens to be too long absent, made them insensibly lose their republican spirit; in the privilege of being citizens of Rome, granted to so many nations, which made the Roman people at last become a sort of many headed monster; in the corruption introduced by the luxury of Asia; in the proscriptions of Sylla, which debased the genius of the nation, and prepared it for slavery; in that necessity which the Romans found themselves in, of having a master while their liberty was become burthensome to them; in that necessity they were obliged to of changing their maxims when they changed their government; in that series of monsters who reigned, almost without interruption, from Tiberius to Nerva, and from Commodus to Constantine; in a word, in the translation and division of the empire, which perished first in the West by the power of barbarians, and which, after having languished several ages in the East, under weak or cruel emperors, insensibly died away, like those rivers which disappear in the sands.

A very small volume was enough for M. de Montesquieu, to explain and unfold so interesting and vast a picture. As the author did not insist upon the detail, and only seized on the most fruitful branches of his subject, he has been able to include, in a very small space, a vast number of objects distinctly perceived, and rapidly presented, without fariguing the reader. While he points out a great deal to us, he leaves us still more to reflect upon; and he might have intitled his book, *A Roman History for the Use of Statesmen and Philosophers*.

Whatever reputation M. de Montesquieu had acquired by this last work, and by those which had preceded it, he had only cleared the way for a far grander undertaking, for that which ought to immortalize his name, and render it respectable to future ages. He had long ago formed the design, and had meditated for twenty years upon the execution of it; or to speak more properly, his whole life had been a perpetual meditation upon it. He had first made himself in some respect a stranger in his own country, better to understand it at last: he had afterwards travelled over all Europe, and profoundly studied the different people who inhabit it. The famous island, which glories so much in her laws, and which makes so bad a use of them, had been to him, in his long tour, what the isle of Crete had formerly been to Lycurgus, a school where he had known well how to instruct himself without approving every thing: in a word, he had, if we may so speak, examined and judged those celebrated nations and men who only exist at present in the annals of the world. It was thus that he attained by degrees to the noblest title which a wise man can deserve, that of legislator of nations.

If he was animated by the importance of his subject, he was at the same time terrified by its extensiveness; he abandoned it, and returned to it again at several intervals. He felt, more than once, as he himself owns, his paternal hands fail him. At last, encouraged by his friends, he collected all his strength, and published *The Spirit of*

Laws.

In this important work, M. de Montesquieu, without insisting, after the example of those who preceded him, upon metaphysical discussions relative to the nature of man, supposed in an abstract state; without confining himself, like others, to consider certain people in certain particular relations or circumstances, takes a view of the inhabitants of the world in the actual state in which they are, and in all the relations which they can stand in to one another. The most part of other writers in this way are almost always either simple moralists, or simple lawyers, or even sometimes simple theologians. As for him, a citizen of all countries, and of all nations, he is less employed about what our duty requires of us, than about the means by which we can be obliged to fulfil it; about the metaphysical perfection of laws, than about that which human nature renders man capable of; about laws which have been made, than about those which ought to have been made; about the laws of a particular people, than about those of all nations. Thus, when comparing himself to those who have run before him in this noble and grand career, he might say, with Correggio when he had seen the works of his rivals, *And I also, I am a painter.*

Filled and penetrated with his subject, the author of the Spirit of Laws comprehends in it so great a number of materials, and treats them with such brevity and depth, that an assiduous and studious reading of it can make us alone perceive the merit of this book. This will especially serve, we venture to say, to make that pretended want of method, with which some readers have accused M. de Montesquieu, disappear; an advantage which they ought not slightly to have accused him of having neglected in a philosophical subject, and in a work of twenty years. Real want of order ought to be distinguished from that which is only apparent. Disorder is when the analogy and connection of ideas are not observed; when conclusions are set up as principles, or precede them; when the reader, after innumerable windings, finds himself at the point whence he set out. Apparent disorder is when the author, putting in their true place the ideas which he makes use of, leaves it to the readers to supply the intermediate ones; and it is thus that M. de Montesquieu believed that he might and ought to make use of them in a book designed for men who thought, whose genius ought to supply voluntary and reasonable omissions.

The order which is perceivable in the grand divisions of the Spirit of Laws takes place no less in the smaller details: we believe that, the more profoundly the work is studied, the more one will be convinced of it. Faithful to his general divisions, the author refers to each those objects which belong to it exclusively; and, with respect to those which, by different branches, belong to several subjects at once, he has placed, under each division, that branch which properly belongs to it. By this we easily perceive, and without confusion, the influence which the different parts of the subject have upon each other; as, in a tree or system of human knowledge well understood, we may perceive the mutual relation of sciences and arts. This comparison is by so much the more just,

that it is the same thing with respect to a plan which we may form to ourselves for examining laws philosophically, as of that order which may be observed in a tree comprehending all the sciences: there will always remain something arbitrary in it; and all that can be required of an author is, that he follow strictly, without deviating from it, that system which he has once formed to himself.

We may say of that obscurity, which is allowable in such a work, the same thing as of want of order. What may be obscure for vulgar readers is not so for those whom the author had in his view. Besides, obscurity which is voluntary is not properly obscurity. M. de Montesquieu being sometimes obliged to present to us truths of great importance, the absolute and direct avowal of which might have shocked without doing any good, has had the prudence to cover them; and, by this innocent artifice, he has concealed them from those to whom they might have been hurtful, without making them lost to men of sagacity.

Among those works which have sometimes furnished him with assistance, and sometimes with clearer views for his own, we may perceive that he has especially profited from two historians who have thought the most, Tacitus and Plutarch: but, though a philosopher who has read these two authors might have dispensed with a great many others, he did not believe that he ought to neglect or disdain any thing in this way that could be of use to his subject. That reading which we must suppose necessary for the Spirit of Laws is immense; and the rational use which the author has made of such a prodigious multitude of materials will appear still more surprising, when it is known that he was almost entirely deprived of sight, and obliged to have recourse to eyes not his own; this prodigious reading contributes not only to the utility, but to the agreeableness, of the work, Without derogating from the majesty of his subject, M. de Montesquieu has known how to soften its austerity, and procure the reader some moments of repose, whether by facts which are singular and little known, or by delicate allusions, or by those strong and brilliant touches of the pencil, which paint, by one stroke, nations and men.

In a word, (for we will not here play the part of Homer's commentators,) there are, without doubt, faults in the Spirit of Laws, as there are in every work of genius whose author first dared to clear out for himself a new rout. M. de Montesquieu has been amongst us, for the study of laws, what Descartes was for that of philosophy: he often instructs us, and is sometimes mistaken; and, even when he mistakes, he instructs those who know how to read him. The last edition of his works demonstrates, by the corrections and additions which he has made, that, if he has now and then made a slip, he has been able to find it out, and to rise again. By this he will acquire, at least, a title to a new examination, in those places where he was not of the same opinion with his censurers: perhaps, indeed, what he imagined stood most in need of correction has entirely escaped them; so blind commonly is the inclination to do hurt.

But that which is within the reach of all the world is the Spirit of Laws; that which ought to render the author dear to all nations, that which would serve to cover far greater faults than are in it, is that spirit of patriotism which dictated it. The love of the public good, a desire of seeing men happy, discovers itself in it every where; and, had it no other merit but this, which is so rare and so valuable, it would be worthy, on this account alone, to be read by nations and kings. We already perceive, by happy experience, that the fruits of this work are not confined to useless sentiments in the minds of its readers. Though M. de Montesquieu survived the publication of the Spirit of Laws but a short while, he had the satisfaction in some measure to foresee those effects which it begins to produce amongst us; the natural love of Frenchmen for their country turned towards its true object; that taste for commerce, for agriculture, and for useful arts, which insensibly spreads itself in our nation; that general knowledge of the principles of government, which renders people more attached to that which they ought to love. Those who have so indecently attacked this work, perhaps, owe more to it than they imagine. Ingratitude, besides, is the smallest reproach which we have to make to them. It is not without regret, and without blushing for the age we live in, that we proceed to expose them; but this history is of too much consequence to the glory of M. de Montesquieu, and advantage to philosophy, to be passed over in silence. May that reproach, which at last covers his enemies, be of use to them!

Scarce had the Spirit of Laws appeared, but it was eagerly sought after on account of the reputation of its author: but, though M. de Montesquieu had written for the good of the people, he ought not to have had the vulgar for his judge. The depth of his subject was a necessary consequence of its importance. However, the strokes which were scattered up and down the work, and which would have been displaced if they had not arisen naturally from the subject, made too many people believe that it was written for them. People sought for an agreeable book, and they only found an useful one; the whole scheme and particular details of which they could not comprehend without some attention. The Spirit of Laws was treated with a deal of light wit; even the title of it was made a subject of pleasantry: in a word, one of the finest literary monuments which our nation ever produced was at first regarded by it with much indifference. It was requisite that the true judges should have time to read it: they very soon correct the errors of the multitude, always ready to change its opinion. That part of the public which teaches dictated to that which listens, to hear how it ought to think and speak; and the suffrages of men of abilities, joined to the echoes which repeated them, formed only one voice over all Europe.

It was then that the open and secret enemies of letters and philosophy (for there are of both kinds) united their darts against this work. Hence that multitude of pamphlets which were aimed against him from all parts, and which we shall not draw out from that oblivion in which they have sunk. If those authors had not taken proper measures to be unknown to posterity, it might be believed that the Spirit of Laws was written amidst a nation of barbarians.

M. de Montesquieu easily despised the dark criticisms of those weak authors who (whether out of a jealousy which they had no title to have, or to satisfy the public ill-nature, which loves satire and contempt) outrageously attack what they cannot attain to; and, more odious on account of the ill which they want to do, than formidable for that which they actually do, do not succeed even in this kind of writing, the facility of which, as well as its object, renders equally mean. He placed works of this kind on the same level with those weekly newspapers of Europe, the encomiums of which have no authority, and their darts no effect; which indolent readers run over without giving credit to, and in which sovereigns are insulted without knowing it, or without deigning to revenge it. But he was not equally indifferent about those principles of irreligion which they accused him of having propagated in the Spirit of Laws. By despising such reproaches he would have believed that he deserved them, and the importance of the object made him shut his eyes at the real meanness of his adversaries. Those men, who really want zeal as much as they are eager to make it appear that they have it, afraid of that light which letters diffuse, not to the prejudice of religion, but to their own disadvantage, took different ways of attacking him; some, by a stratagem which was as puerile as pusillanimous, had written to himself; others, after having attacked him under the mask of anonymous writers, had afterwards fallen by the ears among themselves. M. de Montesquieu, though he was very jealous of confounding them with each other, did not think it proper to lose time, which was precious, in combating them one after another; he contented himself with making an example of him who had most signalized himself by his extravagance. It was the author of an anonymous and periodical paper, who imagined that he had a title to succeed Pascal, because he has succeeded to his opinions; a panegyrist of works which nobody reads, and an apologist of miracles which the secular power put an end to whenever it wanted to do it; who calls the little interest, which people of letters take in his quarrels, impious and scandalous; and hath, by an address worthy of him, alienated from himself that part of the nation whose affections he ought chiefly to have endeavoured to keep. The strokes of this formidable champion were worthy of those views which inspired him: he accused M. de Montesquieu of Spinosism and deism (two imputations which are incompatible); of having followed the system of Pope (of which there is not a word in his works); of having quoted Plutarch, who is not a Christian author; of not having spoken of original sin and of grace. In a word, he pretended that the Spirit of Laws was a production of the constitution *Unigenitus*; an idea which we may perhaps be suspected of fathering on the critic out of derision. Those who have known M. de Montesquieu, and who understand his work and that of Clement XI. may judge, by this accusation, of the rest.

The unsuccessfulness of this writer ought greatly to discourage him: he wanted to attack a wise man in that place which is most sensible to every good citizen; but he only procured him an addition of glory as a man of letters: the *Defence of the Spirit of Laws* appeared. This work, on account of that moderation, that truth, that delicacy of ridicule which abound in it, ought to be regarded as a model-in this way. M. de Montesquieu, charged by his adversary with atrocious imputations, might easily have

rendered him odious; he did better, he made him ridiculous. If we are beholden to an aggressor for that good which he has done us without wanting to do it, we owe him eternal thanks for having procured us this master-piece. But what adds still more to the merit of this precious little piece is this, that the author, without thinking of it, has there drawn a picture of himself; those who knew him think they hear him; and posterity will be convinced, when reading his *Defence*, that his conversation was not inferior to his writings; an encomium which few great men have deserved.

Another circumstance gave him plainly the advantage in this dispute. The critic, who, as a proof of his attachment to religion, attacks its ministers, loudly accused the clergy of France, and especially the faculty of theology, of indifference for the cause of God, because they did not authentically proscribe so pernicious a work. The faculty had a title to despise the reproach of a nameless writer, but religion was in the question; a commendable delicacy made it resolve to examine the Spirit of Laws. Though it has been employed about it several years, it has not yet pronounced any thing; and, if some slight inadvertencies, which are almost inevitable in so vast a career, should have escaped M. de Montesquieu, the long and scrupulous attention, which they would have required from the most enlightened body of the church, might prove at least how excusable they are; but this body, full of prudence, will do nothing rashly in so important an affair. It knows the grounds of reason and of faith; it knows that the work of a man of letters ought no to be examined like that of a theologian; that the bad consequences, which odious interpretations may draw from a proposition, do not render the proposition blameable in itself; that besides we live in an unlucky age, in which the interests of religion have need of being delicately managed; and that it may do hurt to weak people to throw an ill-timed suspicion of incredulity upon geniuses of the first rank; that, in a word, in spite of this unjust accusation, M. de Montesquieu was always esteemed, visited, and well received, by the greatest and most respectable characters in the church. Would he have preserved among men of worth that esteem which he enjoyed if they had regarded him as a dangerous writer?

While insects plagued him in his own country England erected a monument to his glory. In 1752, M. d'Assier, celebrated for the medals which he has struck in honour of several illustrious men, came from London to Paris to strike one of him. M. de la Tour, an artist of such superior talents, and so respectable for his disinterestedness and greatness of mind, had ardently desired to give a new lustre to his pencil, by transmitting to posterity the portrait of the author of the Spirit of Laws; he only wanted the satisfaction of painting him; and he deserved, like Apelles, that this honour should be reserved for him: but M. de Montesquieu, as sparing of M. de la Tour's time as he himself was free of it, constantly and politely refused his pressing solicitations. M. d'Assier at first bore with such difficulties. 'Do you believe,' said he at last to M. de Montesquieu, 'that there is not as much pride in refusing my offer as in accepting of it?' Overcome by his pleasantry, he permitted M. d'Assier to do whatever he would.

The author of the Spirit of Laws, in fine, was peaceably enjoying his glory, when he fell sick at the beginning of February: his health, naturally delicate, began to decay for some time past, by the slow and almost infallible effect of deep study; by the uneasiness which they had endeavoured to give him on account of his work; in a word, by that kind of life which he was obliged to lead at Paris, which he felt to be fatal to him. But the eagerness with which his company was sought after was too keen not to be sometimes indiscreet; they would, without perceiving it, enjoy him at the expence of himself. Scarce had the news of the danger which he was in spread abroad, but it became the object of the conversation and anxiety of the public. His house was never empty of persons of all ranks who came to enquire about his health, some out of real affection, others to have the appearance of it or to follow the crowd. His majesty, penetrated with the loss which his kingdom was about to sustain, enquired about him several times; a testimony of goodness and justice which does equal honour to the monarch and the subject. M. de Montesquieu's end was not unworthy of his life. Oppressed with cruel pains, far from a family that was dear to him, and which had not the comfort of closing his eyes, surrounded by some friends and a great crowd of spectators, he preserved to his last moments a calmness and tranquility of soul. In a word, after having performed with decency every duty, full of confidence in the Eternal Being whom he was about to be re-united with, he died with the tranquility of a man of worth, who had never consecrated his talents but to the improvement of virtue and humanity. France and Europe lost him the 10th of February, 1755, aged sixty-six.

All the public news-papers published this event as a misfortune. We may apply to M. de Montesquieu what was formerly said of an illustrious Roman; that nobody, when told of his death, shewed any joy at it; that nobody even forgot him when he was no more. Foreigners were eager to demonstrate their regrets: my lord Chesterfield, whom it is enough to name, caused to be published in one of the public London papers an article to his honour, an article worthy of the one and of the other; it is the portrait of

Anaxagoras drawn by Pericles^{*}. The royal academy of sciences and belles lettres of Prussia, though it is not its custom to pronounce the *éloge* of foreign members, thought itself bound to do him an honour which it had not before done to any one but the illustrious John Bernouilli. M. de Maupertuis, notwithstanding he was at that time indisposed, performed himself this last duty to his friend, and would not permit an office so dear and so melancholy to fall to the share of any other person. To so many honourable suffrages in favour of M. de Montesquieu, we believe we may add, without indiscretion, those praises which were given him, in presence of one of us, by that very monarch to whom this celebrated academy owes its lustre, a prince made to feel those losses which Philosophy sustains, and at the same time to comfort her.

The seventeenth of February, the French academy, according to custom, performed a solemn service for him, at which, notwithstanding the rigour of the season, almost all the learned men of this body, who were not absent from Paris, thought it their duty to assist. They ought, at this melancholy ceremony, to have placed the Spirit of Laws upon

his coffin, as heretofore they exposed, opposite to that of Raphael, his last picture of the transfiguration. This simple and affecting ornament would have been a fine funeral oration.

Hitherto we have only considered M. de Montesquieu as a writer and philosopher; it would be to rob him of the half of his glory, to pass over in silence his agreeable personal qualities.

He had, in company, a sweetness and gaiety of temper always the same. His conversation was spirited, agreeable, and instructive, by the great number of men and of nations whom he had known. It was, like his stile, concise, full of wit and sallies, without gall, and without satire. Nobody told a story in a more lively manner, more readily, or with more grace and less affectation; he knew that the conclusion of an agreeable story is always the point in view, he therefore made dispatch to come at it, and produced the effect without having long promised it.

His frequent absence of mind only rendered him more amiable: he always awoke from it by some unexpected stroke which re-animated the languishing conversation; besides, these were never either frolicsome, shocking, or troublesome. The fire of his genius, the great number of ideas with which it was furnished, gave rise to them; but this never happened in the middle of an interesting or serious conversation; the desire of pleasing those, in whose company he was, made him attentive to them without affectation and without constraint.

The agreeableness of his conversation not only resembled his character and his genius, but even that kind of method which he observed in his study. Though capable of deep and long-continued meditation, he never exhausted his strength, he always left off application before he felt the least symptom of fatigue^{*}.

He was sensible to glory, but he did not wish to attain it but by deserving it. He never endeavoured to augment his own by those underhand practices, by those dark and shameful methods, which dishonour the character of the man without adding to that of the author.

Worthy of every distinction and of every reward, he asked nothing, and he was not surprised that he was forgot; but he has adventured, even in delicate circumstances, to protect at court men of letters, who were persecuted, celebrated, and unfortunate, and has obtained favours for them.

Though he lived with the great, whether out of necessity, or propriety, or taste, their company was not necessary to his happiness. He retired whenever he could to his estate in the country; he there again with joy met his philosophy, his books, and his repose. Surrounded, at his leisure hours, with country people, after having studied man, in the commerce of the world, and in the history of nations, he studied him also in those

simple people whom nature alone has instructed, and he could from them learn something: he conversed cheerfully with them; he endeavoured, like Socrates, to find out their genius; he appeared as happy, when conversing with them, as in the most brilliant assemblies, especially when he made up their differences, and comforted them under their distress by his beneficence.

Nothing does greater honour to his memory than the method in which he lived, which some people have pretended to blame as extravagant, in a proud and avaricious age, extremely unfit to find out, and still less to feel, the real benevolent motives of it.

M. de Montesquieu would neither make encroachments upon the fortune of his family, by those supplies which he gave the unfortunate, nor by those considerable expences which his long tour of travelling, the weakness of his sight, and the printing of his works, had exposed him to. He transmitted to his children, without diminution or augmentation, the estate which he received from his ancestors; he added nothing to it but the glory of his name, and the example of his life. He had married, in 1715, dame Jane de Lartigue, daughter of Peter de Lartigue, lieutenant-colonel of the regiment of Molevrier: he had two daughters and one son by her, who, by his character, his morals, and his works, has shewn himself worthy of such a father.

Those who love truth and their country will not be displeased to find some of his maxims here. He thought,

That every part of the state ought to be equally subject to the laws; but that the privileges of every part of the state ought to be respected when their effects have nothing contrary to that natural right which obliges every citizen equally to concur to the public good: that ancient possession was in this kind the first of titles, and the most inviolable of rights, which it was always unjust, and sometimes dangerous, to want to shake.

That magistrates, in all circumstances, and notwithstanding whatever advantage it might be to their own body, ought never to be any thing but magistrates without partiality and without passion, like the laws which absolve and punish without love and hatred.

In a word, he said, upon occasion of those ecclesiastical disputes which have so much employed the Greek emperors and Christians, that theological disputes, when they are not confined to the schools, infallibly dishonour a nation in the eyes of its neighbours: in fact, the contempt, in which wise men hold those quarrels, does not vindicate the character of their country; because, sages making every where the least noise, and being the smallest number, it is never from them that the nation is judged of.

The importance of those works, which we have had occasion to mention in this panegyric, has made us pass over in silence less considerable ones, which served as a

relaxation to our author, and which, in any other person, would have merited an encomium. The most remarkable of them is the Temple of Gnidus, which was very soon published after the Persian Letters. M. de Montesquieu, after having been Horace, Theophrastus, and Lucian, in those, was an Ovid and Anacreon in this new essay. It is no more the despotic love of the East which he proposes to paint, it is the delicacy and simplicity of pastoral love, such as it is in an unexperienced heart which the commerce of the world has not yet corrupted. The author, fearing, perhaps, that a picture so opposite to our manners should appear too languid and uniform, has endeavoured to animate it by the most agreeable images. He transports the reader into enchanted scenes, the view of which, to say the truth, little interests the lover in his happiest moments, but the description of which still flatters the imagination, when the passions are gratified. Inspired by his subject, he hath adorned his prose with that animated, figurative, and poetic, stile, which the romance of Telemachus gave the first example of amongst us. We do not know why some censurers of the temple of Gnidus have said upon this occasion, that it ought to have been written in verse. The poetic stile, if we understand, as we ought by this word, a stile full of warmth and images, does not stand in need of the uniform march and cadency of versification to be agreeable; but, if we only make this stile to consist in a diction loaded with needless epithets, in the cold and trivial descriptions of the wings and quiver of love, and of such objects, versification will add nothing to the merit of these beaten ornaments; in vain will we look for the life and spirit of it. However this be, the temple of Gnidus being a sort of poem in prose, it belongs to our celebrated writers to determine the rank which it ought to hold: it is worthy of such judges.

We believe, at least, the descriptions in this work may with success stand one of the principal tests of poetic descriptions, that of being represented on canvass. But what we ought chiefly to observe in the temple of Gnidus is, that Anacreon himself is always the observer and the philosopher there. In the fourth canto the author appears to describe the manners of the Cyberites, and it may easily be perceived that these are our own manners. The preface especially bears the mark of the author of the Persian Letters. When he represents the Temple of Gnidus as a translation from a Greek manuscript, a piece of wit which has been so much disfigured since by bad imitators, he takes occasion to paint by one stroke of his pen the folly of critics and the pedantry of translators. He concludes with these words, which deserve to be repeated: 'If serious people require some other work of me of a less frivolous nature, I can easily satisfy them; I have been labouring thirty years at a work of twelve pages, which will contain all that we know of metaphysics, politics, and morality; and all that the greatest authors have forgot in the volumes which they have published on these sciences.'

We look upon that particular interest which M. de Montesquieu took in the Encyclopædia, as one of the most honourable rewards of our labour; this work, till the present time, has only been supported by the courage and emulation of its authors. All men of letters ought, as he thought, eagerly to concur in the execution of this most

useful undertaking. He gave an example of it, with M. de Voltaire, and several other celebrated writers. Perhaps the opposition which this work has met with, and which reminded him of what had happened to himself, interested him the more in our favour. Perhaps he was sensible, without perceiving it, of that justice which we dared to do him in the first volume of the Encyclopædia, when nobody as yet ventured to say a word in his defence. He prepared for us an article *upon taste*, which has been found imperfect among his papers. We shall give it to the public in that condition, and treat it with the same respect that antiquity formerly shewed to the last words of Seneca. Death prevented him from giving us any farther marks of his beneficence; and, joining our own griefs with those of all Europe, we might write on his tomb,

Finis vitæ ejus nobis luctuosus, patriæ tristis, extraneis etiam ignotisque non sine cura fuit.

TACIT. *in Agric.*

ENDNOTES

[*] It was a work in the form of letters, the purpose of which was to prove that the idolatry of most of the pagans did not appear to deserve eternal damnation.

[*] See vol. iv. p. 115.

[*] See this encomium in English, as we read it in the paper called the Evening Post. "On the 10th of this month died at Paris, universally and sincerely regretted, Charles Secondat, baron of Montesquieu, and president à mortier of the parliament of Bourdeaux. His virtues did honour to human nature, his writings justice. A friend to mankind, he asserted their undoubted and unalienated rights, with freedom, even in his own country, whose prejudices in matters of religion and government (*we must remember it is an Englishman who speaks*) he had long lamented, and endeavoured (not without some success) to remove. He well knew and justly admired the happy constitution of this country, where fixed and known laws equally restrain monarchy from tyranny, and liberty from licentiousness. His works will illustrate his name, and survive him, as long as right reason, moral obligation, and the true Spirit of Laws, shall be understood, respected, and maintained."

[*] The author of the anonymous and periodical paper, which we mentioned above, pretends to find a manifest contradiction between what we say here and that which we had said before, that M. de Montesquieu's health was impaired by the slow and almost infallible effect of deep study. But why, when he was comparing the two places, has he suppressed these words, *slow and almost infallible*, which he had under his eyes? It is evidently because he perceived, that an effect, which is slow, is not a bit less real for not being felt immediately; and than, consequently, these words destroy that

appearance of contradiction which he pretends to point out. Such is the fidelity of this author in trifles, and for a stronger reason in more serious matters.

PREFACE.

IF, amidst the infinite number of subjects contained in this book, there is any thing which, contrary to my expectation, may possibly offend, I can at least assure the public that it was not inserted with an ill intention, for I am not naturally of a captious temper. Plato thanked Heaven that he was born in the same age with Socrates; and, for my part, I give thanks to God that I was born a subject of that government under which I live, and that it is his pleasure I should obey those whom he has made me love.

I beg one favour of my readers, which I fear will not be granted me; this is, that they will not judge by a few hours reading of the labour of twenty years; that they will approve or condemn the book entire, and not a few particular phrases. If they would search into the design of the author, they can do it no other way so completely as by searching into the design of the work.

I have first of all considered mankind; and the result of my thoughts has been, that, amidst such an infinite diversity of laws and manners, they were not solely conducted by the caprice of fancy.

I have laid down the first principles, and have found that the particular cases apply naturally to them; that the histories of all nations are only consequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent.

When I have been obliged to look back into antiquity, I have endeavoured to assume the spirit of the ancients, lest I should consider those things as alike which are really different, and lest I should miss the difference of those which appear to be like.

I have not drawn my principles from my prejudices, but from the nature of things.

Here a great many truths will not appear till we have seen the chain which connects them with others. The more we enter into particulars, the more we shall perceive the certainty of the principles on which they are founded. I have not even given all these particulars; for who could mention them all without a most insupportable fatigue!

The reader will not here meet with any of those bold flights which seem to characterise the works of the present age. When things are examined with ever so small a degree of extent, the sallies of imagination must vanish; these generally arise from the mind's collecting all its powers to view only one side of the subject, while it leaves the other unobserved.

I write not to censure any thing established in any country whatsoever. Every nation will here find the reasons on which its maxims are founded; and this will be the natural inference, that to propose alterations belongs only to those who are so happy as to be born with a genius capable of penetrating into the entire constitution of a state.

It is not a matter of indifference that the minds of people be enlightened. The prejudices of the magistrate have arisen from national prejudice. In a time of ignorance they have committed even the greatest evils without the least scruple; but, in an enlightened age, they even tremble while conferring the greatest blessings. They perceive the ancient abuses, they see how they must be reformed, but they are sensible also of the abuses of the reformation. They let the evil continue if they fear a worse; they are content with a lesser good if they doubt of a greater. They examine into the parts to judge of them in connection; and they examine all the causes to discover their different effects.

Could I but succeed so as to afford new reasons to every man to love his duty, his prince, his country, his laws; new reasons to render him more sensible, in every nation and government, of the blessings he enjoys, I should think myself the most happy of mortals.

Could I but succeed so as to persuade those who command to increase their knowledge in what they ought to prescribe; and those who obey, to find a new pleasure resulting from their obedience; I should think myself the most happy of mortals.

The most happy of mortals should I think myself, could I contribute to make mankind recover from their prejudices. By prejudice, I here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves.

It is in endeavouring to instruct mankind that we are best able to practise that general virtue which comprehends the love of all. Man, that flexible being, conforming in society to the thoughts and impressions of others, is equally capable of knowing his own nature, whenever it is laid open to his view, and of losing the very sense of it, when this idea is banished from his mind.

Often have I begun and as often have I laid aside this undertaking. I have a thousand times given the leaves I have written to the ^{*}winds; I every day felt my paternal hands fall [†]. I have followed my object without any fixed plan; I have known neither rules nor exceptions; I have found the truth only to lose it again. But, when I had once discovered my first principles, every thing I sought for appeared; and, in the course of twenty years, I have seen my work begun, growing up, advancing to maturity, and finished.

If this work meets with success, I shall owe it chiefly to the grandeur and majesty of the subject. However, I do not think that I have been totally deficient in point of genius.

When I have seen what so many great men both in France and Germany have written before me, I have been lost in admiration, but I have not lost my courage; I have said, with Corregio, *And I also am a painter.*^{*}

ENDNOTES

[*] Ludibria ventis.

[†] Bis patriæ cecidere manus. —

[*] Ed io anche son pittore.

THE SPIRIT OF LAWS.

BOOK I. OF LAWS IN GENERAL.

CHAP. I.

Of the Relation of Laws to different Beings.

LAWS, in their most general signification, are the necessary relations arising from the nature of things. In this sense, all beings have their laws; the Deity his^{*} laws, the material world its laws, the intelligence superior to man their laws, the beasts their laws, man his laws.

They who assert, that a *blind fatality produced the various effects we behold in this world*, talk very absurdly; for can any thing be more unreasonable than to pretend that a blind fatality could be productive of intelligent beings?

There is then a primitive reason; and laws are the relations subsisting between it and different beings, and the relations of these to one another.

God is related to the universe as creator and preserver: the laws by which he created all things are those by which he preserves them. He acts according to these rules, because he knows them; he knows them, because he made them; and he made them, because they are relative to his wisdom and power.

Since we observe that the world, though formed by the motion of matter, and void of understanding, subsists through so long a succession of ages, its motions must certainly be directed by invariable laws: and, could we imagine another world, it must also have constant rules, or it would inevitably perish.

Thus the creation, which seems an arbitrary act, supposeth laws as invariable as those of the fatality of the atheists. It would be absurd to say, that the Creator might govern the world without those rules, since without them it could not subsist.

These rules are a fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, lost, according to the relations of the quantity of matter and velocity: each diversity is *uniformity*; each change is *constancy*.

Particular intelligent beings may have laws of their own making; but they have some likewise which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust, but what is commanded or forbidden by positive laws, is the same as saying that, before the describing of a circle, all the radii were not equal.

We must therefore acknowledge relations of justice antecedent to the positive law by which they are established: as for instance, that, if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to shew their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence; if one intelligent being injures another, it deserves a retaliation; and so on.

But the intelligent world is far from being so well governed as the physical: for, though the former has also its laws, which of their own nature are invariable, it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error; and, on the other, their nature requires them to be free agents. Hence they do not steadily conform to their primitive laws; and even those of their own instituting they frequently infringe.

Whether brutes be governed by the general laws of motion, or by a particular movement, we cannot determine. Be that as it may, they have not a more intimate relation to God than the rest of the material world; and sensation is of no other use to them, than in the relation they have either to other particular beings, or to themselves.

By the allurements of pleasure they preserve the individual, and by the same allurements they preserve their species. They have natural laws, because they are united by sensation; positive laws they have none, because they are not connected by knowledge: and yet they do not invariably conform to their natural laws: these are better observed by vegetables, that have neither understanding nor sense.

Brutes are deprived of the high advantages which we have; but they have some which we have not. They have not our hopes; but they are without our fears: they are

subject, like us, to death, but without knowing it: even most of them are more attentive than we to self-preservation, and do not make so bad a use of their passions.

Man, as a physical being, is, like other bodies, governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loseth; and, as a sensible creature, he is hurried away by a thousand impetuous passions. Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures; legislators have, therefore, by political and civil laws, confined him to his duty.

CHAP. II.

Of the Laws of Nature.

ANTECEDENT to the above-mentioned laws are those of nature; so called because they derive their force entirely from our frame and existence. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society; the laws received in such a state would be those of nature.

The law, which, impressing on our minds the idea of a Creator, inclines us toward him, is the first in importance, though not in order, of natural laws. Man, in a state of nature, would have the faculty of knowing before he had acquired any knowledge. Plain it is that his first ideas would not be of a speculative nature: he would think of the preservation of his being before he would investigate its original. Such a man would feel nothing in himself, at first, but impotency and weakness: his fears and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in forests^{*} trembling at the motion of a leaf, and flying from every shadow.

In this state, every man, instead of being sensible of his equality, would fancy himself inferior: there would, therefore, be no danger of their attacking one another; peace would be the first law of nature.

The natural impulse, or desire, which Hobbes attributes to mankind, of subduing one another, is far from being well founded. The idea of empire and dominion is so complex, and depends on so many other notions, that it could never be the first which occurred to the human understanding.

Hobbes enquires, "For what reason men go armed, and have locks and keys to fasten their doors, if they be not naturally in a state of war?" But is it not obvious, that he attributes to mankind, before the establishment of society, what can happen but in consequence of this establishment, which furnishes them with motives for hostile attacks and self-defence?

Next to a sense of his weakness, man would soon find that of his wants. Hence, another law of nature would prompt him to seek for nourishment.

Fear, I have observed, would induce men to shun one another; but the marks of this fear, being reciprocal, would soon engage them to associate. Besides, this association would quickly follow from the very pleasure one animal feels at the approach of another of the same species. Again, the attraction arising from the difference of sexes would enhance this pleasure, and the natural inclination they have for each other would form a third law.

Beside the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge; and thence arises a second tie, which brutes have not. Mankind have therefore a new motive of uniting, and a fourth law of nature results from the desire of living in society.

CHAP. III.

Of positive Laws.

AS soon as mankind enter into a state of society, they lose the sense of their weakness; equality ceases, and then commences the state of war.

Each particular society begins to feel its strength; whence arises a state of war betwixt different nations. The individuals likewise of each society become sensible of their force: hence the principal advantages of this society they endeavour to convert to their own emolument; which constitutes a state of war betwixt individuals.

These two different kinds of states give rise to human laws. Considered as inhabitants of so great a planet, which necessarily contains a variety of nations, they have laws relative to their mutual intercourse, which is what we call the *law of nations*. As members of a society that must be properly supported, they have laws relative to the governors and the governed; and this we distinguish by the name of *politic law*. They have also another sort of laws, as they stand in relation to each other; by which is understood the *civil law*.

The law of nations is naturally founded on this principle, that different nations ought in

time of peace to do one another all the good they can, and in time of war as little injury as possible, without prejudicing their real interests.

The object of war is victory; that of victory is conquest; and that of conquest, preservation. From this and the preceding principle all those rules are derived which constitute the *law of nations*.

All countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners; for they send and receive ambassadors, and understand the rights of war and peace. The mischief is, that their law of nations is not founded on true principles.

Besides the law of nations relating to all societies, there is a polity, or civil constitution, for each, particularly considered. No society can subsist without a form of government. "The united strength of individuals," as Gravina well observes, "constitutes what we call the *body politic*."

The general strength may be in the hands of a single person, or of many. Some think that, nature having established paternal authority, the most natural government was that of a single person. But the example of paternal authority proves nothing: for, if the power of a father be relative to a single government, that of brothers after the death of a father, and that of cousin-germans after the decease of brothers, refer to a government of many. The political power necessarily comprehends the union of several families.

Better is it to say, that the government most conformable to nature is that which best agrees with the humour and disposition of the people in whose favour it is established.

The strength of individuals cannot be united without a conjunction of all their wills. "The conjunction of those wills," as Gravina again very justly observes, "is what we call the *civil state*."

Law in general is human reason, inasmuch as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be only the particular cases in which human reason is applied.

They should be adapted in such a manner to the people for whom they are framed, that it is a great chance if those of one nation suit another.

They should be relative to the nature and principle of each government; whether they form it, as may be said of political laws; or whether they support it, as in the case of civil institutions.

They should be relative to the climate of each country, to the quality of its soil, to its

situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have a relation to the degree of liberty which the constitution will bear, to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all which different lights they ought to be considered.

This is what I have undertaken to perform in the following work. These relations I shall examine, since all these together constitute what I call the *Spirit of Laws*.

I have not separated the political from the civil institutions; for, as I do not pretend to treat of laws, but of their spirit, and as this spirit consists in the various relations which the laws may have to different objects, it is not so much my business to follow the natural order of laws, as that of these relations and objects.

I shall first examine the relations which laws have to the nature and principle of each government: and, as this principle has a strong influence on laws, I shall make it my study to understand it thoroughly; and, if I can but once establish it, the laws will soon appear to flow from thence as from their source. I shall proceed afterwards to other more particular relations.

Endnotes

[*] "Law," says Plutarch, "is the king of mortal and immortal beings." See his treatise, entitled, *A Discourse to an unlearned Prince*.

[*] Witness the savage found in the forests of Hanover, who was carried over to England under the reign of George I.

BOOK II. OF LAWS DIRECTLY DERIVED FROM THE NATURE OF GOVERNMENT.

CHAP. I.

Of the Nature of three different Governments.

THERE are three species of government; *republican*, *monarchical*, and *despotic*. In order to discover their nature, it is sufficient to recollect the common notion, which supposes three definitions, or rather three facts: "That a republican government is that in which the body or only a part of the people is possessed of the supreme power: monarchy, that in which a single person governs by fixed and established laws: a

despotic government, that in which a single person directs every thing by his own will and caprice."

This is what I call the nature of each government: we must now inquire into those laws which directly conform to this nature, and consequently are the fundamental institutions.

CHAP. II.

Of the republican Government, and the Laws relative to Democracy.

WHEN the body of the people is possessed of the supreme power, this is called a *democracy*. When the supreme power is lodged in the hands of a part of the people, it is then an *aristocracy*.

In a democracy the people are in some respects the sovereign, and in others the subject.

There can be no exercise of sovereignty but by their suffrages, which are their own will: now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this government. And indeed it is as important to regulate, in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is, in a monarchy, to know who is the prince, and after what manner he ought to govern.

Libanius^{*} says, that at "Athens a stranger who intermeddled in the assemblies of the people was punished with death." This is because such a man usurped the rights of sovereignty.

It is an essential point, to fix the number of citizens who are to form the public assemblies; otherwise it would be uncertain whether the whole or only a part of the people had given their votes. At Sparta the number was fixed to ten thousand. But Rome, designed by Providence to rise from the weakest beginnings to the highest pitch of grandeur; Rome, doomed to experience all the vicissitudes of fortune; Rome, who had sometimes all her inhabitants without her walls, and sometimes all Italy and a considerable part of the world within them; Rome, I say, never fixed^{*} the number; and this was one of the principal causes of her ruin.

The people, in whom the supreme power resides, ought to have the management of every thing within their reach: what exceeds their abilities must be conducted by their ministers.

But they cannot properly be said to have their ministers, without the power of nominating them: it is therefore a fundamental maxim, in this government, that the people should choose their ministers; that is, their magistrates.

They have occasion, as well as monarchs, and even more so, to be directed by a council or senate. But, to have a proper confidence in these, they should have the choosing of the members; whether the election be made by themselves, as at Athens; or by some magistrate deputed for that purpose, as on certain occasions was customary at Rome.

The people are extremely well qualified for choosing those whom they are to intrust with part of their authority. They have only to be determined by things to which they cannot be strangers, and by facts that are obvious to sense. They can tell when a person has fought many battles, and been crowned with success; they are therefore very capable of electing a general. They can tell when a judge is assiduous in his office, gives general satisfaction, and has never been charged with bribery: this is sufficient for choosing a prætor. They are struck with the magnificence or riches of a fellow-citizen: no more is requisite for electing an ædile. These are facts of which they can have better information in a public forum than a monarch in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this surpasses their abilities.

Should we doubt of the people's natural capacity, in respect to the discernment of merit, we need only cast an eye on the series of surprising elections made by the Athenians and Romans; which no one surely will attribute to hazard.

We know that, though the people of Rome assumed to themselves the right of raising plebeians to public offices, yet they never would exert this power; and though, at Athens, the magistrates were allowed, by the law of Aristides, to be elected from all the different classes of inhabitants, there never was a case, says Xenophon^{*}, that the common people petitioned for employments which could endanger either their security or their glory.

As most citizens have sufficient abilities to choose, though unqualified to be chosen, so the people, though capable of calling others to an account for their administration, are incapable of conducting the administration themselves.

The public business must be carried on, with a certain motion, neither too quick nor too slow. But the motion of the people is always either too remiss or too violent. Sometimes, with a hundred thousand arms, they overturn all before them; and sometimes, with a hundred thousand feet, they creep like insects.

In a popular state the inhabitants are divided into certain classes. It is in the manner of making this division that great legislators have signalized themselves; and it is on this the duration and prosperity of democracy have ever depended.

Servius Tullus followed the spirit of aristocracy in the distribution of his classes. We find, in Livy,[†] and in Dionysius Halicarnasseus,[‡] in what manner he lodged the right of suffrage in the hands of the principal citizens. He had divided the people of Rome into a hundred and ninety-three centuries, which formed six classes; and, ranking the rich, who were in smaller numbers, in the first centuries; and those in middling circumstances, who were more numerous, in the next, he flung the indigent multitude into the last; and, as each century had but one vote^{*}, it was property rather than numbers that decided the elections.

Solon divided the people of Athens into four classes. In this he was directed by the spirit of democracy, his intention not being to fix those who were to choose, but such as were eligible: therefore, leaving to every citizen the right of election, he made[†] the judges eligible from each of those four classes; but the magistrates he ordered to be chosen only out of the first three, consisting of persons of easy fortunes.

As the division of those who have a right of suffrage is a fundamental law in republics, the manner also of giving this suffrage is another fundamental.

The suffrage by *lot* is natural to democracy, as that by *choice* is to aristocracy.

The suffrage by *lot* is a method of electing that offends no one; but animates each citizen with the pleasing hope of serving his country.

Yet, as this method is in itself defective, it has been the endeavour of the most eminent legislators to regulate and amend it.

Solon made a law, at Athens, that military employments should be conferred by *choice*; but that senators and judges should be elected by *lot*.

The same legislator ordained, that civil magistracies attended with great expence should be given by choice, and the others by *lot*.

In order, however, to amend the suffrage by *lot*, he made a rule, that none but those who presented themselves should be elected; that the person elected should be examined by judges,^{*} and that every one should have a right to accuse him if he were unworthy of the office[†]: this participated at the same time of the suffrage by *lot*, and of that by choice. When the time of their magistracy was expired, they were obliged to submit to another judgement in regard to their conduct. Persons utterly unqualified must have been extremely backward in giving in their names to be drawn by *lot*.

The law which determines the manner of giving suffrage is likewise fundamental in a democracy. It is a question of some importance, whether the suffrages ought to be public or secret. Cicero observes,[‡] that the laws^{||} which rendered them secret, towards the close of the republic, were the cause of its decline. But, as this is differently

practised in different republics, I shall offer here my thoughts concerning this subject.

The people's suffrages ought doubtless to be public^S; and this should be considered as a fundamental law of democracy. The lower class ought to be directed by those of higher rank, and restrained within bounds by the gravity of eminent personages. Hence, by rendering the suffrages secret in the Roman republic, all was lost: it was no longer possible to direct a populace that sought its own destruction. But, when the body of the nobles are to vote in an aristocracy,^{*} or in a democracy the senate,[†] as the business is then only to prevent intrigues, the suffrages cannot be too secret.

Intriguing in a senate is dangerous: dangerous it is also in a body of nobles; but not so in the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on the account of an actor, as ever they could be for the welfare of the state. The misfortune of a republic is, when intrigues are at an end; which happens when the people are gained by bribery and corruption: in this case they grow indifferent to public affairs, and avarice becomes their predominant passion. Unconcerned about the government and every thing belonging to it, they quietly wait for their hire.

It is likewise a fundamental law, in democracies, that the people should have the sole power to enact laws. And yet there are a thousand occasions on which it is necessary the senate should have a power of decreeing: nay, it is frequently proper to make some trial of a law before it is established. The constitutions of Rome and Athens were excellent. The decrees of the senate[‡] had the force of laws for the space of a year, but did not become perpetual till they were ratified by the consent of the people.

CHAP. III.

Of the Laws relative to the Nature of Aristocracy.

IN an aristocracy the supreme power is lodged in the hands of a certain number of persons. These are invested both with the legislative and executive authority; and the rest of the people are, in respect to them, the same as the subjects of a monarchy in regard to the sovereign.

They do not vote here by lot; for this would be productive of inconveniencies only. And indeed, in a government where the most mortifying distinctions are already established, though they were to be chosen by lot, still they would not cease to be odious: it is the nobleman they envy, and not the magistrate.

When the nobility are numerous, there must be a senate to regulate the affairs which the body of nobles are incapable of deciding, and to prepare others for their decision. In

this case it may be said, that the aristocracy is in some measure in the senate, the democracy in the body of the nobles, and the people are a cypher.

It would be a very happy thing, in an aristocracy, if the people, in some measure, could be raised from their state of annihilation. Thus, at Genoa, the bank of St. George being administered by the people^{*} gives them a certain influence in the government, from whence their whole prosperity is derived.

The senators ought by no means to have a right of naming their own members; for this would be the only way to perpetuate abuses. At Rome, which in its early years was a kind of aristocracy, the senate did not fill up the vacant places in their own body: the new members were nominated by the^{*} censors.

In a republic, the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy. In the latter, the laws have provided for, or in some measure adapted themselves to, the constitution; and the principle of government checks the monarch: but, in a republic, where a private citizen has obtained an exorbitant power,[†] the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it.

There is an exception to this rule, when the constitution is such as to have immediate need of a magistrate invested with an exorbitant power. Such was Rome with her dictators; such is Venice with her state-inquisitors: these are formidable magistrates, who restore, as it were by violence, the state to its liberty. But how comes it that these magistracies are so very different in these two republics? It is because Rome supported the remains of her aristocracy against the people; whereas Venice employs her state-inquisitors to maintain her aristocracy against the nobles. The consequence was, that at Rome the dictatorship could be only of a short duration, as the people act through passion, and not with design. It was necessary that a magistracy of this kind should be exercised with lustre and pomp; the business being to intimidate, and not to punish, the multitude. It was also proper that the dictator should be created only for some particular affair, and for this only should have an unlimited authority, as he was always created upon some sudden emergency. On the contrary, at Venice they have occasion for a permanent magistracy; for here it is that schemes may be set on foot, continued, suspended, and resumed; that the ambition of a single person becomes that of a family, and the ambition of one family that of many. They have occasion for a secret magistracy, the crimes they punish being hatched in secrecy and silence. This magistracy must have a general inquisition; for their business is not to remedy known disorders, but to prevent the unknown. In a word, the latter is designed to punish suspected crimes; whereas the former used rather menaces than punishment, even for crimes that were openly avowed.

In all magistracies the greatness of the power must be compensated by the brevity of

the duration. This most legislators have fixed to a year: a longer space would be dangerous, and a shorter would be contrary to the nature of government; for who is it that, in the management even of his domestic affairs, would be thus confined? At

Ragusa^{*} the chief magistrate of the republic is changed every month, the other officers every week, and the governor of the castle every day. But this can take place only in a small republic environed[†] by formidable powers, who might easily corrupt such petty and insignificant magistrates.

The best aristocracy is that in which those who have no share in the legislature are so few and inconsiderable, that the governing party have no interest in oppressing them.

Thus, when[‡] Antipater made a law at Athens, that whosoever was not worth two thousand drachms should have no power to vote, he formed, by this method, the best aristocracy possible; because this was so small a sum, as excluded very few, and not one of any rank or consideration in the city.

Aristocratical families ought, therefore, as much as possible, to level themselves, in appearance, with the people. The more an aristocracy borders on democracy, the nearer it approaches to perfection; and, in proportion as it draws towards monarchy, the more it is imperfect.

But the most imperfect of all is that in which the part of the people that obeys is in a state of civil servitude to those who command; as the aristocracy of Poland, where the peasants are slaves to the nobility.

CHAP. IV.

Of the Relation of Laws to the Nature of monarchical Government.

THE intermediate, subordinate, and dependent powers constitute the nature of monarchical government; I mean of that in which a single person governs by fundamental laws. I said, the *intermediate, subordinate, and dependent powers*: and indeed, in monarchies, the prince is the source of all power, political and civil. These fundamental laws necessarily suppose the intermediate channels through which the power flows; for, if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and of course there is no fundamental law.

The most natural intermediate and subordinate power is that of the nobility. This, in some measure, seems to be essential to a monarchy, whose fundamental maxim is, *No monarch, no nobility; no nobility, no monarch*: but there may be a despotic prince.

There are men who have endeavoured, in some countries in Europe, to suppress the jurisdiction of the nobility; not perceiving that they were driving at the very thing that

was done by the parliament of England. Abolish the privileges of the lords, the clergy, and cities, in a monarchy, and you will soon have a popular state, or else a despotic government.

The courts of a considerable kingdom in Europe have, for many ages, been striking at the patrimonial jurisdiction of the lords and clergy. We do not pretend to censure these sage magistrates; but we leave it to the public to judge how far this may alter the constitution.

Far am I from being prejudiced in favour of the privileges of the clergy; however, I should be glad their jurisdiction were once fixed. The question is not, whether their jurisdiction was justly established; but, whether it be really established; whether it constitutes a part of the laws of the country, and is in every respect relative to those laws; whether, between two powers acknowledged independent, the conditions ought not to be reciprocal; and whether it be not equally the duty of a good subject to defend the prerogative of the prince, and to maintain the limits which from time immemorial he has prescribed to his authority.

Though the ecclesiastic power be so dangerous in a republic, yet it is extremely proper in a monarchy, especially of the absolute kind. What would become of Spain and Portugal, since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power? a barrier ever useful when there is no other: for, since a despotic government is productive of the most dreadful calamities to human nature, the very evil that restrains it is beneficial to the subject.

In the same manner as the ocean, threatening to overflow the whole earth, is stopped by weeds and pebbles, that lie scattered along the shore; so monarchs, whose power seems unbounded, are restrained by the smallest obstacles, and suffer their natural pride to be subdued by supplication and prayer.

The English, to favour their liberty, have abolished all the intermediate powers of which their monarchy was composed. They have a great deal of reason to be jealous of this liberty: were they ever to be so unhappy as to lose it, they would be one of the most servile nations upon earth.

Mr. Law, through ignorance both of a republican and monarchical constitution, was one of the greatest promoters of absolute power ever known in Europe. Besides the violent and extraordinary changes owing to his direction, he would fain suppress all the intermediate ranks, and abolish the political communities. He was dissolving^{*} the monarchy by his chimerical reimbursements, and seemed as if he even wanted to redeem the constitution.

It is not enough to have intermediate powers in a monarchy; there must be also a depository of the laws. This depository can only be the judges of the supreme courts of

justice, who promulge the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence, and contempt of civil government, require there should be a body invested with a power of reviving and executing the laws, which would be otherwise buried in oblivion. The prince's council are not a proper depositary: they are naturally the depositary of the momentary will of the prince, and not of the fundamental laws. Besides, the prince's council is continually changing; it is neither permanent nor numerous; neither has it a sufficient share of the confidence of the people; consequently it is incapable to set them right in difficult conjunctures, or to reduce them to proper obedience.

Despotic governments, where there are no fundamental laws, have no such kind of depositary. Hence it is that religion has generally so much influence in those countries, because it forms a kind of permanent depositary; and, if this cannot be said of religion, it may of the customs that are respected instead of laws.

CHAP. V.

Of the Laws relative to the Nature of a despotic Government.

FROM the nature of despotic power it follows, that the single person, invested with this power, commits the execution of it also to a single person. A man, whom his senses continually inform that he himself is every thing, and his subjects nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs. But, were he to commit the administration to many, there would be continual disputes among them; each would form intrigues to be his first slave, and he would be obliged to take the reins into his own hands. It is, therefore, more natural for him to resign it to a vizir,^{*} and to invest him with the same power as himself. The creation of a vizir is a fundamental law of this government.

It is related of a pope, that he had started an infinite number of difficulties against his election, from a thorough conviction of his incapacity. At length he was prevailed on to accept of the pontificate, and resigned the administration entirely to his nephew. He was soon struck with surprize, and said, "I should never have thought that these things were so easy." The same may be said of the princes of the East, who, being educated in a prison, where eunuchs corrupt their hearts and debase their understandings, and where they are frequently kept ignorant of their high rank, when drawn forth in order to be placed on the throne, they are at first confounded; but, as soon as they have chosen a vizir, and abandoned themselves in their seraglio to the most brutal passions, pursuing, in the midst of a prostituted court, every capricious extravagance, they could never have dreamt to find matters so easy.

The more extensive the empire, the larger the seraglio; and consequently the more voluptuous the prince. Hence the more nations such a sovereign has to rule, the less he attends to the cares of government; the more important his affairs, the less he makes them the subject of his deliberations.

Endnotes

[*] Declam. 17. & 28.

[*] See the Considerations on the causes of the grandeur and decline of the Romans.

[*] Page 691. & 692. edit. Wechel. Ann. 1576.

[†] Lib. 1.

[‡] Lib. 4, Art. 15, & seq.

[*] See, in the Considerations on the causes of the grandeur and decline of the Romans, chap. 9. how this spirit of Servius Tullus was preserved in the republic.

[†] Dionysius Halicarn. eulogium of Isocrates, p. 67. tom. 2. Edit. Wechel. Pollux, l. 8. c. 10, Art. 130.

[*] See the oration of Demosthenes *de falsâ legat.* and the oration against Timarchus.

[†] They used even to draw two tickets for each place; one which gave the place, and the other which named the person who was to succeed in case the first was rejected.

[‡] Lib. 1. & 3. de Leg.

[||] They were called *Leges Tabulares*: two tablets were presented to each citizen; the first marked with an *A*, for *Antiquo*, or *I forbid it*; and the other with an *U* and an *R*, for *Uti rogas*, or *Be it as you desire*.

[§] At Athens the people used to lift up their hands.

[*] As at Venice.

[†] The thirty tyrants at Athens ordered the suffrages of the *Areopagites* to be public, in order to manage them as they pleased. *Lysias, Orat. contra Agorai. cap. 8.*

[‡] See Dionys. Halicarn. lib. 4. & 9.

[*] See Mr. Addison's Travels to Italy.

[*] They were named at first by the consuls.

[†] This is what ruined the republic of Rome. See Considerations on the causes of the grandeur and decline of the Romans.

[*] Tournefort's voyages.

[†] At Lucca the magistrates are chosen only for two months.

[‡] Diodorus, lib. 18. p. 601. Rhodoman's edition.

[*] Ferdinand, king of Arragon, made himself grand-master of the orders; and that alone changed the constitution.

[*] The eastern kings are never without vizirs, says Sir John Chardin.

BOOK III. OF THE PRINCIPLES OF THE THREE KINDS OF GOVERNMENT.

CHAP. I.

Difference between the Nature and Principle of Government.

AFTER having examined the laws relative to the nature of each government, we must investigate those which relate to its principle.

There is this difference between^{*} the nature and principle of government, that the former is that by which it is constituted, and the latter that by which it is made to act. One is its particular structure, and the other the human passions which set it in motion.

Now, laws ought to be no less relative to the principle, than to the nature, of each government. We must therefore enquire into this principle, which shall be the subject of this third book.

CHAP. II.

Of the Principle of different Governments.

I have already observed, that it is the nature of a republican government, that either

the collective body of the people or particular families should be possessed of the supreme power: of a monarchy, that the prince should have this power, but, in the execution of it, should be directed by established laws: of a despotic government, that a single person should rule according to his own will and caprice. This enables me to discover their three principles, which are naturally derived from thence. I shall begin with a republican government, and in particular with that of democracy.

CHAP. III.

Of the Principle of Democracy.

THERE is no great share of probity necessary to support a monarchical or despotic government: the force of laws, in one, and the prince's arm, in the other, are sufficient to direct and maintain the whole: but, in a popular state, one spring more is necessary, namely, *virtue*.

What I have here advanced is confirmed by the unanimous testimony of historians, and is extremely agreeable to the nature of things. For, it is clear, that, in a monarchy, where he, who commands the execution of the laws, generally thinks himself above them, there is less need of virtue than in a popular government, where the person, entrusted with the execution of the laws, is sensible of his being subject to their direction.

Clear it is, also, that a monarch, who, through bad advice or indolence, ceases to enforce the execution of the laws, may easily repair the evil; he has only to follow other advice, or to shake off this indolence. But when, in a popular government, there is a suspension of the laws, (as this can proceed only from the corruption of the republic,) the state is certainly undone.

A very droll spectacle it was, in the last century, to behold the impotent efforts of the English towards the establishment of democracy. As they, who had a share in the direction of public affairs, were void of virtue; as their ambition was enflamed by the success of the most daring of their members[†]; as the prevailing parties were successively animated by the spirit of faction; the government was continually changing; the people, amazed at so many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed.

When Sylla thought of restoring Rome to her liberty, this unhappy city was incapable of that blessing. She had only the feeble remains of virtue, which were continually

diminishing: instead of being roused out of her lethargy by Cæsar, Tiberius, Caius, Claudius, Nero, Domitian, she riveted every day her chains; if she struck some blows, her aim was at the tyrant, but not at the usurpation.

The politic Greeks, who lived under a popular government, knew no other support than virtue: the modern inhabitants of that country are entirely taken up with manufacture, commerce, finances, opulence, and luxury.

When virtue is banished, ambition invades the minds of those who are disposed to receive it, and avarice possesses the whole community. The objects of their desires are changed; what they were fond of before is become indifferent; they were free while under the restraint of laws, but they would fain now be free to act against law; and, as each citizen is like a slave who has run away from his master, what was a maxim of equity, he calls rigour; what was a rule of action, he stiles constraint; and to precaution he gives the name of fear. Frugality, and not the thirst of gain, now passes for avarice. Formerly, the wealth of individuals constituted the public treasure, but now this is become the patrimony of private persons. The members of the commonwealth riot on the public spoils, and its strength is only the power of a few and the licentiousness of many.

Athens was possessed of the same number of forces, when she triumphed so gloriously, and when, with so much infamy, she was enslaved. She had twenty thousand citizens[§] when she defended the Greeks against the Persians, when she contended for empire with Sparta, and invaded Sicily. She had twenty thousand when Demetrius Phalereus numbered them^{*}, as slaves are told by the head in a market-place. When Philip attempted to lord it over Greece, and appeared at the gates of Athens[†], she had even then lost nothing but time. We may see, in Demosthenes, how difficult it was to awake her: she dreaded Philip, not as the enemy of her liberty, but of her pleasures[‡]. This famous city, which had withstood so many defeats, and, after having been so often destroyed, had as often risen out of her ashes, was overthrown at Chæronea, and, at one blow, deprived of all hopes of resource. What does it avail her, that Philip sends back her prisoners, if he does not return her men? It was ever after as easy to triumph over the Athenian forces as it had been difficult to subdue her virtue.

How was it possible for Carthage to maintain her ground? When Hannibal, upon his being made prætor, endeavoured to hinder the magistrates from plundering the republic, did not they complain of him to the Romans? Wretches, who would fain be citizens without a city, and beholden for their riches to their very destroyers! Rome soon insisted upon having three hundred of their principal citizens as hostages; she obliged them next to surrender their arms and ships; and then she declared war[†]. From the desperate efforts of this defenceless city, one may judge of what she might have performed in her full vigour, and assisted by virtue.

CHAP. IV.

Of the Principle of Aristocracy.

AS virtue is necessary in a popular government, it is requisite, also, under an aristocracy. True it is, that, in the latter, it is not so absolutely requisite.

The people, who, in respect to the nobility, are the same as the subjects with regard to a monarch, are restrained by their laws: they have, therefore, less occasion for virtue than the people in a democracy. But how are the nobility to be restrained? They, who are to execute the laws against their colleagues, will immediately perceive they are acting against themselves. Virtue is, therefore, necessary in this body, from the very nature of the constitution.

An aristocratical government has an inherent vigour, unknown to democracy. The nobles form a body, who, by their prerogative, and for their own particular interest, restrain the people; it is sufficient, that there are laws in being, to see them executed.

But, easy as it may be for the body of the nobles to restrain the people, it is difficult to restrain themselves^{*}. Such is the nature of this constitution, that it seems to subject the very same persons to the power of the laws, and, at the same time, to exempt them.

Now, such a body as this can restrain itself only two ways; either by a very eminent virtue, which puts the nobility, in some measure, on a level with the people, and may be the means of forming a great republic; or by an inferior virtue, which puts them, at least, upon a level with one another; and on this their preservation depends.

Moderation is, therefore, the very soul of this government; a moderation, I mean, founded on virtue, not that which proceeds from indolence and pusillanimity.

CHAP. V.

That Virtue is not the Principle of a monarchical Government.

IN monarchies, policy effects great things with as little virtue as possible. Thus, in the nicest machines, art has reduced the number of movements, springs, and wheels.

The state subsists independently of the love of our country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients, and to us are known only by story.

The laws supply here the place of those virtues; they are by no means wanted, and the state dispenses with them: an action, performed here in secret, is, in some measure, of no consequence.

Though all crimes be, in their own nature, public, yet there is a distinction between crimes really public and those that are private, which are so called, because they are more injurious to individuals than to the community.

Now, in republics, private crimes are more public; that is, they attack the constitution more than they do individuals: and, in monarchies, public crimes are more private; that is, they are more prejudicial to private people than to the constitution.

I beg that no one will be offended with what I have been saying; my observations are founded on the unanimous testimony of historians. I am not ignorant that virtuous princes are no such very rare instances; but I venture to affirm, that, in a monarchy, it is extremely difficult for the people to be virtuous^{*}.

Let us compare what the historians of all ages have asserted concerning the courts of monarchs; let us recollect the conversations and sentiments of people of all countries in respect to the wretched character of courtiers; and we shall find, that these are not airy speculations, but truths, confirmed by a sad and melancholy experience.

Ambition in idleness, meanness mixed with pride, a desire of riches without industry, aversion to truth, flattery, perfidy, violation of engagements, contempt of civil duties, fear of the prince's virtue, hope from his weakness, but, above all, a perpetual ridicule cast upon virtue, are, I think, the characteristics by which most courtiers, in all ages and countries, have been constantly distinguished. Now, it is exceeding difficult for the leading men of the nation to be knaves, and the inferior sort to be honest; for the former to be cheats, and the latter to rest satisfied with being only dupes.

But, if there should chance to be some unlucky honest man[†] among the people, cardinal Richelieu, in his political testament, seems to hint that a prince should take care not to employ him[‡]. So true is it, that virtue is not the spring of this government. It is not, indeed, excluded, but it is not the spring of government.

CHAP. VI.

In what Manner Virtue is supplied in a monarchical Government.

BUT it is high time for me to have done with this subject, lest I should be suspected of writing a satire against monarchical government. Far be it from me; if monarchy wants one spring, it is provided with another. Honour, that is, the prejudice of every person

and rank, supplieth the place of the political virtue of which I have been speaking, and is every where her representative: here it is capable of inspiring the most glorious actions, and, joined with the force of laws, may lead us to the end of government as well as virtue itself.

Hence, in well-regulated monarchies, they are almost all good subjects, and very few good men; for, to be a good man[†], a good intention is necessary^{*}, and we should love our country not so much on our own account as out of regard to the community.

CHAP. VII.

Of the Principle of Monarchy.

A monarchical government supposeth, as we have already observed, pre-eminences and ranks, as likewise a noble descent. Now, since it is the nature of honour to aspire to preferments and titles, it is properly placed in this government.

Ambition is pernicious in a republic; but in a monarchy it has some good effects; it gives life to the government, and is attended with this advantage, that it is no way dangerous, because it may be continually checked.

It is with this kind of government as with the system of the universe, in which there is a power that constantly repels all bodies from the center, and a power of gravitation, that attracts them to it. Honour sets all the parts of the body politic in motion, and, by its very action, connects them; thus each individual advances the public good, while he only thinks of promoting his own interest.

True it is, that, philosophically speaking, it is a false honour which moves all the parts of the government; but even this false honour is as useful to the public as true honour could possibly be to private people.

Is it not a very great point, to oblige men to perform the most difficult actions, such as require an extraordinary exertion of fortitude and resolution, without any other recompence than that of glory and applause?

CHAP. VIII.

That Honour is not the Principle of despotic Government.

HONOUR is far from being the principle of despotic government: mankind being here all

upon a level, no one person can prefer himself to another; and as, on the other hand, they are all slaves, they can give themselves no sort of preference.

Besides, as honour has its laws and rules; as it knows not how to submit; as it depends, in a great measure, on a man's own caprice, and not on that of another person; it can be found only in countries in which the constitution is fixed, and where they are governed by settled laws.

How can despotism bear with honour? This glories in the contempt of life, and that is founded in the power of taking it away. How can honour, on the other hand, bear with despotism? The former has its fixed rules and peculiar caprices, but the latter is directed by no rule, and its own caprices are subversive of all others.

Honour, therefore, a thing unknown in arbitrary governments, some of which have not even a proper word to express it^{*}, is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themselves.

CHAP. IX.

Of the Principle of despotic Government.

AS virtue is necessary in a republic, and, in a monarchy, honour, so fear is necessary in a despotic government: with regard to virtue, there is no occasion for it, and honour would be extremely dangerous.

Here, the immense power of the prince is devolved intirely upon those whom he is pleased to intrust with the administration. Persons, capable of setting a value upon themselves, would be likely to create disturbances. Fear must, therefore, depress their spirits, and extinguish even the least sense of ambition.

A moderate government may, whenever it pleases, and without the least danger, relax its springs: it supports itself by the laws and by its own internal strength. But, when a despotic prince ceases one single moment to lift up his arm, when he cannot instantly demolish those whom he has intrusted with the first employments[†], all is over: for, as fear, the spring of this government, no longer subsists, the people are left without a protector.

It is probably in this sense the Cadis maintained that the Grand Seignior was not obliged to keep his word or oath, when he limited thereby his authority[‡].

It is necessary that the people should be judged by laws, and the great men by the caprice of the prince; that the lives of the lowest subjects should be safe, and the

bashaw's head ever in danger. We cannot mention these monstrous governments without horror. The Sophi of Persia, dethroned, in our days, by Mahomet, the son of Miriveis, saw the constitution subverted, before this revolution, because he had been too sparing of blood^{*}.

History informs us, that the horrid cruelties of Domitian struck such a terror into the governors, that the people recovered themselves a little under his reign[§]. Thus a torrent overflows one side of a country, and, on the other, leaves fields untouched, where the eye is refreshed by the prospect of fine meadows.

CHAP. X.

Difference of Obedience in moderate and despotic Governments.

IN despotic states, the nature of government requires the most passive obedience; and, when once the prince's will is made known, it ought infallibly to produce its effect.

Here they have no limitations or restrictions; no mediums, terms, equivalents, or remonstrances; no change to propose: man is a creature that blindly submits to the absolute will of the sovereign.

In a country like this, they are no more allowed to represent their apprehensions of a future danger than to impute their miscarriage to the capriciousness of fortune. Man's portion here, like that of beasts, is instinct, compliance, and punishment.

Little does it then avail to plead the sentiments of nature, filial respect, conjugal or parental tenderness, the laws of honour, or want of health; the order is given, and that is sufficient.

In Persia, when the king has condemned a person, it is no longer lawful to mention his name or to intercede in his favour. Even if the prince were intoxicated, or non compos, the decree must be executed^{*}; otherwise he would contradict himself, and the law admits of no contradiction. This has been the way of thinking in that country in all ages: as the order, which Ahasuerus gave, to exterminate the Jews, could not be revoked, they were allowed the liberty of defending themselves.

One thing, however, may be sometimes opposed to the prince's will[§], namely, religion. They will abandon, nay, they will slay, a parent, if the prince so commands, but he cannot oblige them to drink wine. The laws of religion are of a superior nature, because they bind the sovereign as well as the subject. But, with respect to the law of nature, it is otherwise; the prince is no longer supposed to be a man.

In monarchical and moderate states, the power is limited by its very spring, I mean, by honour, which, like a monarch, reigns over the prince and his people. They will not alledge to their sovereign, the laws of religion; a courtier would be apprehensive of rendering himself ridiculous. But the laws of honour will be appealed to on all occasions. Hence arise the restrictions necessary to obedience: honour is naturally subject to whims, by which the subject's submission will be ever directed.

Though the manner of obeying be different, in these two kinds of government, the power is the same. On which side soever the monarch turns, he inclines the scale, and is obeyed. The whole difference is, that, in a monarchy, the prince receives instruction, at the same time that his ministers have greater abilities, and are more versed in public affairs, than the ministers of a despotic government.

CHAP. XI.

Reflections on the preceding Chapters.

SUCH are the principles of the three sorts of government: which does not imply, that, in a particular republic, they actually are, but that they ought to be, virtuous: nor does it prove, that, in a particular monarchy, they are actuated by honour; or, in a particular despotic government, by fear; but that they ought to be directed by these principles, otherwise the government is imperfect.

Endnotes

[*] This is a very important distinction, from whence I shall draw many consequences, for it is the key of an infinite number of laws.

[†] Cromwell.

[§] Plutarch, Life of Pericles. Plato, in Critia.

[*] She had, at that time, twenty-one thousand citizens, ten thousand strangers, and four hundred thousand slaves. See Athenæus, book 6.

[†] She had then twenty thousand citizens. See Demosthenes in Aristog.

[||] They had passed a law which rendered it a capital crime for any one to propose applying the money designed for the theatres to military service.

[†] This lasted three years.

[*] Public crimes may be punished, because it is here a common concern; but private crimes will go unpunished, because it is the common interest not to punish them.

[*] I speak here of political virtue, which is, also, moral virtue, as it is directed to the public good: very little of private moral virtue, and not at all of that virtue which relates to revealed truths. This will appear better, book V. chap. 2.

[†] This is to be understood in the sense of the preceding note.

[‡] We must not, says he, employ people of mean extraction, they are too rigid and morose.

[†] This word, *good man*, is understood here in a political sense only.

[*] See the note, p. 30.

[*] See Perry, p 447.

[†] As it often happens in a military aristocracy.

[‡] Ricault *on the Ottoman empire*.

[*] See the history of this revolution, by father Ducerceau.

[§] His was a military constitution, which is one of the species of despotic government.

[*] See sir John Chardin.

[§] Ibid.

BOOK IV. THAT THE LAWS OF EDUCATION OUGHT TO BE RELATIVE TO THE PRINCIPLES OF GOVERNMENT.

CHAP. I.

Of the Laws of Education.

THE laws of education are the first impressions we receive; and, as they prepare us for civil life, every private family ought to be governed by the plan of that great household which comprehends them all.

If the people in general have a principle, their constituent parts, that is, the several

families, will have one also. The laws of education will be therefore different in each species of government: in monarchies, they will have honour for their object; in republics, virtue; in despotic governments, fear.

CHAP. II.

Of Education in Monarchies.

IN monarchies the principal branch of education is not taught in colleges or academies: it commences, in some measure, at our setting out in the world; for this is the school of what we call honour, that universal preceptor, which ought every where to be our guide.

Here it is that we constantly hear three rules or maxims; viz. *that we should have a certain nobleness in our virtues, a kind of frankness in our morals, and a particular politeness in our behaviour.*

The virtues we are here taught are less what we owe to others than to ourselves; they are not so much what draws us towards society, as what distinguishes us from our fellow-citizens.

Here the actions of men are judged, not as virtuous, but as shining; not as just, but as great; not as reasonable, but as extraordinary.

When honour here meets with any thing noble in our actions, it is either a judge that approves them, or a sophister by whom they are excused.

It allows of gallantry, when united with the idea of sensible affection, or with that of conquest: this is the reason why we never meet with so strict a purity of morals in monarchies as in republican governments.

It allows of cunning and craft, when joined with the notion of greatness of soul, or importance of affairs; as, for instance, in politics, with whose finesses it is far from being offended.

It does not forbid adulation, but when separate from the idea of a large fortune, and connected only with the sense of our mean condition.

With regard to morals, I have observed, that the education of monarchies ought to admit of a certain frankness and open carriage: truth, therefore, in conversation, is here a necessary point. But is it for the sake of truth? By no means. Truth is requisite only because a person habituated to veracity has an air of boldness and freedom. And,

indeed, a man of this stamp seems to lay a stress only on the things themselves, not on the manner in which they are received.

Hence it is, that, in proportion as this kind of frankness is commended, that of the common people is despised, which has nothing but truth and simplicity for its object.

In fine, the education of monarchies requires a certain politeness of behaviour. Man, a social animal, is formed to please in society; and a person that would break through the rules of decency, so as to shock those he conversed with, would lose the public esteem, and become incapable of doing any good.

But politeness, generally speaking, does not derive its original from so pure a source: it rises from a desire of distinguishing ourselves. It is pride that renders us polite: we are flattered with being taken notice of for a behaviour that shews we are not of a mean condition, and that we have not been bred up with those who in all ages are considered as the scum of the people.

Politeness, in monarchies, is naturalised at court. One man excessively great renders every body else little. Hence that regard which is paid to our fellow-subjects: hence that politeness, equally pleasing to those by whom, as to those towards whom, it is practised; because it gives people to understand that a person actually belongs, or at least deserves to belong, to the court.

A court air consists in quitting a real for a borrowed greatness. The latter pleases the courtier more than the former. It inspires him with a certain disdainful modesty, which shews itself externally, but whose pride insensibly diminishes in proportion to its distance from the source of this greatness.

At court we find a delicacy of taste in every thing; a delicacy arising from the constant use of the superfluities of life; from the variety, and especially the satiety, of pleasures; from the multiplicity, and even confusion, of fancies; which, if they are but agreeable, are sure of being well received.

These are the things which properly fall within the province of education, in order to form what we call a man of honour, a man possessed of all the qualities and virtues requisite in this kind of government.

Here it is that honour interferes with every thing, mixing even with people's manner of thinking, and directing their very principles.

To this whimsical honour it is owing that the virtues are only just what it pleases: it adds rules of its own invention to every thing prescribed to us: it extends or limits our duties according to its own fancy, whether they proceed from religion, politics, or morality.

There is nothing so strongly inculcated, in monarchies, by the laws, by religion, and honour, as submission to the prince's will: but this very honour tells us, that the prince never ought to command a dishonourable action; because this would render us incapable of serving him.

Crillon refused to assassinate the duke of Guise, but offered to fight him. After the massacre of St. Bartholomew, Charles IX. having sent orders to the governors in the several provinces for the Hugonots to be murdered, viscount Dorte, who commanded at Bayonne, wrote thus to the king: ^{*}“Sire, among the inhabitants of this town, and your majesty's troops, I could not find so much as one executioner: they are honest citizens, and brave soldiers. We jointly, therefore, beseech your majesty to command our arms and lives in things that are practicable.” This great and generous soul looked upon a base action as a thing impossible.

There is nothing that honour more strongly recommends to the nobility, than to serve their prince in a military capacity: and indeed this is their favourite profession, because its dangers, its success, and even its miscarriages, are the road to grandeur. Yet this very law of its own making honour chooses to explain; and, in case of any affront, it requires or permits us to retire.

It insists also that we should be at liberty either to seek or to reject employments; a liberty which it prefers even to an ample fortune.

Honour therefore has its supreme laws, to which education is obliged to conform.[†] The chief of these are, that we are permitted to set a value upon our fortune, but are absolutely forbidden to set any upon our lives.

The second is, that, when we are raised to a post or preferment, we should never do or permit any thing which may seem to imply that we look upon ourselves as inferior to the rank we hold.

The third is, that those things which honour forbids are more rigorously forbidden when the laws do not concur in the prohibition; and those it commands are more strongly insisted upon when they happen not to be commanded by law.

CHAP. III.

Of Education in a despotic Government.

AS education in monarchies tends to raise and ennoble the mind, in despotic governments its only aim is to debase it. Here it must necessarily be servile: even in power such an education will be an advantage, because every tyrant is at the same

time a slave.

Excessive obedience supposes ignorance in the person that obeys. The same it supposes in him that commands; for he has no occasion to deliberate, to doubt, to reason; he has only to will.

In despotic states each house is a separate government. As education, therefore, consists chiefly in social converse, it must be here very much limited: all it does is to strike the heart with fear, and to imprint on the understanding a very simple notion of a few principles of religion. Learning here proves dangerous, emulation fatal; and, as to virtue, Aristotle cannot think there is any one virtue belonging to slaves: ^{*} if so, education in despotic countries is confined within a very narrow compass.

Here therefore education is in some measure needless: to give something, one must take away every thing; and begin with making a bad subject, in order to make a good slave.

For why should education take pains in forming a good citizen, only to make him share in the public misery? If he loves his country, he will strive to relax the springs of government: if he miscarries, he will be undone: if he succeeds, he must expose himself, the prince, and his country, to ruin.

CHAP. IV.

Difference between the Effects of ancient and modern Education.

MOST of the ancients lived under governments that had virtue for their principle; and, when this was in full vigour, they performed actions unusual in our times, and at which our narrow minds are astonished.

Another advantage their education had over ours; it never was effaced by contrary impressions. Epaminondas, the last year of his life, said, heard, beheld, and performed, the very same things as at the age in which he received the first principles of his education.

In our days we receive three different or contrary educations; namely, of our parents, of our masters, and of the world. What we learn in the latter effaces all the ideas of the former. This in some measure arises from the contrast we experience between our religious and worldly engagements; a thing unknown to the ancients.

CHAP. V.

Of Education in a republican Government.

IT is in a republican government that the whole power of education is required. The fear of despotic governments naturally rises of itself amidst threats and punishments: the honour of monarchies is favoured by the passions, and favours them in its turn: but virtue is a self-renunciation, which is ever arduous and painful.

This virtue may be defined *the love of the laws and of our country*. As such love requires a constant preference of public to private interest, it is the source of all private virtues; for they are nothing more than this very preference itself.

This love is peculiar to democracies. In these alone the government is intrusted to private citizens. Now, government is like every thing else: to preserve it, we must love it.

Has it ever been heard that kings were not fond of monarchy, or that despotic princes hated arbitrary power?

Every thing, therefore, depends on establishing this love in a republic; and to inspire it ought to be the principal business of education: but the surest way of instilling it into children is for parents to set them an example.

People have it generally in their power to communicate their ideas to their children; but they are still better able to transfuse their passions.

If it happens otherwise, it is because the impressions made at home are effaced by those they have received abroad.

It is not the young people that degenerate: they are not spoilt till those of maturer age are already sunk into corruption.

CHAP. VI.

Of some Institutions among the Greeks.

THE ancient Greeks, convinced of the necessity that people who live under a popular government should be trained up to virtue, made very singular institutions in order to inspire it. Upon seeing, in the life of Lycurgus, the laws that legislator gave to the Lacedæmonians, I imagine I am reading the history of the Sevarambes. The laws of

Crete were the model of those of Sparta; and those of Plato reformed them.

Let us reflect here a little on the extensive genius with which those legislators must have been endowed, to perceive that, by striking at received customs, and by confounding all manner of virtues, they should display their wisdom to the universe. Lycurgus, by blending theft with the spirit of justice, the hardest servitude with excess of liberty, the most rigid sentiments with the greatest moderation, gave stability to his city. He seemed to deprive her of all resources, such as arts, commerce, money, walls: ambition prevailed among the citizens, without hopes or improving their fortune: they had natural sentiments without the tie of a son, husband, or father; and chastity was stript even of modesty and shame. This was the road that led Sparta to grandeur and glory; and so infallible were these institutions, that it signified nothing to gain a victory over that republic, without subverting her polity.*

By these laws Crete and Laconia were governed. Sparta was the last that fell a prey to the Macedonians, and Crete to the Romans.† The Samnites had the same institutions, which furnished those very Romans with the subject of four and twenty triumphs.‡

A character so extraordinary in the institutions of Greece has shewn itself lately in the dregs and corruption of modern times.‡ A very honest legislator has formed a people, to whom probity seems as natural as bravery to the Spartans. Mr. Penn is a real Lycurgus; and, though the former made peace his principal aim, as the latter did war, yet they resemble one another in the singular way of living to which they reduced their people, in the ascendant they had over free men, in the prejudices they overcame, and in the passions which they subdued.

Another example we have from Paraguay. This has been the subject of an invidious charge against a society that considers the pleasure of commanding as the only happiness in life: but it will be ever a glorious undertaking to render government subservient to human happiness.§

It is glorious indeed for this society to have been the first in pointing out to those countries the idea of religion joined with that of humanity. By repairing the devastations of the Spaniards, she has begun to heal one of the most dangerous wounds that the human species ever received.

An exquisite sensibility to whatever she distinguishes by the name of honour, joined to her zeal for a religion which is far more humbling in respect to those who receive than to those who preach its doctrines, has set her upon vast undertakings, which she has accomplished with success. She has drawn wild people from their woods, secured them a maintenance, and clothed their nakedness; and, had she only, by this step, improved the industry of mankind, it would have been sufficient to eternize her fame.

They, who shall attempt hereafter to introduce the like institutions, must establish the

community of goods, as prescribed in Plato's Republic; that high respect he required for the gods; that separation from strangers, for the preservation of morals; and an extensive commerce, carried on by the community, and not by private citizens. They must give our arts without our luxury, and our wants without our desires.

They must prescribe money, the effect of which is to swell people's fortunes beyond the bounds prescribed by nature; to learn to preserve for no purpose what has been idly hoarded up; to multiply without end our desires; and to supply the sterility of nature, of whom we have received very scanty means of inflaming our passions and of corrupting each other.

"The Epidamnians[†], perceiving their morals depraved by conversing with barbarians, chose a magistrate for making all contracts and sales, in the name and behalf of the city." Commerce then does not corrupt the constitution, and the constitution does not deprive the society of the advantages of commerce.

CHAP. VII.

In what Case these singular Institutions may be of Service.

INSTITUTIONS of this kind may be proper in republics, because they have virtue for their principle: but, to excite men to honour, in monarchies, or to imprint fear, in despotic governments, less pains are necessary.

Besides, they cannot take place but in a small state^{*}, in which there is a possibility of a general education, and of training up the body of the people like a single family.

The laws of Minos, of Lycurgus, and of Plato, suppose a particular attention and care which the citizens ought to have over one another's conduct. But an attention of this kind cannot be expected in the confusion and multitude of affairs in which a large nation is intangled.

In institutions of this kind, money, as we have above observed, must be banished. But, in great societies, the multiplicity, variety, embarrassment, and importance, of affairs, as well as the facility of purchasing, and the slowness of exchange, require a common measure. In order to extend or support our power, we must be possessed of the means to which, by the unanimous consent of mankind, this power is annexed.

CHAP. VIII.

Explication of a Paradox of the Ancients, in Respect to Manners.

THAT judicious writer, Polybius, informs us, that music was necessary to soften the manners of the Arcadians, who lived in a cold gloomy country; that the inhabitants of Cynete, who slighted music, were the cruellest of all the Greeks, and that no other town was so immersed in luxury and debauch. Plato is not afraid to affirm, that there is no possibility of making a change in music without altering the frame of government. Aristotle, who seems to have written his politics only in order to contradict Plato, agrees with him, notwithstanding, in regard to the power and influence of music over the manners of the people. This was also the opinion of Theophrastus, of Plutarch[§], and of all the ancients; an opinion grounded on mature reflection; being one of the principles of their polity^{*}. Thus it was they enacted laws, and thus they required that cities should be governed.

This, I fancy, must be explained in the following manner. It is observable, that, in the cities of Greece, especially those whose principal object was war, all lucrative arts and professions were considered as unworthy of a freeman. "Most arts (says Xenophon[‡]) corrupt and enervate the bodies of those that exercise them; they oblige them to sit under a shade or near the fire. They can find no leisure either for their friends or for the republic." It was only by the corruption of some democracies that artisans became freemen. This we learn from Aristotle[¶], who maintains, that a well-regulated republic will never give them the right and freedom of the city[‡].

Agriculture was, likewise, a servile profession, and generally practised by the inhabitants of conquered countries; such as the *Helotes*, among the Lacedæmonians; the *Periecians*, among the Cretans; the *Penestes*, among the Thessalians; and other conquered[¶] people in other republics.

In fine, every kind of low commerce^{*} was infamous, among the Greeks, as it obliged a citizen to serve and wait on a slave, on a lodger, or a stranger. This was a notion that clashed with the spirit of Greek liberty; hence Plato[§], in his laws, orders a citizen to be punished if he attempted to concern himself with trade.

Thus, in the Greek republics, the magistrates were extremely embarrassed. They would not have the citizens apply themselves to trade, to agriculture, or to the arts, and yet they would not have them idle^{¶¶¶}. They found, therefore, employment for them in gymnastic and military exercises; and none else were allowed by their institution[‡]. Hence the Greeks must be considered as a society of wrestlers and boxers. Now, these exercises having a natural tendency to render people hardy and fierce, there was a necessity for tempering them with others that might soften their manners^{*}. For this purpose, music, which influences the mind by means of the corporeal organs, was extremely proper. It is a kind of medium between manly exercises, which harden the body, and speculative sciences, which are apt to render us unsociable and sour. It

cannot be said that music inspired virtue, for this would be inconceivable; but it prevented the effects of a savage institution, and enabled the soul to have such a share in the education as it could never have had without the assistance of harmony.

Let us suppose, among ourselves, a society of men, so passionately fond of hunting as to make it their sole employment: they would, doubtless, contract thereby a kind of rusticity and fierceness: but, if they happen to imbibe a taste for music, we should quickly perceive a sensible difference in their customs and manners. In short, the exercises used by the Greeks could raise only one kind of passions, *viz.* fierceness, indignation, and cruelty: but music excites all these, and is, likewise, able to inspire the soul with a sense of pity, lenity, tenderness, and love. Our moral writers, who declaim so vehemently against the stage, sufficiently demonstrate the power of music over the mind.

If the society abovementioned were to have no other music than that of drums and the sound of the trumpet, would it not be more difficult to accomplish this end than by the more melting tones of softer harmony? The ancients were, therefore, in the right, when, under particular circumstances, they preferred one mode to another, in regard to manners.

But some will ask, why should music be pitched upon preferable to any other entertainment? It is because, of all sensible pleasures, there is none that less corrupts the soul. We blush to read, in Plutarch[†], that the Thebans, in order to soften the manners of their youth, authorised, by law, a passion which ought to be proscribed by all nations.

Endnotes

[*] See D'Aubigny's history.

[†] We mention here what actually is, and not what ought to be. Honour is a prejudice, which religion sometimes endeavours to remove, and at other times to regulate.

[*] Polit. lib. 1.

[*] Philopœmen obliged the Lacedæmonians to change their manner of educating their children, being convinced that, if he did not take this measure, they would always be noted for their magnanimity. *Plutarch. Life of Philopœmen.* See Livy, book 38.

[†] She defended her laws and liberty for the space of three years. See the 98th, 99th, and 100th book of Livy, in Florus's Epitome. She made a braver resistance than

the greatest kings.

[II] Florus, lib. 1.

[‡] *In fæce Romuli*, Cicero.

[§] The Indians of Paraguay do not depend on any particular lord: they pay only a fifth of the taxes, and are allowed the use of fire-arms to defend themselves.

[†] Plutarch, in *his questions concerning the Greek affairs*.

[*] Such as were formerly the cities of Greece.

[§] Life of Pelopidas.

[*] Plato, in his fourth book of laws, says, that the præfectures of music and gymnastic exercises are the most important employments in the city: and, in his Republic, book III. Damon will tell you, says he, what sounds are capable of corrupting the mind with base sentiments, or of inspiring the contrary virtues.

[‡] Book 5th of memorable sayings.

[II] Polit. book 3. chap. 4.

[†] Diophantes, says Aristotle, Polit. ch. 7. made a law, formerly, at Athens, that artisans should be slaves to the republic.

[¶] Plato, likewise, and Aristotle require slaves to till the land: *Laws, book V. Polit. book VII. c. 10*. True it is, that agriculture was not every where exercised by slaves: on the contrary, Aristotle observes, the best republics were those in which the citizens themselves tilled the land. But this was brought about by the corruption of the ancient governments, which were become democratical; for, in earlier times, the cities of Greece were subject to an aristocratic government.

[*] Cauponatio.

[§] Book 2.

[III] Arist. Polit. lib. 10.

[‡] *Ars corporum exercendorum gymnastica, variis certaminibus terendorum pædotribica. Aristot. Polit. I. 8. c. 5.*

[*] Aristotle observes, that the children of the Lacedæmonians, who began these

exercises at a very tender age, contracted from thence too great a ferocity and rudeness of behaviour. Polit. lib. 8. c. 4.

[¶] Life of Pelopidas.

BOOK V. THAT THE LAWS, GIVEN BY THE LEGISLATOR, OUGHT TO BE RELATIVE TO THE PRINCIPLE OF GOVERNMENT.

CHAP. I.

Idea of this Book.

THAT the laws of education ought to be relative to the principle of each government has been shewn in the preceding book. Now, the same may be said of those which the legislator gives to the whole society. The relation of laws to this principle strengthens the several springs of government; and this principle derives from thence, in its turn, a new degree of vigour. And thus it is, in mechanics, that action is always followed by re-action.

Our design is, to examine this relation in each government, beginning with the republican state, whose principle is virtue.

CHAP. II.

What is meant by Virtue in a political State.

VIRTUE in a republic is a most simple thing; it is a love of the republic; it is a sensation, and not a consequence of acquired knowledge; a sensation that may be felt by the meanest as well as by the highest person in the state. When the common people adopt good maxims, they adhere to them steadier than those we call gentlemen. It is very rare that corruption commences with the former: nay, they frequently derive from their imperfect light a stronger attachment to the established laws and customs.

The love of our country is conducive to a purity of morals, and the latter is again conducive to the former. The less we are able to satisfy our private passions, the more we abandon ourselves to those of a general nature. How comes it that monks are so fond of their order? It is owing to the very cause that renders the order insupportable. Their rule debars them of all those things by which the ordinary passions are fed; there remains, therefore, only this passion for the very rule that torments them: the more austere it is, that is, the more it curbs their inclinations, the more force it gives to the only passion left them.

CHAP. III.

What is meant by a Love of the Republic, in a Democracy.

A love of the republic, in a democracy, is a love of the democracy; as the latter is that of equality.

A love of the democracy is, likewise, that of frugality. Since every individual ought here to enjoy the same happiness and the same advantages, they should, consequently, taste the same pleasures and form the same hopes; which cannot be expected but from a general frugality.

The love of equality, in a democracy, limits ambition to the sole desire, to the sole happiness, of doing greater services to our country than the rest of our fellow-citizens. They cannot all render her equal services, but they all ought to serve her with equal alacrity. At our coming into the world, we contract an immense debt to our country, which we can never discharge.

Hence distinctions here arise from the principle of equality, even when it seems to be removed by signal services or superior abilities.

The love of frugality limits the *desire of having*, to the study of procuring, necessaries to our family, and superfluities to our country. Riches give a power which a citizen cannot use for himself, for then he would be no longer equal. They likewise procure pleasures which he ought not to enjoy, because these would be also repugnant to the equality.

Thus well-regulated democracies, by establishing domestic frugality, made way, at the same time, for public expences; as was the case at Rome and Athens, when magnificence and profusion arose from the very fund of frugality. And, as religion commands us to have pure and unspotted hands, when we make our offerings to the gods, the laws required a frugality of life, to enable them to be liberal to our country.

The good sense and happiness of individuals depend greatly on the mediocrity of their abilities and fortunes. Therefore, as a republic, where the laws have placed many in a middling station, is composed of wise men, it will be wisely governed; as it is composed of happy men, it will be extremely happy.

CHAP. IV.

In what Manner the Love of Equality and Frugality is inspired.

THE love of equality and of a frugal œconomy is greatly excited by equality and frugality themselves, in societies, where both these virtues are established by law.

In monarchies and despotic governments, no body aims at equality; this does not so much as enter their thoughts; they all aspire to superiority. People of the very lowest condition desire to emerge from their obscurity, only to lord it over their fellow-subjects.

It is the same with respect to frugality. To love it, we must practise and enjoy it. It is not those who are enervated with pleasure that are fond of a frugal life: were this natural and common, Alcibiades would never have been the admiration of the universe. Neither is it those who envy or admire the luxury of the great: people, that have present to their view none but rich men, or men miserable like themselves, detest their wretched condition, without loving or knowing the real term or point of misery.

A true maxim it is, therefore, that, in order to love equality and frugality in a republic, these virtues must have been previously established by law.

CHAP. V.

In what Manner the Laws establish Equality in a Democracy.

SOME ancient legislators, as Lycurgus and Romulus, made an equal division of lands. A settlement of this kind can never take place but upon the foundation of a new republic, or when the old one is so corrupt, and the minds of the people are so disposed, that the poor think themselves obliged to demand, and the rich obliged to consent to, a remedy of this nature.

If the legislator, in making a division of this kind, does not enact laws, at the same time, to support it, he forms only a temporary constitution; inequality will break in where the laws have not precluded it, and the republic will be utterly undone.

Hence, for the preservation of this equality, it is absolutely necessary there should be some regulation in respect to womens dowries, donations, successions, testamentary settlements, and all other forms of contracting. For, were it once allowed to dispose of our property to whom and how we pleased, the will of each individual would disturb the order of the fundamental law.

Solon, by permitting the Athenians, upon failure of issue^{*}, to leave their estates to whom they pleased, acted contrary to the ancient laws, by which the estates were ordered to continue in the family of the testator[†], and even contrary to his own laws; for, by abolishing debts, he had aimed at equality.

The law, which prohibited people's having two inheritances[§], was extremely well adapted for a democracy: it derived its origin from the equal distribution of lands and portions made to each citizen. The law would not permit a single man to possess more than a single portion.

From the same source arose those laws by which the next relation was ordered to marry the heiress. This law was given to the Jews after the like distribution. Plato[¶], who grounds his laws on this division, made the same regulation which had been received as a law by the Athenians.

At Athens, there was a law, whose spirit, in my opinion, has not been hitherto rightly understood. It was lawful to marry a sister only by the father's side, but it was not permitted to espouse a sister by the same venter^{*}. This custom was originally owing to republics, whose spirit would not permit that two portions of land, and consequently two inheritances, should devolve on the same person. A man, who married his sister only by the father's side, could inherit but one estate, namely, that of his father; but, by espousing his sister by the same venter, it might happen, that his sister's father, having no male issue, might leave her his estate, and, consequently, the brother, who married her, might be possessed of two.

Little will it avail to object what Philo says[‡], that, although the Athenians were allowed to marry a sister by the father's side, and not by the mother's, yet the contrary practice prevailed among the Lacedæmonians, who were permitted to espouse a sister by the mother's side, and not by the father's. For I find, in Strabo[‡], that, at Sparta, whenever a woman was married to her brother, she had half his portion for her dowry. Plain it is, that this second law was made in order to prevent the bad consequences of the former. That the estate belonging to the sister's family might not devolve on the brother's, they gave half the brother's estate to the sister for her dowry.

Seneca[¶] speaking of Silanus, who had married his sister, says, that the permission was limited at Athens, but general at Alexandria. In a monarchical government there was very little concern about any such thing as a division of estates.

Excellent was that law, which, in order to maintain this division of lands in a democracy, ordained, that a father, who had several children, should pitch upon one of them to inherit his portion,[§] and leave the others to be adopted, to the end that the number of citizens might always be kept upon an equality with that of the divisions.

Phaleas of Chalcedon[‡] contrived a very extraordinary method of rendering all fortunes equal, in a republic where there was the greatest inequality. This was, that the rich should give fortunes with their daughters to the poor, but receive none themselves; and that the poor should receive money for their daughters, instead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It

lays the citizens under such hard and oppressive conditions, as would make them detest the very equality which they designed to establish. It is proper sometimes that the laws should not seem to tend so directly to the end they propose.

Though real equality be the very soul of a democracy, it is so difficult to establish, that an extreme exactness in this respect would not be always convenient. Sufficient it is to establish a census,^{*} which should reduce or fix the differences to a certain point: it is afterwards the business of particular laws to level, as it were, the inequalities, by the duties laid upon the rich, and by the ease afforded to the poor. It is moderate riches alone that can give or suffer this sort of compensations; for, as to men of over-grown estates, every thing which does not contribute to advance their power and honour is considered by them as an injury.

All inequality in democracies ought to be derived from the nature of the government, and even from the principle of equality. For example, it may be apprehended that people, who are obliged to live by their labour, would be too much impoverished by a public employment, or neglect the duties attending it; that artisans would grow insolent; and that too great a number of freemen would overpower the ancient citizens.

In this case the equality[†] in a democracy may be suppressed, for the good of the state. But this is only an apparent equality: for a man ruined by a public employment would be in a worse condition than his fellow-citizens; and this same man, being obliged to neglect his duty, would reduce the rest to a worse condition than himself; and so on.

CHAP. VI.

In what Manner the Laws ought to maintain Frugality in a Democracy.

IT is not sufficient, in a well-regulated democracy, that the divisions of land be equal; they ought also to be small, as was customary among the Romans. "God forbid," said Curius to his soldiers,[‡] "that a citizen should look upon that as a small piece of land which is sufficient to maintain him."

As equality of fortunes supports frugality, so the latter maintains the former. These things, though in themselves different, are of such a nature as to be unable to subsist separately: they reciprocally act upon each other: if one withdraws itself from a democracy, the other surely follows it.

True it is, that, when a democracy is founded in commerce, private people may acquire vast riches without a corruption of morals. This is because the spirit of commerce is naturally attended with that of frugality, œconomy, moderation, labour, prudence, tranquility, order, and rule. So long as this spirit subsists, the riches it produces have no

bad effect. The mischief is when excessive wealth destroys the spirit of commerce: then it is that the inconveniences of inequality begin to be felt.

In order to support this spirit, commerce should be carried on by the principal citizens: this should be their sole aim and study; this the chief object of the laws: and these very laws, by dividing the estates of individuals in proportion to the increase of commerce, should set every poor citizen so far at his ease, as to be able to work like the rest; and every wealthy citizen in such a mediocrity, as to be obliged to take some pains either in preserving or acquiring a fortune.

It is an excellent law, in a trading republic, to make an equal division of the paternal estate among the children. The consequence of this is, that, how great soever a fortune the father has made, his children, being not so rich as he, are induced to avoid luxury, and to work as he had done. I speak here only of trading republics; for, as to those that have no commerce, the legislator must pursue quite different measures.*

In Greece there were two sorts of republics; the one military, like Sparta; the other commercial, as Athens. In the former, the citizens were obliged to be idle; in the latter, endeavours were used to inspire them with the love of industry and labour. Solon made idleness a crime, and insisted that each citizen should give an account of his manner of getting a livelihood. And indeed, in a well-regulated democracy, where people's expences should extend only to what is necessary, every one ought to have it; for how should their wants be otherwise supplied?

CHAP. VII.

Other Methods of favouring the Principle of Democracy.

AN equal division of lands cannot be established in all democracies. There are some circumstances in which a regulation of this nature would be impracticable, dangerous, and even subversive of the constitution. We are not always obliged to proceed to extremes. If it appears that this division of lands, which was designed to preserve the people's morals, does not suit with the democracy, recourse must be had to other methods.

If a permanent body be established, to serve as a rule and pattern of manners; a senate, to which years, virtue, gravity, and eminent services, procure admittance; the senators, by being exposed to public view like the statues of the gods, must naturally inspire every family with sentiments of virtue.

Above all, this senate must steadily adhere to the ancient institutions, and mind that the people and the magistrates never swerve from them.

The preservation of the ancient customs is a very considerable point in respect to manners. Since a corrupt people seldom perform any memorable actions, seldom establish societies, build cities, or enact laws: on the contrary, since most institutions are derived from people whose manners are plain and simple, to keep up the ancient custom is the way to preserve the original purity of morals.

Besides, if, by some revolution, the state has happened to assume a new form, this seldom can be effected without infinite pains and labour, and hardly ever by idle and debauched persons. Even those who had been the instruments of the revolution were desirous it should be relished; which is difficult to compass without good laws. Hence it is that ancient institutions generally tend to reform the people's manners, and those of modern date to corrupt them. In the course of a long administration the descent to vice is insensible; but there is no reascending to virtue without making the most generous efforts.

It has been questioned, whether the members of the senate we are speaking of ought to be for life, or only chosen for a time. Doubtless they ought to be for life, as was the custom at Rome,^{*} at Sparta,[†] and even at Athens: for we must not confound the senate at Athens, which was a body that changed every three months, with the Areopagus, whose members, as standing patterns, were established for life.

Let this be therefore a general maxim; that, in a senate designed to be a rule and the depository, as it were, of manners, the members ought to be chosen for life; in a senate intended for the administration of affairs the members may be changed.

The spirit, says Aristotle, waxes old, as well as the body. This reflection holds good only in regard to a single magistrate, but cannot be applied to a senatorian assembly.

At Athens, beside the Areopagus, there were guardians of the public morals, as well as of the laws.[‡] At Sparta all the old men were censors. At Rome the censorship was committed to two particular magistrates. As the senate watched over the people, the censors were to have an eye over the people and the senate. Their office was to reform the corruptions of the republic, to stigmatize indolence, to censure neglects, and to correct mistakes: as to flagrant crimes, these were left to the punishment of the laws.

That Roman law, which required the accusations in cases of adultery to be public, was admirably well calculated for preserving the purity of morals; it intimidated married women, as well as those who were to watch over their conduct.

Nothing contributes more to the preservation of morals than an extreme subordination of the young to the old. Thus they are both restrained, the former by their respect for those of advanced age, and the latter by their regard for themselves.

Nothing gives a greater force to the laws than a perfect subordination between the

citizens and the magistrate. "The great difference which Lycurgus established between Sparta and the other cities (says Xenophon^{*}) consists chiefly in the obedience the citizens shew to the laws: they run when the magistrate calls them. But, at Athens, a rich man would be highly displeas'd to be thought dependent on the magistrate."

Paternal authority is likewise of great use towards the preservation of morals. We have already observed, that, in a republic, there is not so coercive a force as in other governments. The laws must therefore endeavour to supply this defect by some means or other; and this is done by paternal authority.

Fathers, at Rome, had the power of life and death over their children.[†] At Sparta every father had a right to correct another man's child.

Paternal authority ended, at Rome, together with the republic. In monarchies, where such a purity of morals is not required, they are controuled by no other authority than that of the magistrates.

The Roman laws, which accustomed young people to dependence, established a long minority. Perhaps we are mistaken in conforming to this custom: there is no necessity for so much constraint in monarchies.

This very subordination in a republic might make it necessary for the father to continue in the possession of his children's fortune during life, as was the custom at Rome. But this is not agreeable to the spirit of monarchy.

CHAP. VIII.

In what Manner the Laws ought to be relative to the Principle of Government in an Aristocracy.

IF the people are virtuous in an aristocracy, they enjoy very near the same happiness as in a popular government, and the state grows powerful. But, as a great share of virtue is very rare where mens fortunes are so unequal, the laws must tend as much as possible to infuse a spirit of moderation, and endeavour to re-establish that equality which was necessarily removed by the constitution.

The spirit of moderation is what we call virtue in an aristocracy; it supplies the place of the spirit of equality in a popular state.

As the pomp and splendor, with which kings are surrounded, form a part of their power, so modesty and simplicity of manners constitute the strength of an aristocratic

nobility^{*}. When they affect no distinction, when they mix with the people, dress like them, and with them share all their pleasures, the people are apt to forget their subjection and weakness.

Every government has its nature and principle. An aristocracy must not, therefore, assume the nature and principle of monarchy; which would be the case, were the nobles to be invested with personal privileges distinct from those of their body. Privileges ought to be for the senate, and simple respect for the senators.

In aristocratical governments, there are two principal sources of disorder: excessive inequality between the governors and the governed; and the same inequality between the different members of the body that governs. From these two inequalities hatreds and jealousies arise, which the laws ought ever to prevent or repress.

The first inequality is, chiefly, when the privileges of the nobility are honourable only as they are ignominious to the people. Such was the law, at Rome, by which the patricians were forbidden to marry plebeians^{*}; a law that had no other effect than to render the patricians, on the one side, more haughty, and, on the other, more odious. The reader may see what advantages the tribunes derived from thence in their harangues.

This inequality occurs, likewise, when the condition of the citizens differs with regard to taxes: which may happen four different ways; when the nobles assume the privilege of paying none; when they commit frauds to exempt themselves[†]; when they engross the public money, under pretence of rewards or appointments for their respective employments; in fine, when they render the common people tributary, and divide among their own body the profits arising from the several subsidies. This last case is very rare; an aristocracy so instituted would be the most intolerable of all governments.

While Rome inclined towards an aristocracy, she avoided all these inconveniences. The magistrates never received any emoluments from their office: the chief men of the republic were taxed like the rest, nay, heavier; and sometimes the taxes fell upon them alone. In fine, far from sharing among themselves the revenues of the state, all they could draw from the public treasure, and all the wealth that fortune flung into their laps, they bestowed freely on the people, to be excused from accepting public honours[‡].

It is a fundamental maxim, that largesses are pernicious to the people in a democracy, but salutary in an aristocratical government. The former make them forget they are citizens, the latter bring them to a sense of it.

If the revenues of the state are not distributed amongst the people, they must be convinced, at least, of their being well administered: to feast their eyes with the public treasure is, with them, the same thing almost as enjoying it. The golden chain displayed at Venice, the riches exhibited at Rome in public triumphs, the treasures preserved in the temple of Saturn, were, in reality, the wealth of the people.

It is a very essential point, in an aristocracy, that the nobles themselves should not levy the taxes. The first order of the state, in Rome, never concerned themselves with it; the levying of taxes was committed to the second; and even this, in process of time, was attended with great inconveniences. In an aristocracy of this kind, where the nobles levied the taxes, the private people would be all at the discretion of persons in public employments, and there would be no such thing as a superior tribunal to check their power. The members, appointed to remove the abuses, would rather enjoy them: the nobles would be like the princes of despotic governments, who confiscate whatever estates they please.

Soon would the profits, hence arising, be considered as a patrimony, which avarice would enlarge at pleasure. The farms would be lowered, and the public revenues reduced to nothing. This is the reason that some governments, without having ever received any remarkable shock, have dwindled away to such a degree, as not only their neighbours, but even their own subjects, have been surprized at it.

The laws should likewise forbid the nobles all kind of commerce: merchants of such unbounded credit would monopolize all to themselves. Commerce is a profession of people who are upon an equality; hence, among despotic states, the most miserable are those in which the prince applies himself to trade.

The laws of Venice debar[†] the nobles from commerce, by which they might, even innocently, acquire exorbitant wealth.

The laws ought to employ the most effectual means for making the nobles do justice to the people. If they have not established a tribune, they ought to be a tribune themselves.

Every sort of asylum, in opposition to the execution of the laws, destroys aristocracy, and is soon succeeded by tyranny.

They ought always to mortify the lust of dominion. There should be either a temporary or perpetual magistrate to keep the nobles in awe; as the Ephori at Sparta, and the State-Inquistors at Venice, magistrates subject to no formalities. This sort of government stands in need of the strongest springs: thus a mouth of stone[§] is open to every informer at Venice; a mouth to which one would be apt to give the appellation of tyranny.

These arbitrary magistrates in an aristocracy bear some analogy to the censorship in democracies, which, of its own nature, is equally independent. And, indeed, the censors ought to be subject to no enquiry in relation to their conduct during their office; they should meet with a thorough confidence, and never be discouraged. In this respect, the practice of the Romans deserved admiration; magistrates of all denominations were accountable for their administration[¶]. except the censors^{*}.

There are two very pernicious things in an aristocracy; excess either of poverty or of wealth in the nobility. To prevent their poverty, it is necessary, above all things, to oblige them to pay their debts in time. To moderate the excess of wealth, prudent and gradual regulations should be made; but no confiscations, no agrarian laws, no expunging of debts; these are productive of infinite mischief.

The laws ought to abolish the right of primogeniture among the nobles[†], to the end, that, by a continual division of the inheritances, their fortunes may be always upon a level.

There should be no substitutions, no powers of redemption, no rights of *majorasgo*, or adoption. The contrivances, for perpetuating the grandeur of families, in monarchical governments, ought never to be employed in aristocracies[†].

When the laws have compassed the equality of families, the next thing is to preserve a proper harmony and union amongst them. The quarrels of the nobility ought to be quickly decided; otherwise the contests of individuals become those of families. Arbiters may terminate, or even prevent the rise of, disputes.

In fine, the laws must not favour the distinctions raised by vanity among families, under pretence that they are more noble or ancient than others: pretences of this nature ought to be ranked among the weaknesses of private persons.

We have only to cast an eye on Sparta; there we may see how the Ephori contrived to check the foibles of the kings, as well as those of the nobility and common people.

CHAP. IX.

In what Manner the Laws are relative to their Principle in Monarchies.

AS honour is the principle of a monarchical government, the laws ought to be relative to this principle.

They should endeavour to support the nobility; in respect to whom, honour may be, in some measure, deemed both child and parent.

They should render the nobility hereditary; not as a boundary between the power of the prince and the weakness of the people, but as the link which connects them both.

In this government, substitutions, which preserve the estates of families undivided, are extremely useful, though in others not so proper.

Here the power of redemption is of service, as it restores to noble families the lands that had been alienated by the prodigality of a parent.

The lands of the nobility ought to have privileges as well as their persons. The monarch's dignity is inseparable from that of his kingdom, and the dignity of the nobleman from that of his fief.

All these privileges must be particular to the nobility and incommunicable to the people, unless we intend to act contrary to the principle of government, and to diminish the power of the nobles together with that of the people.

Substitutions are a restraint to commerce; the power of redemption produces an infinite number of processes; every estate in land, that is sold throughout the kingdom, is, in some measure, without an owner for the space of a year. Privileges annexed to fiefs give a power very burthensome to those governments which tolerate them. These are the inconveniences of nobility; inconveniences, however, that vanish when confronted with its general utility. But, when these privileges are communicated to the people, every principle of government is wantonly violated.

In monarchies, a person may leave the bulk of his estate to one of his children; a permission improper in any other government.

The laws ought to favour all kind of commerce^{||} consistent with the constitution, to the end that the subjects may, without ruining themselves, be able to satisfy the continual cravings of the prince and his court.

They should establish some regulation, that the manner of collecting the taxes may not be more burthensome than the taxes themselves.

The weight of duties produces labour, labour weariness, and weariness the spirit of indolence.

CHAP. X.

Of the Expedition peculiar to the executive Power in Monarchies.

GREAT is the advantage which a monarchical government has over a republic. As the state is conducted by a single person, the executive power is thereby enabled to act with greater expedition: but, as this expedition may degenerate into rapidity, the laws should use some contrivance to slacken it: they ought not only to favour the nature of each constitution, but likewise to remedy the abuses that might result from this very nature.

Cardinal Richelieu[§] advises monarchs to permit no such things as societies or communities that raise difficulties upon every trifle. If this man's heart had not been bewitched with the love of despotic power, still these arbitrary notions would have filled his head.

The bodies, intrusted with the depositum of the laws, are never more obedient than when they proceed slowly, and use that reflection in the prince's affairs which can scarcely be expected from the ignorance of a court, or from the precipitation of its councils[¶].

What would have become of the finest monarchy in the world, if the magistrates, by their delays, their complaints, and entreaties, had not checked the rapidity even of their princes virtues, when these monarchs, consulting only the generous impulse of their minds, would fain have given a boundless reward to services performed with an unlimited courage and fidelity?

CHAP. XI.

Of the Excellence of a monarchical government.

MONARCHY has a great advantage over a despotic government. As it naturally requires there should be several orders or ranks of subjects, the state is more permanent, the constitution more steady, and the person of him who governs more secure.

Cicero^{*} is of opinion, that the establishing of the tribunes preserved the republic. "And, indeed, (says he,) the violence of a headless people is more terrible. A chief, or head, is sensible that the affair depends upon himself, and therefore he thinks; but the people, in their impetuosity, are ignorant of the danger into which they hurry themselves." This reflection may be applied to a despotic government, which is a people without tribunes, and to a monarchy, where the people have some sort of tribunes.

Accordingly, it is observable, that, in the commotions of a despotic government, the people, hurried away by their passions, are apt to push things as far as they can go. The disorders they commit are all extreme; whereas, in monarchies, matters are seldom carried to excess. The chiefs are apprehensive on their own account; they are afraid of being abandoned; and the intermediate dependent powers[†] do not choose that the populace should have too much the upper hand. It rarely happens that the states of the kingdom are entirely corrupted: the prince adheres to these; and the seditious, who have neither will nor hopes to subvert the government, have neither power nor will to dethrone the prince.

In these circumstances, men of prudence and authority interfere; moderate measures

are first proposed, then complied with, and things at length are redressed; the laws resume their vigour, and command submission.

Thus all our histories are full of civil wars without revolutions, while the histories of despotic governments abound with revolutions without civil wars.

The writers of the history of the civil wars of some countries, even those who fomented them, sufficiently demonstrate the little foundation princes have to suspect the authority with which they invest particular bodies of men; since, even under the unhappy circumstance of their errors, they sighed only after the laws and their duty, and restrained, more than they were capable of inflaming, the impetuosity of the revolted^{||}.

Cardinal Richelieu, reflecting perhaps that he had too much reduced the states of the kingdom, has recourse to the virtues of the prince and of his ministers for the support[±] of government: but he requires so many things, that indeed there is none but an angel capable of such attention, such resolution, and knowledge; and scarce can we flatter ourselves ever to see such a prince and ministers, no not while monarchy subsists.

As people, who live under a good government, are happier than those who, without rule or leaders, wander about the forests; so monarchs, who live under the fundamental laws of their country, are far happier than despotic princes, who have nothing to regulate either their own passions or those of their subjects.

CHAP. XII.

The same Subject continued.

LET us not look for magnanimity in despotic governments. The prince cannot impart a greatness which he has not himself: with him there is no such thing as glory.

It is in monarchies we behold the subjects encircling the throne, and cheered by the irradiancy of the sovereign: there it is that each person, filling, as it were, a larger space, is capable of exercising those virtues which adorn the soul, not with independence, but with true dignity and greatness.

CHAP. XIII.

An Idea of despotic Power.

WHEN the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit.^{*}— This is an emblem of despotic government.

CHAP. XIV.

In what Manner the Laws are relative to the Principles of despotic Government.

THE principle of despotic government is fear: but a timid, ignorant, and faint-spirited people have no occasion for a great number of laws.

Every thing ought to depend here on two or three ideas: hence there is no necessity that any new notions should be added. When we want to break a horse, we take care not to let him change his master, his lesson, or his pace. Thus an impression is made on his brain by two or three motions, and no more.

If a prince is shut up in a seraglio, he cannot leave his voluptuous abode without alarming those who keep him confined. They will not bear that his person and power should pass into other hands. He seldom, therefore, wages war in person, and hardly ventures to intrust the command to his generals.

A prince of this stamp, unaccustomed to resistance in his palace, is enraged to see his will opposed by armed force: hence he is generally governed by wrath or vengeance. Besides, he can have no notion of true glory. War, therefore, is carried on, under such a government, in its full natural fury, and less extent is given to the law of nations than in other states.

Such a prince has so many imperfections, that they are afraid to expose his natural stupidity to public view. He is concealed in his palace, and the people are ignorant of his situation. It is lucky for him that the inhabitants of those countries need only the name of a prince to govern them.

When Charles XII. was at Bender, he met with some opposition from the senate of Sweden: upon which he wrote word home that he would send one of his boots to command them. This boot would have governed like a despotic prince.

If the prince is a prisoner, he is supposed to be dead, and another mounts the throne. The treaties made by the prisoner are void; his successor will not ratify them. And, indeed, (as he is the law, the state, and the prince,) when he is no longer a prince, he is nothing: were he not, therefore, deemed to be deceased, the state would be subverted.

One thing which chiefly determined the Turks to conclude a separate peace with Peter I. was the Muscovites telling the vizir, that, in Sweden, another prince had been set upon the throne.[†]

The preservation of the state is only the preservation of the prince, or rather of the palace where he is confined. Whatever does not directly menace this palace, or the capital, makes no impression on ignorant, proud, and prejudiced, minds; and, as for the concatenation of events, they are unable to trace, to foresee, or even to conceive, it. Politics, with its several springs and laws, must here be very much limited; the political government is as simple as the civil.^{*}

The whole is reduced to reconciling the political and civil administration to the domestic government, the officers of state to those of the seraglio.

Such a state is happiest when it can look upon itself as the only one in the world, when it is environed with deserts, and separated from those people whom they call barbarians. Since it cannot depend on the militia, it is proper it should destroy a part of itself.

As fear is the principle of despotic government, its end is tranquillity: but this tranquillity cannot be called a peace; no, it is only the silence of those towns which the enemy is ready to invade.

Since the strength does not lie in the state, but in the army that founded it; in order to defend the state, the army must be preserved, how formidable soever to the prince. How, then, can we reconcile the security of the government to that of the prince's person?

Observe how industriously the Russian government endeavours to temper its arbitrary power, which it finds more burthensome than the people themselves. They have broke their numerous guards, mitigated criminal punishments, erected tribunals, entered into a knowledge of the laws, and instructed the people. But there are particular causes that will probably once more involve them in the very misery which they now endeavour to avoid.

In those states religion has more influence than any where else: it is fear added to fear. In Mahometan countries it is partly from their religion that the people derive the surprizing veneration they have for their prince.

It is religion that amends, in some measure, the Turkish constitution. The subjects, who have no attachment of honour to the glory and grandeur of the state, are connected with it by the force and principle of religion.

Of all despotic governments there is none that labours more under its own weight than

that wherein the prince declares himself proprietor of all the lands, and heir to all his subjects. Hence the neglect of agriculture arises; and, if the prince intermeddles likewise in trade, all manner of industry is ruined.

Under this sort of government nothing is repaired or improved.[†] Houses are built only for the necessity of habitation: there is no digging of ditches, or planting of trees: every thing is drawn from, but nothing restored to, the earth: the ground lies untilld, and the whole country becomes a desert.

Is it to be imagined, that the laws, which abolish the property of land and the succession of estates, will diminish the avarice and cupidity of the great? By no means: they will rather stimulate this cupidity and avarice. The great men will be prompted to use a thousand oppressive methods, imagining they have no other property than the gold and silver which they are able to seize upon by violence or to conceal.

To prevent, therefore, the utter ruin of the state, the avidity of the prince ought to be moderated by some established custom. Thus, in Turkey, the sovereign is satisfied with the right of three *per cent.* on the value of inheritances.[†] But, as he gives the greatest part of the lands to his soldiery, and disposes of them as he pleases; as he seizes on all the inheritances of the officers of the empire at their decease; as he has the property of the possessions of those who die without issue, and the daughters have only the usufruct; it thence follows that the greatest part of the estates of the country are held in a precarious manner.

By the laws of Bantam^{*} the king seizes on the whole inheritance, even wife, children, and habitation. In order to elude the cruellest part of this law, they are obliged to marry their children at eight, nine, or ten years of age, and sometimes younger, to the end that they may not be a wretched part of the father's succession.

In countries where there are no fundamental laws the succession to the empire cannot be fixed. The crown is then elective, and the right of electing is in the prince, who names a successor either of his own or of some other family. In vain would it be to establish here the succession of the eldest son: the prince might always choose another. The successor is declared by the prince himself, or by a civil war. Hence a despotic state is, upon another account, more liable, than a monarchical government, to dissolution.

As every prince of the royal family is held equally capable of being chosen, hence it follows that the prince who ascends the throne immediately strangles his brothers, as in Turkey; or puts out their eyes, as in Persia; or bereaves them of their understanding, as in the Mogul's country; or, if these precautions are not used, as in Morocco, the vacancy of the throne is always attended with the horrors of a civil war.

By the constitutions of Russia[†] the Czar may choose whom he has a mind for his

successor, whether of his own or of a strange family, Such a settlement produces a thousand revolutions, and renders the throne as tottering as the succession is arbitrary. The right of succession being one of those things which are of most importance to the people to know, the best is that which most sensibly strikes them, such as a certain order of birth. A settlement of this kind puts a stop to intrigues, and stifles ambition: the mind of a weak prince is no longer enslaved, nor is he made to speak his will as he is just expiring.

When the succession is established by a fundamental law, only one prince is the successor, and his brothers have neither a real nor apparent right to dispute the crown with him. They can neither pretend to, nor take any advantage of, the will of a father. There is then no more occasion to confine or kill the king's brother than any other subject.

But, in despotic governments, where the prince's brothers are equally his slaves and his rivals, prudence requires that their persons be secured; especially in Mahometan countries, where religion considers victory or success as a divine decision in their favour; so that they have no such thing as a monarch *de jure*, but only *de facto*.

There is a far greater incentive to ambition in countries where the princes of the blood are sensible, that, if they do not ascend the throne, they must be either imprisoned or put to death, than amongst us, where they are placed in such a station as may satisfy, if not their ambition, at least their moderate desires.

The princes of despotic governments have ever perverted the use of marriage. They generally take a great many wives, especially in that part of the world where absolute power is in some measure naturalized; namely, Asia. Hence they come to have such a multitude of children, that they can hardly have any great affection for them, nor the children for one another.

The reigning family resembles the state: it is too weak itself, and its head too powerful: it seems very numerous and extensive, and yet is suddenly extinct. Artaxerxes[†] put all his children to death for conspiring against him. It is not at all probable that fifty children should conspire against their father, and much less that this conspiracy should be owing to his having refused to resign his concubine to his eldest son. It is more natural to believe that the whole was an intrigue of those oriental seraglios, where fraud, treachery, and deceit, reign in silence and darkness; and where an old prince, grown every day more infirm, is the first prisoner of the palace.

After what has been said, one would imagine that human nature should perpetually rise up against despotism. But, notwithstanding the love of liberty, so natural to mankind, notwithstanding their innate detestation of force and violence, most nations are subject to this very government. This is easily accounted for. To form a moderate government,

it is necessary to combine the several powers; to regulate, temper, and set them in motion; to give, as it were, ballast to one, in order to enable it to counterpoise the other. This is a master-piece of legislation, rarely produced by hazard, and seldom attained by prudence. On the contrary, a despotic government offers itself, as it were, at first sight; it is uniform throughout; and, as passions only are requisite to establish it, this is what every capacity may reach.

CHAP. XV.

The same Subject continued.

IN warm climates, where despotic power generally prevails, the passions disclose themselves earlier, and are sooner extinguished^{||}; the understanding is sooner ripened; they are in less danger of squandering away their fortunes; there is less facility of distinguishing themselves in the world; less communication between young people, who are confined at home; they marry much earlier, and consequently may be sooner of age, than in our European climates. In Turkey, they are of age at fifteen[§].

They have no such thing as a cession of goods; in a government where there is no fixed property people depend rather on the person than on his estate.

The cession of goods is naturally admitted in moderate governments^{*}, but especially in republics, because of the greater confidence usually placed in the probity of the citizens, and the lenity and moderation arising from a form of government which every subject seems to have preferred to all others.

Had the legislators of the Roman republic established the cession of goods[†], they never would have been exposed to so many seditions and civil discords; neither would they have experienced the danger of the evils nor the inconveniency of the remedies.

Poverty, and the precariousness of property, in a despotic state, render usury natural, each person raising the value of his money in proportion to the danger he sees in lending it. Misery, therefore, pours in from all parts into those unhappy countries; they are bereft of every thing, even of the resource of borrowing.

Hence it is, that a merchant, under this government, is unable to carry on an extensive commerce: he lives from hand to mouth; and, were he to encumber himself with a large quantity of merchandises, he would lose more by the exorbitant interest he must give for money than he could possibly get by the goods. Hence they have no laws here relating to commerce; they are all reduced to what is called the bare police.

A government cannot be unjust without having hands to exercise its injustice. Now, it is

impossible but these hands will be grasping for themselves. The embezzling of the public money is, therefore, natural in despotic states.

As this is a common crime, under such a government, confiscations are very useful. By these the people are eased; the money drawn by this method being a considerable tribute, which could hardly be raised on the exhausted subject: neither is there, in those countries, any one family which the prince would be glad to preserve.

In moderate governments it is quite a different thing. Confiscations would render property uncertain, would strip innocent children, would destroy a whole family, instead of punishing a single criminal. In republics, they would be attended with the mischief of subverting equality, which is the very soul of this government, by depriving a citizen of his necessary subsistence.

There is a Roman law[†] against confiscations, except in the case of *crimen majestatis*, or high treason of the most heinous nature. It would be a prudent thing to follow the spirit of this law, and to limit confiscations to particular crimes^{*}. In countries where a local custom has rendered real estates alienable, Bodin very justly observes, that confiscations should extend only to such as are purchased or acquired[‡].

CHAP. XVI.

Of the Communication of Power.

IN a despotic government, the power is communicated entire to the person intrusted with it. The vizir himself is the despotic prince; and each particular officer is the vizir. In monarchies, the power is less immediately applied, being tempered by the monarch as he gives it[†]. He makes such a distribution of his authority, as never to communicate a part of it without reserving a greater share to himself.

Hence, in monarchies, the governors of towns are not so dependent on the governor of the province as not to be still more so on the prince; and the private officers of military bodies are not so far subject to their general as not to owe still a greater subjection to their sovereign.

In most monarchies, it has been wisely regulated, that those, who have an extensive command, should not belong to any military corps; so that, as they have no authority but through the prince's pleasure, and as they may be employed or not, they are in some measure in the service, and in some measure out of it.

This is incompatible with a despotic government. For, if those who are not actually employed were still invested with privileges and titles, the consequence must be, that

there would be a kind of men in the state who might be said to be great of themselves; a thing directly opposite to the nature of this government.

Were the governor of a town independent of the bashaw, expedients would be daily necessary to make them agree; which is highly absurd in a despotic state. Besides, if a particular governor might refuse to obey, how could the other answer for his province with his head?

In this kind of government, authority must ever be wavering; nor is that of the lowest magistrate more steady than that of the despotic prince. Under moderate governments, the law is prudent in all its parts, and perfectly well known, so that even the pettiest magistrates are capable of following it. But, in a despotic state, where the prince's will is the law, though the prince were wise, yet how could the magistrate follow a will he does not know? he must certainly follow his own.

Again, as the law is only the prince's will, and as the prince can only will what he knows, the consequence is, that there are an infinite number of people who must will for him, and make their wills keep pace with his.

In fine, as the law is the momentary will of the prince, it is necessary that those who will for him should follow his subitaneous manner of willing.

CHAP. XVII.

Of Presents.

IT is a received custom, in despotic countries, never to address any superior whomsoever, not excepting their kings, without making them a present. The Mogul[†] never receives the petitions of his subjects if they come with empty hands. These princes spoil even their own favours.

But thus it must ever be in a government where no man is a citizen; where they have all a notion that a superior is under no obligation to an inferior; where men imagine themselves bound by no other tie than the chastisements inflicted by one party over another; where, in fine, there is very little to do, and where the people have seldom an occasion of presenting themselves before the great, of offering their petitions, and much less their complaints.

In a republic, presents are odious, because virtue stands in no need of them. In monarchies, honour is a much stronger incentive than presents. But, in a despotic government, where there is neither honour nor virtue, people cannot be determined to act but through hope of the conveniences of life.

It is in conformity to republican ideas, that Plato[†] ordered those who received presents for doing their duty to be punished with death. "They must not take presents (says he) neither for good nor for evil actions."

A very bad law that was, among the Romans[‡], which gave the magistrates leave to accept of small presents[§], provided they did not exceed one hundred crowns the whole year. They, who receive nothing, expect nothing; they, who receive a little, soon covet more; till at length their desires swell to an exorbitant height. Besides, it is much easier to convict a man, who knows himself obliged to accept of no present at all, and yet will accept of something, than a person who takes more when he ought to take less, and who always finds pretexts, excuses, and plausible reasons, in justification of his conduct.

CHAP. XVIII.

Of Rewards conferred by the Sovereign.

IN despotic governments, where, as we have already observed, the principal motive of action is the hope of the conveniences of life, the prince who confers rewards has nothing to bestow but money. In monarchies, where honour alone predominates, the prince's rewards would consist only of marks of distinction, if the distinctions established by honour were not attended with luxury, which necessarily brings on its wants: the prince, therefore, is obliged to confer such honours as lead to wealth. But, in a republic, where virtue reigns, (a motive self-sufficient, and which excludes all others,) the recompences of the state consist only of public attestations of this virtue.

It is a general rule, that great rewards, in monarchies and republics, are a sign of their decline, because they are a proof of their principles being corrupted, and that the idea of honour has no longer the same force in monarchy, nor the title of citizen the same weight in a republic.

The very worst Roman emperors were those who were most profuse in their largesses; for example, *Caligula, Claudius, Nero, Otho, Vitellius, Commodus, Heliogabalus*, and *Caracalla*. The best, as *Augustus, Vespasian, Antoninus Pius, Marcus Aurelius*, and *Pertinax*, were œconomists. Under good emperors the state resumed its principles; all other treasures were supplied by that of honour.

CHAP. XIX.

New Consequences of the Principles of the three Governments.

I cannot conclude this book without making some applications of my three principles.

Quest. 1. It is a question, whether the laws ought to oblige a subject to accept of a public employment. My opinion is, that they ought in a republic, but not in a monarchical government. In the former, public employments are attestations of virtue, depositums with which a citizen is entrusted by his country, for whose sake alone he ought to live, to act, and to think; consequently, he cannot refuse them[†]. In the latter, public offices are testimonies of honour: now, such is the capriciousness of honour, that it chooses to accept of none of these testimonies but when and in what manner it pleases.

The late king of Sardinia inflicted punishments^{*} on his subjects who refused the dignities and public offices of the state. In this he unknowingly followed republican ideas: but his manner of governing, in other respects, sufficiently proves that this was not his intention.

Quest. 2. Secondly, it is questioned, whether a subject should be obliged to accept of a post in the army inferior to that which he held before. Among the Romans, it was usual to see a captain serve the next year under his lieutenant[†]. This is because virtue in republics requires a continual sacrifice of our persons and of our repugnances for the good of the state. But, in monarchies, honour, true or false, will never bear with what it calls degrading itself.

In despotic governments, where honour, posts, and ranks, are equally abused, they indiscriminately make of a prince a scullion, and of a scullion a prince.

Quest. 3. Thirdly, it may be enquired, whether civil and military employments should be conferred on the same person. In republics, I think, they should be joined, but in monarchies separated. In the former, it would be extremely dangerous to make the profession of arms a particular state, distinct from that of civil functions; and, in the latter, no less dangerous would it be to confer these two employments on the same person.

In republics, a person takes up arms only with a view to defend his country and its laws; it is because he is a citizen he makes himself, for a while, a soldier. Were these two distinct states, the person who, under arms, thinks himself a citizen, would soon be made sensible he is only a soldier.

In monarchies, they, whose condition engages them in the profession of arms, have nothing but glory, or, at least, honour or fortune, in view. To men, therefore, like these, the prince should never give any civil employments; on the contrary, they ought to be

checked by the civil magistrate, that the same persons may not have, at the same time, the confidence of the people and the power to abuse it[†].

We have only to cast an eye on a nation that may be justly called a republic disguised under the form of monarchy, and we shall see how jealous they are of making a separate order of the profession of arms, and how the military state is constantly allied with that of the citizen, and even sometimes of the magistrate, to the end that these qualities may be a pledge for their country which should never be forgotten.

The division of civil and military employments, made by the Romans after the extinction of the republic, was not an arbitrary thing: it was a consequence of the change which happened in the constitution of Rome; it was natural to a monarchical government; and, what was only commenced under Augustus[‡], succeeding emperors[§] were obliged to finish, in order to temper the military government.

Procopius, therefore, the competitor of Valens, the emperor, was very much to blame, when, conferring the proconsular dignity[¶] upon Hormisdas, a prince of the blood-royal of Persia, he restored to this magistracy the military command of which it had been formerly possessed, unless, indeed, he had very particular reasons for so doing. A person, that aspires to the sovereignty, concerns himself less about what is serviceable to the state than what is likely to promote his own interest.

Quest. 4. Fourthly, it is a question, whether public employments should be sold. They ought not, I think, in despotic governments, where the subjects must be instantaneously placed or displaced by the prince.

But, in monarchies, this custom is not at all improper, by reason it is an inducement to engage in that, as a family employment, which would not be undertaken through a motive of virtue: it fixes, likewise, every one to his duty, and renders the several orders of the kingdom more permanent. Suidas^{*} very justly observes, that Anastasius had changed the empire into a kind of aristocracy, by selling all public employments.

Plato[†] cannot bear with this prostitution: "This is exactly (says he) as if a person were to be made a mariner or pilot of a ship for his money. Is it possible that this rule should be bad in every other employment of life and hold good only in the administration of a republic?" But Plato speaks of a republic founded on virtue, and we of a monarchy. Now, in monarchies, (where, though there were no such thing as a regular sale of public offices, still the indigence and avidity of the courtier would equally prompt him to expose them to sale,) chance will furnish better subjects than the prince's choice. In short, the method of attaining to honours through riches inspires and cherishes industry[‡], a thing extremely wanting in this kind of government.

Quest. 5. The fifth question is, in what kind of government censors are necessary. My answer is, that they are necessary in a republic, where the principle of government is

virtue. We must not imagine that criminal actions only are destructive of virtue; it is destroyed also by omissions, by neglects, by a certain coolness in the love of our country, by bad examples, and by the seeds of corruption. Whatever does not openly violate, but elude, the laws; does not subvert, but weaken, them; ought to fall under the enquiry and correction of the censors.

We are surprised at the punishment of the Areopagite for killing a sparrow, which, to escape the pursuit of a hawk, had taken shelter in his bosom. Surprised we are, also, that an Areopagite should put his son to death for pulling out the eyes of a little bird. But let us reflect, that the question here does not relate to a criminal sentence, but to a judgement concerning manners in a republic founded on manners.

In monarchies there should be no censors: the former are founded on honour, and the nature of honour is to have the whole world for its censor. Every man who fails in this article is subject to the reproaches even of those who are void of honour.

Here the censors would be spoilt by the very people whom they ought to correct: they could not prevail against the corruption of a monarchy; the corruption rather would be too strong against them.

Hence it is obvious, that there ought to be no censors in despotic governments. The example of China seems to derogate from this rule: but we shall see, in the course of this work, the particular reasons of that institution.

Endnotes

[*] Plutarch, life of Solon.

[†] Ibid.

[§] *Philolaus*, of Corinth, made a law, at Athens, that the number of the portions of land and that of inheritances should be always the same. *Arist. Polit.* lib. 2. cap. 12.

[¶] Republic, book 8.

[*] *Cornelius Nepos*, in *præfat.* This custom began in the earliest times. Thus Abraham says of Sarah, *she is my sister; my father's daughter, but not my mother's*. The same reasons occasioned the establishing the same law among different nations.

[‡] De specialibus legibus quæ pertinent ad præcepta Decalogi.

[†] Lib. 10.

[||] *Atbenis dimidium licet, Alexandræ totum. Seneca de morte Claudii.*

[§] Plato has a law of this kind, lib. 3. leg.

[‡] Aristot. lib. 2. cap. 7.

[*] Solon made four classes; the first, of those who had an income of 500 minas, either in corn or liquid fruits; the second, of those who had 300, and were able to keep a horse; the third, of such as had only 200; the fourth, of all those who lived by their manual labour. *Plut.* Life of Solon.

[†] Solon excludes, from public employments, all those of the fourth class.

[‡] They insisted upon a larger division of the conquered lands. *Plutarch's* moal works, Lives of the ancient Kings and Commanders.

[*] In these the portions or fortunes of women ought to be very much limited.

[*] The magistrates there were annual, and the senators for life.

[†] Lycurgus, says Xenophon, (*de Repub Lacedæm.*) ordained, that the senators should be chosen from amongst the old men, to the end that they might not be neglected in the decline of life: thus, by making them judges of the courage of young people, he rendered the old age of the former more honourable than the strength and vigour of the latter.

[‡] Even the Areopagus itself was subject to their censure.

[*] Republic of the Lacedæmonians.

[†] We may see, in the Roman history, how useful this power was to the republic. I shall give an instance even in the time of its greatest corruption. Aulus Fulvius was set out on his journey, in order to join Catiline; his father called him back, and put him to death. Sallust, *de bello Catil.*

[*] In our days, the Venetians, who, in many respects, may be said to have a very wise government, decided a dispute between a noble Venetian and a gentleman of Terra-Firma, in respect to precedency in a church, by declaring, that, out of Venice, a noble Venetian had no pre-eminence over any other citizen.

[*] It was inserted by the decemvirs in the two last tables. See Dionys. Halicarn. I. 10.

[†] As in some aristocracies in our time. Nothing is more prejudicial to government.

[||] See, in Strabo, l. 14. in what manner the Rhodians behaved in this respect.

[‡] *Amelot de la Housaye*, of the government of Venice, part 3. The *Claudian* law forbade the senators to have any ship at sea that held above forty bushels. *Liv.* l. 21.

[§] The informers throw their scrolls into it.

[¶] See *Livy*, l. 49. A censor could not be troubled even by a censor; each made his remark without taking the opinion of his colleague; and, when it otherwise happened, the censorship was, in a manner, abolished.

[*] At Athens, the *logistæ*, who made all the magistrates accountable for their conduct, gave no account themselves.

[‡] It is so practised at Venice: *Amelot de la Housaye*, p. 30 and 31.

[‡] The main design of some aristocracies seems to be less the support of the state than of their nobility.

[||] It is tolerated only in the common people. See the third law, *Cod. de comm. & mercatoribus*, which is full of good sense.

[§] *Testam. polit.*

[¶] *Barbaris cunctatio servilis, statim exequi regium videtur.* Tacit. *Annal.* l. 5.

[*] *Lib. 3. de Leg.*

[‡] See the first note of book 2. ch. 4.

[||] *Memoirs of Cardinal de Retz*, and other histories.

[‡] *Testam, polit.*

[*] *Edifying Letters*, 11. col. p. 315.

[‡] Continuation of Puffendorf's Introduction to the History of Europe, in the article of Sweden, ch. 10.

[*] According to sir John Chardin, there is no council of state in Persia.

[‡] See Ricaut, *State of the Ottoman Empire*, p. 196.

[‡] See concerning the inheritances of the Turks, *Ancient and Modern Sparta*. See also Ricaut on the Ottoman Empire.

[*] Collection of Voyages that contributed to the establishment of the East-India company, tom. 1. The law of *Pegu* is less cruel: if there happen to be children, the king succeeds only to two-thirds. Ibid. tom. 3. p. 1.

[†] See the different constitutions, especially that of 1722.

[‡] See Justin.

[||] See the book of laws, as relative to the nature of the climate.

[§] *Languilletiere*, Ancient and Modern Sparta, p. 463.

[*] The same may be said of compositions in regard to fair bankrupts.

[†] There was no such establishment made till the Julian law, *de cessione bonorum*; which preserved them from prison and from an ignominious division of their goods.

[‡] *Authentica bona damnatorum. Cod. de bon. damn.*

[*] They seem to have been too fend of confiscations in the republic of Athens.

[||] Book 5. ch. 3.

[‡]

*Ut esse Phœbi dulcius lumen solet
Jamjam cadentis. — — —*

[†] Collection of Voyages that contributed to the Establishment of the East-India Company, tom. 1. p. 80.

[‡] Book 12. of Laws.

[||] Leg. §. 5. ad leg. Jul. repet.

[§] *Munuscula*.

[¶] Plato, in his Republic, book 8. ranks these refusals among the marks of the corruption of a republic. In his Laws, book 6 he orders them to be punished by a fine. At Venice they are punished with banishment.

[*] Victor Amadeus.

[†] Some centurions having appealed to the people for the employments which they had before enjoyed, *It is just, my comrades*. said a centurion, *that you should look*

upon every post as honourable in which you have an opportunity of defending the republic. Livy, Dec. 5. lib. 42.

[‡] Ne imperium ad optimos nobilium transferretur, senatum militia vetuit Gallienus, etiam adire exercitum. *Aurelius Victor, de viris illustribus.*

[||] Augustus deprived the senators, proconsuls, and governors, of the privilege of wearing arms. Dio, l. 33.

[§] Constantine. See Zozimus, lib. 2.

[¶] Ammianus Marcellinus, lib. 26. *More veterum & bella recturo.*

[*] Fragments taken from the embassies of Constantine Porphyrogenitus.

[†] Repub. lib. 8.

[‡] We see the laziness of Spain, where all public employments are given away.

BOOK VI. CONSEQUENCES OF THE PRINCIPLES OF DIFFERENT GOVERNMENTS WITH RESPECT TO THE SIMPLICITY OF CIVIL AND CRIMINAL LAWS, THE FORM OF JUDGEMENTS, AND THE INFLICTING OF PUNISHMENTS.

CHAP. I.

Of the Simplicity of civil Laws in different Governments.

MONARCHIES do not permit of so great a simplicity of laws as despotic governments: for, in monarchies, there must be courts of judicature: these must give their decisions: the decisions must be preserved and learnt, that we may judge in the same manner to-day as yesterday, and that the lives and property of the citizens may be as certain and fixt as the very constitution of the state.

In monarchies, the administration of justice, which decides not only in whatever belongs to life and property, but likewise to honour, demands very scrupulous enquiries. The delicacy of the judge increases in proportion to the increase of his trust, and of the importance of the interests on which he determines.

We must not therefore be surprised to find so many rules, restrictions, and extensions, in the laws of those countries; rules that multiply the particular cases, and seem to make of reason itself an art.

The difference of rank, birth, and condition, established in monarchical governments, is frequently attended with distinctions in the nature of property; and the laws relative to the constitution of this government may augment the number of these distinctions. Hence, among us, goods are divided into real estates, purchases, dowries, paraphernalia, paternal and maternal inheritances; moveables of different kinds; estates held in fee-simple or in tail; acquired by descent or conveyance; allodial, or held by soccage; ground-rents, or annuities. Each sort of goods is subject to particular rules, which must be complied with in the disposal of them. These things must needs diminish the simplicity of the laws.

In our governments the fiefs are become hereditary. It was necessary that the nobility should have a fixt property; that is, the fief should have a certain consistency; to the end that the proprietor might be always in a capacity of serving the prince. This must have been productive of great varieties: for instance, there are countries where fiefs could not be divided among the brothers; in others, the younger brothers may be allowed a more generous subsistence.

The monarch, who knows each of his provinces, may establish different laws, or tolerate different customs. But, as the despotic prince knows nothing, and can attend to nothing, he must take general measures, and govern by a rigid and inflexible will, which, throughout his whole dominions, produces the same effect: in short, every thing bends under his feet.

In proportion as the decisions of the courts of judicature are multiplied in monarchies, the law is loaded with decrees that sometimes contradict one another; either because succeeding judges are of a different way of thinking, or because the same causes are sometimes well, and at other times ill, defended; or, in fine, by reason of an infinite number of abuses, to which all human regulations are liable. This is a necessary evil, which the legislator redresses from time to time, as contrary even to the spirit of moderate governments: for, when people are obliged to have recourse to courts of judicature, this should come from the nature of the constitution, and not from the contradiction or uncertainty of the law.

In governments where there are necessary distinctions of persons there must likewise be privileges. This also diminishes the simplicity, and creates a thousand exceptions.

One of the privileges least burthensome to society, and especially to him who confers it, is that of pleading in one court preferably to another. Here new difficulties arise, when it becomes a question before which court we shall plead.

Far different is the case of the people under despotic governments. In those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the prince, it follows that there are scarce any civil laws in regard to

landed property. From the right the sovereign has to successions it follows likewise that there are none relating to inheritances. The monopolies, established by the prince for himself in some countries, render all sorts of commercial laws quite useless. The marriages, which they usually contract with female slaves, are the cause that there are scarce any civil laws relating to dowries, or to the particular advantage of married women. From the prodigious multitude of slaves it follows likewise that there are very few who have any such thing as a will of their own, and of course are answerable for their conduct before a judge. Most moral actions, that are only in consequence of a father's, a husband's, or a master's, will, are regulated by them, and not by the magistrates.

I forgot to observe, that, as what we call honour is a thing hardly known in those countries, the several difficulties relating to this article, though of such importance with us, are with them quite out of the question. Despotic power is self-sufficient: round it there is an absolute vacuum. Hence it is, that, when travellers favour us with the description of countries where arbitrary sway prevails, they seldom make mention of civil laws.^{*}—

All occasions, therefore, of wrangling and lawsuits are here removed. And to this, in part, it is owing that litigious people, in those countries, are so roughly handled: as the injustice of their demand is neither screened, palliated, nor protected, by an infinite number of laws, of course it is immediately discovered.

CHAP. II.

Of the Simplicity of criminal Laws in different Governments.

WE hear it generally said, that justice ought to be administered with us as in Turkey. Is it possible, then, that the most ignorant of all nations should be the most clear-sighted in a point which it most behoves mankind to know?

If we examine the set forms of justice, with respect to the trouble the subject undergoes, in recovering his property, or in obtaining satisfaction for an injury or affront, we shall find them doubtless too numerous: but, if we consider them in the relation they bear to the liberty and security of every individual, we shall often find them too few, and be convinced that the trouble, expence, delays, and even the very dangers, of our judiciary proceedings, are the price that each subject pays for his liberty.

In Turkey, where little regard is shewn to the honour, life, or estate, of the subject, all causes are speedily decided. The method of determining them is a matter of

indifference, provided they be determined. The bashaw, after a quick hearing, orders which party he pleases to be bastinadoed, and then sends them about their business.

Here it would be dangerous to be of a litigious disposition: this supposes a strong desire of obtaining justice, a settled aversion, an active mind, and a steadiness in pursuing one's point. All this should be avoided in a government where fear ought to be the only prevailing sentiment, and in which popular disturbances are frequently attended with sudden and unforeseen revolutions. Here every man ought to know that the magistrate must not hear his name mentioned, and that his security depends entirely on his being reduced to a kind of annihilation.

But, in moderate governments, where the life of the meanest subject is deemed precious, no man is stript of his honour or property but after a long enquiry; and no man is bereft of life till his very country has attacked him; an attack that is never made without leaving him all possible means of making his defence.

Hence it is, that, when a person renders himself absolute^{*}, he immediately thinks of reducing the number of laws. In a government thus constituted, they are more affected with particular inconveniences than with the liberty of the subject, which is very little minded.

In republics, it is plain, that as many formalities, at least, are necessary as in monarchies. In both governments, they increase in proportion to the value which is set on the honour, fortune, liberty, and life, of the subject.

In republican governments, men are all equal; equal they are, also, in despotic governments: in the former, because they are every thing; in the latter, because they are nothing.

CHAP. III.

In what Governments, and in what Cases, the Judges ought to determine according to the express Letter of the Law.

THE nearer the government approaches towards a republic, the more the manner of judging becomes settled and fixt: hence it was a fault, in the republic of Sparta, for the Ephori to pass such arbitrary judgements, without having any laws to direct them. The first consuls, at Rome, pronounced sentence in the same manner as the Ephori; but the inconveniency of this proceeding was soon felt, and they were obliged to have recourse to express and determinate laws.

In despotic governments there are no laws; the judge himself is his own rule. There are laws in monarchies; and, where these are explicit, the judge conforms to them; where they are otherwise, he endeavours to investigate their spirit. In republics, the very nature of the constitution requires the judges to follow the letter of the law; otherwise, the law might be explained to the prejudice of every citizen, in cases where their honour, property, or life, are concerned.

At Rome, the judges had no more to do than to declare that the person accused was guilty of a particular crime, and then the punishment was found in the laws, as may be seen in divers laws still extant. In England, the jury give their verdict, whether the fact, brought under their cognizance, be proved or not; if it be proved, the judge pronounces the punishment inflicted by the law, and for this he needs only to open his eyes.

CHAP. IV.

Of the Manner of passing Judgement.

HENCE arises the different manner of passing judgement. In monarchies the judges choose the method of arbitration: they deliberate together; they communicate their sentiments for the sake of unanimity; they moderate their opinions, in order to render them conformable to those of others; and the lesser number is obliged to give way to the majority. But this is not agreeable to the nature of a republic. At Rome, and in the cities of Greece, the judges never entered into a consultation; each gave his opinion one of these three ways; *I absolve; I condemn; it does not appear clear to me*^{*}: this was because the people judged, or were supposed to judge. But the people are far from being civilians; all these restrictions and methods of arbitration are above their reach; they must have only one object, and one single fact, set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgement.

The Romans introduced fet forms of actions[†], after the example of the Greeks, and established a rule, that each cause should be directed by its proper action. This was necessary in their manner of judging; it was necessary to fix the state of the question, that the people might have it always before their eyes: otherwise, in a long process, this state of the question would continually change, and be no longer distinguished.

Hence it followed, that the Roman judges granted only the simple demand, without making any addition, deduction, or limitation. But the *prætors* devised other forms of actions, which were called *ex bona fide*, where the method of pronouncing sentence was left to the disposition of the judge. This was more agreeable to the spirit of monarchy.

Hence it is a saying among the French lawyers. *that. in France*[†]. *all actions are EX BONA*

FIDE.

CHAP. V.

In what Governments the Sovereign may be Judge.

MACHIAVEL^S attributes the loss of the liberty of Florence to the people's not judging in a body in cases of high-treason against themselves, as was customary at Rome. For this purpose they had eight judges: *but the few, says Machiavel, are corrupted by a few.* I should willingly adopt the maxim of this great man: but as, in those cases, the political interest prevails, in some measure, over the civil, (for it is always an inconveniency that the people should be judges in their own cause,) in order to remedy this evil, the laws must provide as much as possible for the security of individuals.

With this view, the Roman legislators did two things; they gave the persons accused permission to banish themselves^{||} before sentence was pronounced[¶]; and they ordained, that the goods of those who were condemned should be sacred, to prevent their being confiscated to the people. We shall see, in the XIth book, the other limitations that were set to the judicatory power residing in the people.

Solon knew how to prevent the abuse which the people might make of their power in criminal judgements. He ordained, that the court of Areopagus should re-examine the affair; that, if they believed the party accused was unjustly acquitted^{*}, they should impeach him again before the people; that, if they believed him unjustly condemned[†], they should prevent the execution of the sentence, and make them re-judge the proceeding. An admirable law, that subjected the people to the censure of the magistracy which they most revered, and even to their own!

In affairs of this kind, it is always proper to throw in some delays, especially when the party accused is under confinement; to the end that the people may grow calm, and give their judgement coolly.

In despotic governments, the prince himself may be judge: but in monarchies this cannot be; the constitution by such means would be subverted, and the dependent intermediate powers annihilated; all set forms of judgement would cease; fear would take possession of the people's minds, and paleness spread itself over every countenance: the more confidence, honour, affection, and security, in the subject, the more extended is the power of the monarch.

We shall give here a few more reflections on this point. In monarchies, the prince is the party that prosecutes the person accused, and causes him to be punished or acquitted; now, were he himself to sit upon the trial, he would be both judge and party.

In this government the prince has frequently the benefit of confiscation; so that here again, by determining criminal causes, he would be both judge and party.

Farther, by this method, he would deprive himself of the most glorious attribute of sovereignty, namely, that of granting pardon^{*}; for it would be quite ridiculous of him to make and unmake his decisions: surely, he would not choose to contradict himself.

Besides, this would be confounding all ideas; it would be impossible to tell whether a man was acquitted or received his pardon.

Lewis XIII. being desirous to sit in judgement upon the trial of the duke *ae la Valette*[†], sent for some members of the parliament and of the privy-council to debate the matter. Upon their being ordered by the king to give their opinion concerning the warrant for his arrest, the president *de Believre* said, "That he found it very strange a prince should pass sentence upon a subject: that kings had reserved to themselves the power of pardoning, and left that of condemning to their officers: that his majesty wanted to see before him at the bar a person, who, by his decision, was to be hurried away into the other world: that the prince's countenance should inspire with hopes, and not confound with fears: that his presence alone removed ecclesiastic censures: and that subjects ought not to go away dissatisfied from the sovereign." When sentence was passed, the same magistrate declared, "This is an unprecedented judgement; to see, contrary to the example of past ages, a king of France, in the quality of a judge, condemning a gentleman to death[‡]."

Again, sentences passed by the prince would be an inexhaustible source of injustice and abuse; the courtiers, by their importunity, would always be able to extort his decisions. Some Roman emperors were so mad as to sit as judges themselves; the consequence was, that no reigns ever so surprized the world with oppression and injustice.

"Claudius, (says Tacitus[¶];) having appropriated to himself the determination of law suits and the function of magistrates, gave occasion to all manner of rapine." But Nero, upon coming to the empire after Claudius, endeavoured to conciliate the minds of the people, by declaring, "That he would take care not to be judge himself in private causes, that the parties might not be exposed, within the walls of a palace, to the iniquitous influence of a few freedmen[§]."

"Under the reign of Arcadius, (says Zozimus[¶];) a swarm of calumniators spread themselves on every side, and infected the court. Upon a person's decease, it was immediately supposed he had left no children^{*}; and, in consequence of this, his property was given away by a recript. For, as the prince was surprizingly stupid, and the empress excessively enterprizing, she was a slave to the insatiable avarice of her domestics and confidants; insomuch, that, to an honest man, nothing could be more desirable than death."

"Formerly, (says Procopius[†],) there used to be very few people at court; but, in Justinian's reign, as the judges had no longer the liberty of administering justice, their tribunals were deserted, while the prince's palace resounded with the litigious clamours of the several parties." Every body knows what a prostitution there was of public judgements, and even of the very laws themselves, at the emperor's court.

The laws are the eye of the prince; by them he sees what would otherwise escape his observation. Should he attempt the function of a judge, he would not then labour for himself, but for impostors, whose aim is to deceive him.

CHAP. VI.

That, in Monarchies, Ministers ought not to sit as Judges.

IT is, likewise, a very great inconveniency, in monarchies, for the ministers of the prince to sit as judges. We have still instances of states where there is a great number of judges to decide exchequer causes, and where the ministers, nevertheless, (a thing most incredible,) would fain determine them. Many are the reflections that here arise; but this single one will suffice for my purpose.

There is, in the very nature of things, a kind of contrast between a prince's council and his courts of judicature. The king's council ought to be composed of a few persons, and the courts of judicature of a great many. The reason is, in the former, things should be undertaken and conducted with a kind of warmth and passion, which can hardly be expected but from four or five men who make it their sole business. On the contrary, in courts of judicature, a certain coolness is requisite, and an indifference, in some measure, to all manner of affairs.

CHAP. VII.

Of a single Magistrate.

A magistracy of this kind cannot take place but in a despotic government. We have an instance, in the Roman history, how far a single magistrate may abuse his power. Might it not be very well expected that *Appius*, on his tribunal, should contemn all laws, after having violated that of his own[†] enacting? Livy has given us the iniquitous distinction of the decemvir. He had suborned a man to reclaim *Virginia*, in his presence, as his slave: *Virginia's* relations insisted, that, by virtue of his own law, she should be consigned to them till the definitive judgement was passed. Upon which, he declared, that his law

had been enacted only in favour of the father; and that, as Virginius was absent, no application could be made of it to the present case[¶].

CHAP. VIII.

Of Accusation in different Governments.

AT Rome[§] it was lawful for one citizen to accuse another: this was agreeable to the spirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and is supposed to hold all the rights of his country in his own hands. Under the emperors the republican maxims were still pursued; and instantly appeared a pernicious tribe, a swarm of informers. Crafty wicked men, who could stoop to any indignity to serve the purposes of their ambition, were sure to busy themselves in the search of criminals whose condemnation might be agreeable to the prince: this was the road to honour and preferment[¶]: but luckily we are strangers to it in our country.

We have at present an admirable law, namely, that by which the prince, who is established for the execution of the laws, appoints an officer in each court of judicature to prosecute all sorts of crimes in his name: hence the profession of informers is a thing unknown to us; for, if this public avenger were suspected to abuse his office, he would soon be obliged to mention his author.

By Plato's laws^{*}, those who neglect to inform or assist the magistrates are liable to punishment. This would not be so proper in our days. The public prosecutor warches for the safety of the citizens; he proceeds in his office while they enjoy their quiet and ease.

CHAP. IX.

Of the Severity of Punishments in different Governments.

THE severity of punishments is fitter for despotic governments, whose principle is terror, than for a monarchy or a republic, whose spring is honour and virtue.

In moderate governments, the love of one's country, shame, and the fear of blame, are restraining motives, capable of preventing a multitude of crimes. Here the greatest punishment of a bad action is conviction. The civil laws have, therefore, a softer way of correcting, and do not require so much force and severity.

In those states, a good legislator is less bent upon punishing, than preventing, crimes;

he is more attentive to inspire good morals than to inflict penalties.

It is a constant remark of the Chinese authors[†], that, the more the penal laws were increased in their empire, the nearer they drew towards a revolution. This is because punishments were augmented in proportion as the public morals were corrupted.

It would be an easy matter to prove, that, in all, or almost all, the governments of Europe, penalties have increased or diminished in proportion as those governments favoured or discouraged liberty.

In despotic governments, people are so unhappy as to have a greater dread of death than regret for the loss of life; consequently, their punishments ought to be more severe. In moderate states, they are more afraid of losing their lives than apprehensive of the pain of dying; those punishments, therefore, which deprive them simply of life, are sufficient.

Men, in excess of happiness or misery, are equally inclinable to severity; witness conquerors and monks. It is mediocrity alone, and a mixture of prosperous and adverse fortune, that inspire us with lenity and pity.

What we see practised by individuals is equally observable in regard to nations. In countries inhabited by savages, who lead a very hard life, and in despotic governments, where there is only one person on whom fortune lavishes her favours, while the miserable subjects lie exposed to her insults, people are equally cruel. Lenity reigns in moderate governments.

When, in reading history, we observe the cruelty of the sultans in the administration of justice, we shudder at the very thought of the miseries of human nature.

In moderate governments, a good legislator may make use of every thing by way of punishment. Is it not very extraordinary, that one of the chief penalties, at Sparta, was to deprive a person of the power of lending out his wife, or of receiving the wife of another man, and to oblige him to have no company at home but virgins? In short, whatever the law calls a punishment, is such effectively.

CHAP. X.

Of the ancient French Laws.

IN the ancient French laws we find the true spirit of monarchy. In cases relating to pecuniary mulcts, the common people are less severely punished than the nobility[†]: but in criminal[‡] cases it is quite the reverse: the nobleman loses his honour and his voice in

court, while the peasant, who has no honour to lose, undergoes a corporal punishment.

CHAP. XI.

That, when People are virtuous, few Punishments are necessary.

THE people of Rome had some share of probity. Such was the force of this probity, that the legislator had frequently no farther occasion than to point out the right road, and they were sure to follow it. One would imagine, that, instead of precepts, it was sufficient to give them counsels.

The punishments of the regal laws, and those of the twelve tables, were almost all abolished in the time of the republic, in consequence either of the *Valerian*^S or of the *Porcian* law.[¶] It was never observed that this step did any manner of prejudice to the civil administration.

This Valerian law, which restrained the magistrates from using violent methods against a citizen that had appealed to the people, inflicted no other punishment on the person who infringed it than that of being reputed a dishonest man.^{*}

CHAP. XII.

Of the Power of Punishments.

EXPERIENCE shews, that, in countries remarkable for the lenity of their laws, the spirit of the inhabitants is as much affected, by slight penalties, as in other countries by severer punishments.

If an inconveniency or abuse arises in the state, a violent government endeavours suddenly to redress it; and, instead of putting the old laws in execution, it establishes some cruel punishment, which instantly puts a stop to the evil. But the spring of government hereby loses its elasticity; the imagination grows accustomed to the severe as well as the milder punishment; and, as the fear of the latter diminishes, they are soon obliged, in every case, to have recourse to the former. Robberies on the high-way were grown common in some countries. In order to remedy this evil, they invented the punishment of breaking upon the wheel; the terror of which put a stop, for a while, to this mischievous practice: but, soon after, robberies on the highways became as common as ever.

Desertion, in our days, was grown to a very great height: in consequence of which it

was judged proper to punish those delinquents with death; and yet their number did not diminish. The reason is very natural: a soldier, accustomed to venture his life, despises, or affects to despise, the danger of losing it: he is habituated to the fear of shame: it would have been, therefore, much better to have continued a punishment[†] which branded him with infamy for life: the penalty was pretended to be increased, while it really diminished.

Mankind must not be governed with too much severity: we ought to make a prudent use of the means which nature has given us to conduct them. If we enquire into the cause of all human corruptions, we shall find that they proceed from the impunity of criminals, and not from the moderation of punishments.

Let us follow nature, who has given shame to man for his scourge; and let the heaviest part of the punishment be the infamy attending it.

But, if there be some countries where shame is not a consequence of punishment, this must be owing to tyranny, which has inflicted the same penalties on villains and honest men.

And, if there are others where men are deterred only by cruel punishments, we may be sure that this must, in a great measure, arise from the violence of the government, which has used such penalties for slight transgressions.

It often happens, that a legislator, desirous of remedying an abuse, thinks of nothing else: his eyes are open only to this object, and shut to its inconveniences. When the abuse is redressed, you see only the severity of the legislator: yet there remains an evil in the state, that has sprung from this severity; the minds of the people are corrupted and become habituated to despotism.

Lysander[‡] having obtained a victory over the Athenians, the prisoners were ordered to be tried, in consequence of an accusation, brought against that nation, of having thrown all the captives of two galleys down a precipice, and of having resolved, in full assembly, to cut off the hands of those whom they should chance to make prisoners. The Athenians were therefore all massacred, except *Adymantes*, who had opposed this decree. *Lysander* reproached *Philocles*, before he was put to death, with having depraved the people's minds, and given lessons of cruelty to all Greece.

"The Argives (says Plutarch^{||}) having put fifteen hundred of their citizens to death, the Athenians ordered sacrifices of expiation, that it might please the gods to turn the hearts of the Athenians from so cruel a thought."

There are two sorts of corruption; one when the people do not observe the laws; the other when they are corrupted by the laws: an incurable evil, because it is in the very remedy itself.

CHAP. XIII.

Insufficiency of the Laws of Japan.

EXCESSIVE punishments may even corrupt a despotic government: of this we have an instance in Japan.

Here almost all crimes are punished with death,^S because disobedience to so great an emperor as that of Japan is reckoned an enormous crime. The question is not so much to correct the delinquent, as to vindicate the authority of the prince. These notions are derived from servitude, and are owing especially to this, that, as the emperor is universal proprietor, almost all crimes are directly against his interests.

They punish with death lies spoken before the magistrate[¶]; a proceeding contrary to natural defence.

Even things which have not the appearance of a crime are severely punished: for instance, a man that ventures his money at play is put to death.

True it is, that the character of this people, so amazingly obstinate, capricious, and resolute, as to defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men, who have a natural contempt of death, and who rip open their bellies for the least fancy; are such men, I say, mended or deterred, or rather are they not hardened, by the continual prospect of punishments?

The relations of travellers inform us, with respect to the education of the Japanese, that children must be treated there with mildness, because they become hardened to punishment; that their slaves must not be too roughly used, because they immediately stand upon their defence. Would not one imagine that they might easily have judged of the spirit, which ought to reign in their political and civil government, from that which should prevail in their domestic concerns?

A wise legislator would have endeavoured to reclaim people by a just temperature of punishments and rewards; by maxims of philosophy, morality, and religion, adapted to those characters; by a proper application of the rules of honour; and by the enjoyment of ease and tranquillity of life: and, should he have entertained any apprehension that their minds, being inured to the cruelty of punishments, would no longer be restrained by those of a milder nature, he would have conducted himself^{*} in another manner, and gained his point by degrees: in particular cases, that admitted of any indulgence, he would have mitigated the punishment, till he should have been able to extend this mitigation to all cases.

But these are springs to which despotic power is a stranger: it may abuse itself, and that is all it can do. In Japan it has made its utmost effort, and has surpassed even itself in cruelty.

As the minds of the people grew wild and intractable, they were obliged to have recourse to the most horrid severity.

This is the origin, this the spirit, of the laws of Japan. They had more fury, however, than force. They succeeded in the extirpation of Christianity: but such unaccountable efforts are a proof of their insufficiency. They wanted to establish a good polity, and they have shewn greater marks of their weakness.

We have only to read the relation of the interview between the emperor and the deyro at *Meaco*.[†] The number of those who were suffocated or murdered in that city by ruffians is incredible: young maids and boys were carried off by force, and found afterwards exposed in public places, at unseasonable hours, quite naked, and sewed in linen bags, to prevent their knowing which way they had passed; robberies were committed in all parts; the bellies of horses were ripped open, to bring their riders to the ground; and coaches were overturned, in order to strip the ladies. The Dutch, who were told they could not pass the night on the scaffolds without exposing themselves to the danger of being assassinated, came down, &c.

I shall here give one instance more from the same nation. The emperor, having abandoned himself to infamous pleasures, lived unmarried, and was consequently in danger of dying without issue. The deyro sent him two beautiful damsels; one he married out of respect, but would not meddle with her. His nurse caused the finest women of the empire to be sent for; but all to no purpose. At length, an armourer's daughter having pleased his fancy,[‡] he determined to espouse her, and had a son. The ladies belonging to court, enraged to see a person of such mean extraction preferred to themselves, stifled the child. The crime was concealed from the emperor; for he would have deluged the land with blood. The excessive severity of the laws hinders, therefore, their execution: when the punishment surpasses all measure, they are frequently obliged to prefer impunity to it.

CHAP. XIV.

Of the Spirit of the Roman Senate.

UNDER the consulate of Acilius Glabrio and Piso the *Acilian law*[¶] was made, to prevent the intriguing for places. Dio says,[§] that the senate engaged the consuls to propose it, by reason that C. Cornelius, the tribune, had resolved to cause more severe

punishments to be established against this crime; to which the people seemed greatly inclined. The senate rightly judged, that immoderate punishments would strike indeed a terror into people's minds, but must have also this effect, that there would be nobody afterwards to accuse or condemn; whereas, by proposing moderate penalties, there would be always judges and accusers.

CHAP. XV.

Of the Roman Laws in Respect to Punishments.

I am strongly confirmed in my sentiments, upon finding the Romans on my side; and I think that punishments are connected with the nature of government, when I behold this great people changing, in this respect, their civil laws, in proportion as they altered their form of government.

The *regal* laws made for fugitives, slaves, and vagabonds, were very severe. The spirit of a republic would have required that the decemvirs should not have inserted those laws in their twelve tables; but men who aimed at tyranny were far from conforming to a republican spirit.

Livy says,[¶] in relation to the punishment of Metius Suffetius, dictator of Alba, (who was condemned, by Tullius Hostilius, to be fastened to two chariots drawn by horses, and to be torn asunder,) that this was the first and last punishment in which the remembrance of humanity seemed to have been lost. He is mistaken: the twelve tables are full of very cruel laws.*

The design of the decemvirs appears more conspicuous in the capital punishment pronounced against libellers and poets. This is not agreeable to the genius of a republic, where the people like to see the great men humbled: but persons who aimed at the subversion of liberty were afraid of writings that might revive its spirit[†]

After the expulsion of the decemvirs, almost all the penal laws were abolished. It is true, they were not expressly repealed; but, as the *Porcian* law had ordained that no citizen of Rome should be put to death, they were of no farther use.

This is exactly the time to which we may refer what Livy says[¶] of the Romans, that no people were ever fonder of moderation in punishments.

But, if, to the lenity of the penal laws, we add the right which the party accused had of withdrawing before judgement was pronounced, we shall find that the Romans followed the spirit which I have observed to be natural to a republic.

Sylla, who confounded tyranny, anarchy, and liberty, made the *Cornelian laws*. He seemed to have contrived regulations merely with a view to create new crimes. Thus, distinguishing an infinite number of actions by the name of murder, he found murderers in all parts; and, by a practice but too much followed, he laid snares, sowed thorns, and opened precipices, wheresoever the citizens set their feet.

Almost all Sylla's laws contained only the interdiction of fire and water. To this Cæsar added the confiscation of goods^{*}, because the rich, by preserving their estates in exile, became bolder in the perpetration of crimes.

The emperors, having established a military government, soon found that it was as terrible to the prince as to the subject; they endeavoured, therefore, to temper it; and with this view had recourse to dignities, and to the respect with which those dignities were attended.

The government thus drew nearer a little to monarchy, and punishments were divided into three classes[†]; those which related to the principal persons in the state[‡], which were very mild; those which were inflicted on persons of an inferior rank[§], and which were more severe; and, in fine, such as concerned only persons of the lowest condition[¶], which were the most rigorous.

Maximinus, that fierce, that stupid, prince, increased the rigour of the military government which he ought to have softened. The senate was informed, says *Capitolinus*[¶], that some had been crucified, others exposed to wild beasts, or sewed up in the skins of beasts lately killed, without any manner of regard to their dignity. It seemed as if he wanted to exercise the military discipline, on the model of which he pretended to regulate the civil administration.

In *the Considerations on the Rise and Declension of the Roman Grandeur*, we find in what manner Constantine changed the military despotism into a military and civil government, and drew nearer to monarchy. There we may trace the different revolutions of this state, and see how they fell from rigour to indolence, and from indolence to impunity.

CHAP. XVI.

Of the just Proportion betwixt Punishments and Crimes.

IT is an essential point, that there should be a certain proportion in punishments, because it is essential that a great crime should be avoided rather than a smaller, and that which is more pernicious to society rather than that which is less.

"An impostor^{*}, who called himself Constantine Ducas, raised a great insurrection at Constantinople. He was taken and condemned to be whipt; but, upon informing against several persons of distinction, he was sentenced to be burnt as a calumniator." It is very extraordinary that they should thus proportion the punishments betwixt the crime of high-treason and that of calumny.

This puts me in mind of a saying of Charles II. king of Great-Britain. He saw a man, one day, standing in the pillory; upon which, he asked what crime the man had committed. He was answered, *Please your majesty, he has written a libel against your ministers.* *The fool!* said the king, *why did not he write against me? they would have done nothing to him.*

"Seventy persons having conspired against the emperor Basil[†], he ordered them to be whipt, and the hair of their heads and beards to be burnt. A stag, one day, having taken hold of him by the girdle with his horn, one of his retinue drew his sword, cut the girdle, and saved him; upon which, he ordered that person's head to be cut off, for having, *said he*, drawn his sword against his sovereign." Who could imagine that the same prince could ever have passed two such different judgements?

It is a great abuse amongst us to condemn to the same punishment a person that only robs on the highway, and another who robs and murders. Surely, for the public security, some difference should be made in the punishment.

In *China*, those who add murder to robbery are cut in pieces[‡]; but not so the others: to this difference it is owing, that, though they rob in that country, they never murder.

In *Russia*, where the punishment of robbery and murder is the same, they always murder^{||}. The dead, say they, tell no tales.

Where there is no difference in the penalty, there should be some in the expectation of pardon. In *England* they never murder on the highway, because robbers have some hopes of transportation, which is not the case in respect to those that commit murder.

Letters of grace are of excellent use in moderate governments. This power which the prince has of pardoning, exercised with prudence, is capable of producing admirable effects. The principle of despotic government, which neither grants nor receives any pardon, deprives it of these advantages.

CHAP. XVII.

Of the Rack.

THE wickedness of mankind makes it necessary for the laws to suppose them better than they really are. Hence the deposition of two witnesses is sufficient in the punishment of all crimes. The law believes them, as if they spoke by the mouth of truth. Thus we judge that every child conceived in wedlock is legitimate; the law having a confidence in the mother, as if she were chastity itself. But the use of the rack against criminals cannot be defended on a like plea of necessity.

We have before us the example of a nation, blessed with an excellent civil government^s, where, without any inconveniency, the practice of racking criminals is rejected. It is not, therefore, in its own nature, necessary¹.

So many men of learning and genius have written against the custom of torturing criminals, that after them I durst not presume to meddle with the subject. I was going to say, that it might suit despotic states, where whatever inspires fear is the properest spring of government; I was going to say, that the slaves among the Greeks and Romans — But nature cries out aloud, and asserts her rights.

CHAP. XVIII.

Of pecuniary and corporal Punishments.

OUR ancestors, the Germans, admitted of none but pecuniary punishments. Those free and warlike people were of opinion, that their blood ought not to be spilt but with sword in hand. On the contrary, these punishments are rejected by the Japanese^{*}, under pretence that the rich might elude them. But are not the rich afraid of being stripped of their property? And might not pecuniary penalties be proportioned to people's fortunes? And, in fine, might not infamy be added to those punishments?

A good legislator takes a just medium; he ordains neither always pecuniary, nor always corporal, punishments.

CHAP. XIX.

Of the Law of Retaliation.

THE use of the *law of retaliation*[†] is very frequent in despotic countries, where they are fond of simple laws. Moderate governments admit of it sometimes; but with this difference, that the former exercise it in full rigour, whereas, among the latter, it ever receives some kind of limitation.

The law of the twelve tables admitted two; first, it never condemned to retaliation but when the plaintiff could not be satisfied in any other manner[±]: secondly, after condemnation they might pay damages and interest^{||}, and then the corporal was changed into a pecuniary punishment[§].

CHAP. XX.

Of the Punishment of Fathers for the Crimes of their Children.

IN China, fathers are punished for the crimes of their children. This was likewise the custom of Peru[¶]; a custom derived from the notion of despotic power.

Little does it signify to say, that, in China, the father is punished for not having exerted that paternal authority which nature has established and the laws themselves have improved. This still supposes that there is no honour among the Chinese. Amongst us, parents, whose children are condemned by the laws of their country, and children^{*}, whose parents have undergone the like fate, are as severely punished by shame, as they would be, in China, by the loss of their lives.

CHAP. XXI.

Of the Clemency of the Prince.

CLEMENCY is the characteristic of monarchs. In republics, whose principle is virtue, it is not so necessary. In despotic governments, where fear predominates, it is less customary, because the great men are to be restrained by examples of severity. It is more necessary in monarchies, where they are governed by honour, which frequently requires what the very law forbids. Disgrace is here equivalent to chastisement; and even the forms of justice are punishments. This is because particular kinds of penalty are formed by shame, which on every side invades the delinquent.

The great men, in monarchies, are so heavily punished by disgrace, by the loss (though often imaginary) of their fortune, credit, acquaintances, and pleasures, that rigour, in respect to them, is needless: it can tend only to divest the subject of the affection he has for the person of his prince, and of the respect he ought to have for public posts and employments.

As the instability of the great is natural to a despotic government, so their security is interwoven with the nature of monarchy.

So many are the advantages which monarchs gain by clemency, so greatly does it raise their fame and endear them to their subjects, that it is generally happy for them to have an opportunity of displaying it; which, in this part of the world, is seldom wanting.

Some branch, perhaps, of their authority, but never hardly the whole, will be disputed: and, if they sometimes fight for their crown, they do not fight for their life.

But some may ask, When is it proper to punish, and when to pardon? — This is a point easier felt than prescribed. When there is danger in the exercise of clemency, it is visible: nothing so easy as to distinguish it from that imbecillity which exposes princes to contempt and to the very incapacity of punishing.

The emperor Maurice[†] made a resolution never to spill the blood of his subjects. Anastasius[‡] punished no crimes at all. Isaac Angelus took an oath, that no one should be put to death during his reign. Those Greek emperors had forgot that it was not for nothing they were intrusted with the sword.

Endnotes

[*] In *Mazulipatan* it could never be found out that there was such a thing as a written law. See *the Collection of Voyages that contributed to the establishment of the India Company*, tom. IV. part I. p. 391. The Indians are regulated in their decisions by certain customs. The Vedan and such like books do not contain civil laws, but religious precepts. See *Lettres ed.* 14. collect.

[*] Cæsar, Cromwell, and many others.

[*] Non liquet.

[†] *Quas actiones, ne populus prout vellet institueret, certas solemnesque esse voluerunt.* Lib. 2, §. 6. Digest. de Orig. Jur.

[‡] In France, a person, though sued for more than he owes, loses his costs if he has not offered to pay the exact debt.

[§] Discourse on the first decade of Livy, book 1, chap. 7.

[||] This is well explained in Cicero's oration *pro Cæcina*, towards the end.

[¶] This was a law at Athens, as appears by Demosthenes. Socrates refused to make use of it.

[*] Demosthenes *pro corona*, p. 494, edit. Frankf. an. 1604.

[†] See Philostratus's Lives of the Sophists, book 1. Life of Aeschin(?)

[*] Plato does not think it right that kings, who, as he says, are priests, should preside on trials where people are condemned to death, to exile, or imprisonment.

[†] See the relation of the trial of the duke de la Valette. It is printed in the Memoirs of *Montrésor* tom. ii. p 62.

[‡] It was afterwards revoked. See the same relation.

[||] Annal. lib. 11.

[§] Annal. lib. 13.

[¶] Hist. lib. 5.

[*] The same disorder happened under Theodosius the younger.

[†] Secret History.

[‡] See the 2d law, § 24, ff. *de Orig. Jur.*

[||] Quod pater puellæ abesset, locum injuriæ esse ratus. Livius Dec. 1. lib. 3.

[§] And in a great many other cities.

[¶] See, in Tacitus, the rewards given to those informers.

[*] Lib. 9.

[†] I shall shew hereafter that China is, in this respect, in the same case as a republic or a monarchy.

[‡] Suppose, for instance, to prevent the execution of a decree, the common people paid a fine of forty sous, and the nobility of sixty livres. *Somme Rurale*, book 2. p. 198. edit. Got. of the year 1512.

[||] See the Council of *Peter Defontaines*, chap. 13. especially the 22d art.

[§] It was made by *Valerius Publicola* soon after the expulsion of the kings, and was twice renewed, both times by magistrates of the same family, as Livy observes, lib. 10. the question was not to give it a greater force, but to render its injunctions more perfect; *diligentius sanctum*, says Livy, *ibid.*

[¶] *Lex Porcia pro tergo civium lata*. It was made in the 454th year of the foundation of Rome.

[*] *Nibil ultra quam improbe factum adjecit*. Liv.

[†] They slit his nose, or cut off his ears.

[‡] Xenoph. Hist. lib. 3.

[||] *Morals, of those who are intrusted with the direction of the state-affairs*.

[§] See *Kempfer*.

[¶] Collection of Voyages that contributed to the establishment of the East-India Company, tom. 3. p. 428.

[*] Let this be observed, as a maxim in practice, with regard to cases where the minds of people have been depraved by too great a severity of punishments.

[†] Collection of Voyages that contributed to the establishment of the East-India Company, tom. 5, p. 2.

[‡] Ibid.

[||] The guilty were condemned to a fine; they could not be admitted into the rank of senators, nor nominated to any public office. Dio, book 36.

[§] Book 36.

[¶] Lib. 1.

[*] We find there the punishment of fire, and generally capital punishments, theft punished with death, &c.

[†] Sylla, animated with the same spirit as the decemvirs, followed their example, in augmenting the penal laws against satirical writers.

[¶] Book 1.

[*] *Pœnas facinorum auxit, cum locupletes eo facilius scelere se obligarent, quod integris patrimoniis exularent*. *Suet. in Jul. Cæsare*.

[†] See the 3d law, §. legis ad leg. Cornel. *de sicariis*, and a vast number of others in the Digest and in the Codex.

[‡] Sublimiores.

[||] Medios.

[§] Infimos, leg. 3. §. legis ad leg. Cornel. *de sicariis*.

[¶] Jul. Cap. *Maximini* duo.

[*] Hist. of Nicephorus, patriarch of Constantinople.

[†] In Nicephorus's history.

[‡] Duhalde, tom. i. p. 6.

[||] Present state of Russia, by *Perry*.

[§] The English.

[¶] The citizens of Athens could not be put to the rack (*Lysias, orat. in Agorot.*) unless it was for high-treason. The torture was used within thirty days after condemnation. (*Curius Fortunatus, Rhetor. Schol. lib. 2.*) There was no preparatory torture. In regard to the Romans, the 3d and 4th law *ad leg. Jul. majest.* shew, that birth, dignity, and the military profession, exempted people from the rack, except in cases of high-treason. See the prudent restrictions of this practice made by the laws of the Visigoths.

[*] See Kempfer.

[†] It is established in the Koran. *See the chapter of the cow.*

[‡] Si membrum rupit, ni cum eo pacit, talio esto. *Aul. Gellius, lib. 20. c. 1.*

[||] See Kempfer.

[§] See also the law of the Visigoths, book 6. tit. 4. §. 3. and 5.

[¶] See *Garcilasso*, history of the civil wars of the Spaniards.

[*] Instead of punishing them, *says Plato*, they ought to be commended for not having followed their father's example. *Book 9. of Laws.*

[†] *Evagr. hist.*

[‡] Fragments of Suidas, in *Constant. Porphyrog.*

**BOOK VII. CONSEQUENCES OF THE DIFFERENT PRINCIPLES OF THE
THREE GOVERNMENTS, WITH RESPECT TO SUMPTUARY LAWS,
LUXURY, AND THE CONDITION OF WOMEN.**

CHAP. I.

Of Luxury.

LUXURY is ever in proportion to the inequality of fortunes. If the riches of a state are equally divided, there will be no luxury; for it is founded merely on the inconveniences acquired by the labour of others.

In order to have this equal distribution of riches, the law ought to give to each man only what is necessary for nature. If they exceed these bounds, some will spend, and others will acquire; by which means an inequality will be established.

Supposing what is necessary for the support of nature to be equal to a given sum, the luxury of those who have only what is barely necessary will be equal to a *cypher*: if a person happens to have double that sum, his luxury will be equal to one: he that has double the latter's substance will have a luxury equal to three: if this be still doubled, there will be a luxury equal to seven: so that the property of the subsequent individual being always supposed double to that of the preceding, the luxury will increase double, and an unit will be always added, in this progression, 0, 1, 3, 7, 15, 31, 63, 127.

In Plato's republic^{||} luxury might have been exactly calculated. There were four sorts of censuses, or rates of estates. The first was exactly the term beyond poverty; the second was double; the third triple; the fourth quadruple to the first. In the first census luxury was equal to a *cypher*; in the second, to one; in the third, to two; in the fourth, to three; and thus it followed in an arithmetical proportion.

Considering the luxury of different nations with respect to one another, it is, in each state, in a compound proportion to the inequality of fortunes among the subjects, and to the inequality of wealth in different states. In Poland, for example, there is an extreme inequality of fortunes: but the poverty of the whole hinders them from having so much luxury as in a more opulent government.

Luxury is also in proportion to the populousness of the towns, and especially of the capital; so that it is in a compound proportion to the riches of the state, to the inequality of private fortunes, and to the number of people settled in particular places.

In proportion to the populousness of towns, the inhabitants are filled with notions of vanity, and actuated by an ambition of distinguishing themselves by trifles[§]. If they are very numerous, and most of them strangers to one another, their vanity redoubles,

because there are greater hopes of success. As luxury inspires these hopes, each man assumes the marks of a superior condition: but, by endeavouring thus at distinction, every one becomes equal, and distinction ceases; as all are desirous of respect, nobody is regarded.

Hence arises a general inconvenience. Those who excel in a profession set what value they please on their labour: this example is followed by people of inferior abilities; and then there is an end of all proportion between our wants and the means of satisfying them. When I am forced to go to law, I must be able to fee council: when I am sick, I must have it in my power to fee a physician.

It is the opinion of several, that the assembling so great a multitude of people in capital cities is an obstruction to commerce, because the inhabitants are no longer at a proper distance from each other: but I cannot think so; for men have more desires, more wants, more fancies, when they live together.

CHAP. II.

Of sumptuary Laws in a Democracy.

WE have observed, that, in a republic where riches are equally divided, there can be no such thing as luxury; and, as we have shewn, in the 5th book,¹ that this equal distribution constitutes the excellency of a republican government, hence it follows, that, the less luxury there is in a republic, the more it is perfect. There was none among the old Romans, none among the Lacedæmonians; and, in republics where this equality is not quite lost, the spirit of commerce, industry, and virtue, renders every man able and willing to live on his own property, and consequently prevents the growth of luxury.

The laws concerning the new division of lands, insisted upon so eagerly in some republics, were of the most salutary nature. They are dangerous only as they are subitaneous. By reducing instantly the wealth of some, and increasing that of others, they form a revolution in each family, and must produce a general one in the state.

In proportion as luxury gains ground in a republic, the minds of the people are turned towards their particular interests. Those, who are allowed only what is necessary, have nothing but their own reputation and their country's glory in view: but a soul depraved by luxury has many other desires, and soon becomes an enemy to the laws that confine it. The luxury in which the garrison of *Rhegio* began to live was the cause of their massacring the inhabitants.

No sooner were the Romans corrupted than their desires became boundless and immense. Of this we may judge by the price they set on things. A pitcher of Falernian

wine^{*} was sold for a hundred Roman denarii; a barrel of salt meat from the kingdom of Pontus cost four hundred; a good cook four talents; and, for boys, no price was reckoned too great. When the whole world, impelled by the force of corruption, is immersed in voluptuousness,[†] what must then become of virtue?

CHAP. III.

Of sumptuary Laws in an Aristocracy.

THERE is this inconvenience in an ill-constituted aristocracy, that the wealth centers in the nobility, and yet they are not allowed to spend; for, as luxury is contrary to the spirit of moderation, it must be banished from thence. This government comprehends, therefore, only people who are extremely poor, and cannot acquire; and people who are vastly rich, and cannot spend.

In Venice they are compelled by the laws to moderation. They are so habituated to parsimony, that none but courtizans can make them part with their money. Such is the method made use of for the support of industry: the most contemptible of women may be profuse without danger, whilst those who contribute to their extravagance consume their days in the greatest obscurity.

Admirable, in this respect, were the institutions of the principal republics of Greece. The rich employed their money in festivals, musical choruses, chariots, horse-races, and chargeable offices. Wealth was therefore as burthensome there as poverty.

CHAP. IV.

Of sumptuary Laws in a Monarchy.

TACITUS says,[‡] "That the Suiones, a German nation, have a particular respect for riches; for which reason they live under the government of one person." This shews that luxury is extremely proper for monarchies, and that under this government there must be no sumptuary laws.

As riches, by the very constitution of monarchies, are unequally divided, there is an absolute necessity for luxury. Were the rich not to be lavish, the poor would starve. It is even necessary here that the expences of the opulent should be in proportion to the inequality of fortunes, and that luxury, as we have already observed, should increase in this proportion. The augmentation of private wealth is owing to its having deprived one

part of the citizens of their necessary support; this must therefore be restored to them.

Hence it is, that, for the preservation of a monarchical state, luxury ought continually to increase, and to grow more extensive, as it rises from the labourer to the artificer, to the merchant, to the magistrate, to the nobility, to the great officers of state, up to the very prince; otherwise the nation will be undone.

In the reign of Augustus a proposal was made in the Roman senate, which was composed of grave magistrates, learned civilians, and of men whose heads were filled with the notion of the primitive times, to reform the manners and luxury of women. It is curious to see, in Dio,[¶] with what art this prince eluded the importunate solicitations of those senators. This was because he was founding a monarchy, and dissolving a republic.

Under Tiberius, the ædiles proposed, in the senate, the re-establishment of the ancient sumptuary laws.[§] This prince, who did not want sense, opposed it. "The state (said he) could not possibly subsist in the present situation of things. How could Rome, how could the provinces, live? We were frugal while we were only masters of one city: now we consume the riches of the whole globe, and employ both the masters and their slaves in our service." He plainly saw that sumptuary laws would not suit the present form of government.

When a proposal was made, under the same emperor, to the senate, to prohibit the governors from carrying their wives with them into the provinces, because of the dissoluteness and irregularity which followed those ladies, the proposal was rejected. It was said, "that the examples of ancient austerity had been changed into a more agreeable method of living."[¶] They found there was a necessity for different manners.

Luxury is therefore absolutely necessary in monarchies; as it is also in despotic states. In the former, it is the use of liberty; in the latter, it is the abuse of servitude. A slave, appointed by his master to tyrannize over other wretches of the same condition, uncertain of enjoying, to-morrow, the blessings of to-day, has no other felicity than that of glutting the pride, the passions, and voluptuousness, of the present moment.

Hence arises a very natural reflexion. Republics end with luxury; monarchies with poverty.^{*}

CHAP. V.

In what Cases sumptuary Laws are useful in a Monarchy.

WHETHER it was from a republican spirit, or from some other particular circumstance,

sumptuary laws were made in Arragon, in the middle of the thirteenth century. James the First ordained, that neither the king, nor any of his subjects, should have above two sorts of dishes at a meal, and that each dish should be dressed only one way, except it were game of their own killing.[†]

In our days sumptuary laws have been also enacted in Sweden; but with a different view from those of Arragon.

A government may make sumptuary laws with a view to absolute frugality. This is the spirit of sumptuary laws in republics; and the very nature of the thing shews that such was the design of those of Arragon.

Sumptuary laws may likewise be established with a design to promote a relative frugality. When a government, perceiving that foreign merchandizes, being at too high a price, will require such an exportation of home manufactures, as to deprive them of more advantages, by the loss of the latter, than they can receive from the possession of the former, they will forbid their being introduced: and this is the spirit of the laws which in our days have been passed in Sweden.[‡] Such are the sumptuary laws proper for monarchies.

In general, the poorer a state, the more it is ruined by its relative luxury, and consequently the more occasion it has for relative sumptuary laws. The richer a state, the more it thrives by its relative luxury; for which reason, it must take particular care not to make any relative sumptuary laws. This we shall better explain in the book on commerce^{*}; here we treat only of absolute luxury.

CHAP. VI.

Of the Luxury of China.

SUMPTUARY laws may, in some governments, be necessary, for particular reasons. The people, by the influence of the climate, may grow so numerous, and the means of subsisting may be so uncertain, as to render an universal application to agriculture extremely necessary. As luxury, in those countries, is dangerous, their sumptuary laws should be very severe. In order, therefore, to be able to judge whether luxury ought to be encouraged or proscribed, we should examine, first, what relation there is between the number of people and the facility they have of procuring subsistence. In England, the soil produces more grain than is necessary for the maintenance of such as cultivate the land, and of those who are employed in the woollen manufactures. This country may be therefore allowed to have some trifling arts, and consequently luxury. In France, likewise, there is corn enough for the support of the husbandman and of the

manufacturer. Besides, a foreign trade may bring in so many necessaries, in return for toys, that there is no danger to be apprehended from luxury.

On the contrary, in China, the women are so prolific, and the human species multiplies so fast, that the lands, though never so much cultivated, are scarcely sufficient to support the inhabitants. Here, therefore, luxury is pernicious, and the spirit of industry and œconomy is as requisite as in any republic^{*}. They are obliged to pursue the necessary arts, and to shun those of luxury and pleasure.

This is the spirit of the excellent decrees of the Chinese emperors. "Our ancestors (says an emperor of the family of the Tangs[†]) held it as a maxim, that, if there was a man who did not work, or a woman that was idle, somebody must suffer cold or hunger in the empire." And on this principle he ordered a vast number of the monasteries of bonzes to be destroyed.

The third emperor of the one-and-twentieth dynasty[‡], to whom some precious stones were brought that had been found in a mine, ordered it to be shut up, not choosing to fatigue his people with working for a thing that could neither feed nor clothe them.

"So great is our luxury, says Kiayventi^{||}, that people adorn with embroidery the shoes of boys and girls whom they are obliged to sell." Is employing so many people in making cloaths for one person the way to prevent a great many from wanting cloaths? There are ten men who eat the fruits of the earth to one employed in agriculture; and is this the means to preserve numbers from wanting nourishment?

CHAP. VII.

Fatal Consequences of Luxury in China.

IN the history of China, we find it has had twenty-two successive dynasties; that is, it has experienced twenty-two general, without mentioning a prodigious number of particular, revolutions. The three first dynasties lasted a long time, because they were wisely administered, and the empire had not so great an extent as it afterwards obtained. But we may observe, in general, that all those dynasties began very well. Virtue, attention, and vigilance, are necessary in China; these prevailed in the commencement of the dynasties and failed in the end. It was natural, that emperors, trained up in military toil, who had compassed the dethroning of a family immersed in pleasure, should adhere to virtue, which they had found so advantageous, and be afraid of voluptuousness, which they knew had proved so fatal to the family dethroned. But, after the three or four first princes, corruption, luxury, indolence, and pleasure, possessed their successors; they shut themselves up in a palace; their understanding

was impaired; their life was shortened; the family declined; the grandees rose up; the eunuchs gained credit; none but children were set on the throne; the palace was at variance with the empire; a lazy set of people, that dwelled there, ruined the industrious part of the nation; the emperor was killed or destroyed by an usurper, who founded a family, the third or fourth successor of which went and shut himself up in the very same palace.

CHAP. VIII.

Of public Contineny.

SO many are the imperfections that attend the loss of virtue in women, and so greatly are their minds depraved when this principal guard is removed, that, in a popular state, public incontinency may be considered as the last of miseries, and as a certain fore-runner of a change in the constitution.

Hence it is that the sage legislators of republican states have ever required of women a particular gravity of manners. They have proscribed not only vice, but the very appearance of it. They have banished even all commerce of gallantry; a commerce that produces idleness, that renders the women corrupters even before they are corrupted, that gives a value to trifles, and debases things of importance; a commerce, in fine, that makes people act entirely by the maxims of ridicule, in which the women are so perfectly skilled.

CHAP. IX.

Of the Condition or State of Women in different Governments.

IN monarchies women are subject to very little restraint; because, as the distinction of ranks calls them to court, there they assume a spirit of liberty, which is almost the only one tolerated in that place. Each courtier avails himself of their charms and passions, in order to advance his fortune: and, as their weakness admits not of pride, but of vanity, luxury constantly attends them.

In despotic governments, women do not introduce, but are themselves an object of, luxury. They must be in a state of the most rigorous servitude. Every one follows the spirit of the government, and adopts in his own family the customs he sees elsewhere established. As the laws are very severe and executed on the spot, they are afraid lest the liberty of women should expose them to danger. Their quarrels, indiscretions,

repugnances, jealousies, piques, and that art, in fine, which little souls have of interesting great ones, would be attended there with fatal consequences.

Besides, as princes, in those countries, make a sport of human nature, they allow themselves a multitude of women; and a thousand considerations oblige them to keep those women in close confinement.

In republics women are free by the laws, and restrained by manners; luxury is banished from thence, and with it corruption and vice.

In the cities of Greece, where they were not under the restraint of a religion, which declares, that, even amongst men, regularity of manners is a part of virtue; where a blind passion triumphed with a boundless insolence, and love appeared only in a shape which we dare not mention, while marriage was considered as nothing more than simple friendship^{*}; such was the virtue, simplicity, and chastity, of women, in those cities, that, in this respect, hardly any people were ever known to have had a better and wiser polity[†].

CHAP. X.

Of the domestic Tribunal among the Romans.

THE Romans had no particular magistrates, like the Greeks, to inspect the conduct of women. The censors had not an eye over them but as over the rest of the republic. The institution of the domestic tribunal[§] supplied the magistracy established among the Greeks[¶].

The husband summoned the wife's relations, and tried her in their presence[‡]. This tribunal preserved the manners of the republic, and, at the same time, those very manners maintained this tribunal. For it decided not only in respect to the violation of the laws, but also of manners: now, in order to judge of the violation of the latter, manners are requisite.

The penalties inflicted by this tribunal ought to be, and actually were, arbitrary: for all that relates to manners, and to the rules of modesty, can hardly be comprised under one code of laws. It is easy, indeed, to regulate by laws what we owe to others, but it is very difficult to comprise all we owe to ourselves.

The domestic tribunal inspected the general conduct of women. But there was one crime, which, beside the animadversion of this tribunal, was likewise subject to a public accusation: this was adultery: whether that, in a republic, so great a deprivation of manners interested the government; or whether the wife's immorality might render the

husband's suspected; or whether, in fine, they were afraid lest even honest people might choose that this crime should rather be concealed than punished.

CHAP. XI.

In what Manner the Institutions changed at Rome together with the Government.

AS manners were supposed by the domestic tribunal, they were also supposed by the public accusation: and hence it is that these two things fell together with the public manners, and ended with the republic^{*}.

The establishing of perpetual questions, that is, the division of jurisdiction among the prætors, and the custom, gradually introduced, of the prætors determining all causes themselves[†], weakened the use of the domestic tribunal. This appears by the surprize of historians, who look upon the decisions, which Tiberius caused to be given by this tribunal, as singular facts, and as a renewal of the ancient course of pleading.

The establishment of monarchy and the change of manners put, likewise, an end to public accusations. It might be apprehended, lest a dishonest man, affronted at the slight shewn him by a woman, vexed at her refusal, and irritated even by her virtue, should form a design to destroy her. The *Julian* law ordained, that a woman should not be accused of adultery till after her husband had been charged with favouring her irregularities; which limited greatly, and annihilated, as it were, this sort of accusation[‡].

Sixtus Quintus seemed to have been desirous of reviving the public accusation[¶]. But there needs very little reflection to see that this law would be more improper in such a monarchy as his than in any other.

CHAP. XII.

Of the Guardianship of Women among the Romans.

THE Roman laws subjected women to a perpetual guardianship, except they were under cover and subject to the authority of a husband^{*}. This guardianship was given to the nearest of the male relations; and, by a vulgar expression[†], it appears they were very much confined. This was proper for a republic, but not at all necessary in a monarchy[‡].

That the women among the ancient Germans were likewise under a perpetual tutelage,

appears from the different codes of the laws of the barbarians[§]. This custom was communicated to the monarchies founded by those people, but was not of a long duration.

CHAP. XIII.

Of the Punishments decreed by Emperors against the Incontinency of Women.

THE *Julian* law ordained a punishment against adultery. But so far was this law, any more than those afterwards made on the same account, from being a mark of regularity of manners, that, on the contrary, it was a proof of their depravation.

The whole political system, in regard to women, received a change in the monarchical state. The question was no longer to oblige them to a regularity of manners, but to punish their crimes. That new laws were made to punish their crimes was owing to their leaving those transgressions unpunished which were not of so criminal a nature.

The frightful dissolution of manners obliged, indeed, the emperors to enact laws, in order to put some stop to lewdness; but it was not their intention to establish a general reformation. Of this, the positive facts related by historians are a much stronger proof than all these laws can be of the contrary. We may see, in *Dio*, the conduct of Augustus on this occasion, and in what manner he eluded, both in his prætorian and censorian office, the repeated instances that were made him[§] for that purpose.

It is true, that we find, in historians, very rigid sentences, passed in the reigns of Augustus and Tiberius, against the lewdness of some Roman ladies. But, by shewing us the spirit of those reigns, at the same time, they demonstrate the spirit of those decisions.

The principal design of Augustus and Tiberius was to punish the dissoluteness of their relations. It was not their immorality they punished, but a particular crime of impiety or high-treason^{*} of their own invention, which served to promote a respect for majesty, and answered their private revenge. Hence it is that the Roman historians inveigh so bitterly against this tyranny.

The penalty of the *Julian* law was small[†]. The emperors insisted that, in passing sentence, the judges should increase the penalty of the law. This was the subject of the invectives of historians. They did not examine whether the women were deserving of punishment, but whether they had violated the law, in order to punish them.

One of the most tyrannical proceedings of Tiberius[‡] was the abuse he made of the ancient laws. When he wanted to extend the punishment of a Roman lady beyond that inflicted by the *Julian* law, he revived the domestic tribunal.[‡]

These regulations in respect to women concerned only senatorial families, but not the common people. Pretences were wanted to accuse the great, which were constantly furnished by the dissolute behaviour of the ladies.

In fine, what I have above observed, namely, that regularity of manners is not the principle of monarchy, was never better verified than under those first emperors; and whoever doubts of it needs only read Tacitus, Suetonius, Juvenal, or Martial.

CHAP. XIV.

Sumptuary Laws among the Romans.

WE have spoken of public incontinence, because it is the inseparable companion of luxury. If we leave the motions of the heart at liberty, how shall we be able to restrain the weaknesses of the mind?

At Rome, besides the general institutions, the censors prevailed on the magistrates to enact several particular laws for maintaining the frugality of women. This was the design of the Fannian, Licinian, and Oppian, laws. We may see, in Livy,[§] the great ferment the senate was in when the women insisted upon the revocation of the Oppian law. The abrogation of this law is fixed upon, by Valerius Maximus, as the period from whence we may date the luxury of the Romans.

CHAP. XV.

Of Dowries and nuptial Advantages in different Constitutions.

DOWRIES ought to be considerable in monarchies, in order to enable husbands to support their rank and the established luxury. In republics, where luxury should never reign,^{*} they ought to be moderate: but there should be hardly any at all in despotic governments, where women are in some measure slaves.

The community of goods, introduced by the French laws, between man and wife, is extremely well adapted to a monarchical government; because the women are thereby interested in domestic affairs, and compelled, as it were, to take care of their family. It is less so in a republic, where women are possessed of more virtue. But it would be

quite absurd in despotic governments, where the women themselves generally constitute a part of the master's property.

As women are in a state that furnishes sufficient inducements to marriage, the advantages which the law gives them over the husband's property are of no service to society: but, in a republic, they would be extremely prejudicial, because riches are productive of luxury. In despotic governments the profits accruing from marriage ought to be mere subsistence, and no more.

CHAP. XVI.

An excellent Custom of the Samnites.

THE Samnites had a custom, which, in so small a republic, and especially in their situation, must have been productive of admirable effects. The young people were all convened in one place, and their conduct was examined. He that was declared the best of the whole assembly had leave given him to take which girl he pleased for his wife; the second best chose after him; and so on[†]. Admirable institution! The only recommendation, that young men could have on this occasion, was their virtue and the services done their country. He who had the greatest share of these endowments chose which girl he liked out of the whole nation. Love, beauty, chastity, virtue, birth, and even wealth itself, were all, in some measure, the dowry of virtue. A nobler and grander recompence, less chargeable to a petty state, and more capable of influencing both sexes, could scarce be imagined.

The Samnites were descended from the Lacedæmonians; and Plato, whose institutes are only an improvement of those of Lycurgus, enacted nearly the same law.^{*}

CHAP. XVII.

Of Female-Administration.

IT is contrary to reason and nature that women should reign in families, as was customary among the Ægyptians; but not that they should govern an empire. In the former case, the state of their natural weakness does not permit them to have the preeminence; in the latter, their very weakness generally gives them more lenity and moderation; qualifications fitter for a good administration than roughness and severity.

In the Indies they are very easy under a female government; and it is settled that, if

the male issue be not of a mother of the same blood, the females born of a mother of the blood-royal must succeed[†]. And then they have a certain number of persons who assist them to bear the weight of the government. According to Mr. *Smith*,[‡] they are very easy in Africa under a female administration. If, to this, we add the example of England and Russia, we shall find that they succeed alike both in moderate and despotic governments.

Endnotes

[¶] The first census was the hereditary share in land; and *Plato* would not allow them to have, in other effects, above a triple of the hereditary share. See *his Laws*, book 5.

[§] In large and populous cities, says the author of the *Fable of the Bees*, tom. 1. p. 97, they wear cloaths above their rank, and, consequently, have the pleasure of being esteemed, by a vast majority, not as what they are, but what they appear to be. — They have the satisfaction to imagine that they appear what they would be; which, to weak minds, is a pleasure almost as substantial as they could reap from the very accomplishment of their wishes.

[¶] Chap. 4. and 5.

[*] Fragment of the 36th book of *Diodorus*, quoted by *Const. Porphyrogen* in his *extract of virtues and vices*.

[†] Cum maximus omnium impetus ad luxuriam esset. *Ibid*.

[‡] De morib. German.

[¶] Dio Cassius, lib. 54.

[§] Tacit. Annal. lib. 3.

[¶] Multa duritiei veterum melius et lætius mutata. *Tacit. Annal. lib. 3*.

[*] Opulentia paritura mox egestatem. *Florus*, lib. 3.

[†] Constitution of James I. in the year 1234, article 6, in *Marca Hispanica*, p. 1429.

[‡] They have prohibited rich wines and other costly merchandizes.

[*] See book 20. chap. 20.

[*] Luxury has been here always prohibited.

[†] In an ordinance quoted by father Du Halde, tom. 2. p. 497.

[‡] History of China, 21st dynasty in father Du Halde's work, tom. 1.

[‖] In a discourse cited by father Du Halde, tom. 2. p. 418.

[*] In respect to true love, *says Plutarch*, the women have nothing to say to it. *In his Treatise of Love*, p. 600. He spoke in the style of his time. See Xenophon, in the dialogue intituled *Hicro*.

[†] At Athens there was a particular magistrate who inspected the conduct of women.

[§] Romulus instituted this tribunal, as appears from Dionysius Halicarnass. book 2. p. 96.

[‖] See, in Livy, book 39. the use that was made of this tribunal at the time of the conspiracy of the Bacchanalians. They gave the name of conspiracy against the republic to assemblies in which the morals of women and young people were debauched.

[‡] It appears, from *Dionys. Halicarn. lib. 2.* that Romulus's institution was, that, in ordinary cases, the husband should sit as judge in the presence of the wife's relations, but that, in heinous crimes, he should determine in conjunction with five of them. Hence *Ulpian*, tit. 6. §. 9. 12. & 13. distinguishes, in respect to the different judgements of manners, between those which he calls important, and those which are less so; *gravior*, *leviores*.

[*] *Judicio de moribus (quod antea quidem in antiquis legibus pofitum erat, non autem frequentabatur) penitus abolito, leg. 11. Cod. de repud.*

[†] *Judicia extraordinaria.*

[‡] It was entirely abolished by Constantine. "It is a shame, *said he*, that settled marriages should be disturbed by the presumption of strangers."

[‖] Sixtus Quintus ordained, that, if a husband did not come and make his complaint to him of his wife's infidelity, he should be put to death. See *Leti*.

[*] *Nisi convenissent in manum viri.*

[†] *Ne sis mihi patruus oro.*

[‡] The Papian law ordained, under Augustus, that women who had borne three

children should be exempt from this tutelage.

[§] This tutelage was, by the Germans, called *Mundeburdium*.

[§] Upon their bringing before him a young man who had married a woman with whom he had before carried on an illicit commerce, he hesitated a long while, not daring to approve or to punish these things. At length, recollecting himself, *seditions*, says he, *have been the cause of very great evils; let us forget them*. Dio, book 54. The senate having desired him to give them some regulations in respect to womens morals, he evaded their petition by telling them, that they should chastise their wives in the same manner as he did his: upon which, they desired him to tell them how he behaved to his wife. (I think, a very indiscreet question.)

[*] Culpam inter viros et fœminas vulgatam gravi nomine læsarum religionum appellando, clementiam majorum suasque ipse leges egrediebatur. *Tacit. Annal. lib. 3.*

[†] This law is given in the Digest; but without mentioning the penalty. It was supposed it was only *relegatio*, because that of incest was only *deportatio*. Leg. *si quis viduam*, ff. de quæst.

[‡] Proprium id Tiberio fuit, scelera nuper reperta priscis verbis obtegere. *Tacit.*

[||] Adulterii graviolem pœnam deprecatus, ut exemplo majorum propinquis suis ultra ducentesimum lapidem removeretur, suasit. Adultero Manlio Italiâ atque Africâ interdictum est. *Tacit. Annal. lib. 2.*

[§] Decad. IV. lib. 4.

[*] Marseilles was the wisest of all the republics in its time: here it was ordained that dowries should not exceed one hundred crowns in money, and five in cloaths, as Strabo observes, lib. 4.

[†] Fragment of Nicolaus Damascenus, taken from Stobæus, in the collection of Constantine Porphyrogenitus.

[*] He even permits them to have a more frequent interview with one another.

[†] Edifying Letters, 14th collection.

[‡] Voyage to Guinea, part the second, of the kingdom of Angola, on the Golden Coast.

BOOK VIII. OF THE CORRUPTION OF THE PRINCIPLES OF THE THREE GOVERNMENTS.

CHAP. I.

General Idea of this Book.

THE corruption of each government generally begins with that of the principles.

CHAP. II.

Of the Corruption of the Principles of Democracy.

THE principle of democracy is corrupted, not only when the spirit of equality is extinct, but likewise when they fall into a spirit of extreme equality, and when each citizen would fain be upon a level with those whom he has chosen to command him. Then the people, incapable of bearing the very power they have delegated, want to manage every thing themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges.

When this is the case virtue can no longer subsist in the republic. The people are desirous of exercising the functions of the magistrates; who cease to be revered. The deliberations of the senate are slighted: all respect is then laid aside for the senators, and consequently for old age. If there is no more respect for old age, there will be none presently for parents: deference to husbands will be likewise thrown off, and submission to masters. This licentiousness will soon become general, and the trouble of command be as fatiguing as that of obedience. Wives, children, slaves, will shake off all subjection. No longer will there be any such things as manners, order, or virtue.

We find, in *Xenophon's Banquet*, a very lively description of a republic in which the people abused their equality. Each guest gives, in his turn, the reason why he is satisfied. "Content I am, says Chamides, because of my poverty. When I was rich, I was obliged to pay my court to informers, knowing I was more liable to be hurt by them than capable of doing them harm. The republic constantly demanded some new tax of me; and I could not decline paying. Since I am grown poor, I have acquired authority; nobody threatens me; I rather threaten others. I can go or stay where I please. The rich already rise from their seats and give me the way. I am a king; I was before a slave: I paid taxes to the republic; now it maintains me: I am no longer afraid of losing, but I hope to acquire."

The people fall into this misfortune when those in whom they confide, desirous of concealing their own corruption, endeavour to corrupt them. To disguise their own ambition, they speak to them only of the grandeur of the state; to conceal their own avarice, they incessantly slatter theirs.

The corruption will increase among the corrupters, and likewise among those who are already corrupted. The people will divide the public money among themselves, and, having added the administration of affairs to their indolence, will be for blending their poverty with the amusements of luxury. But, with their indolence and luxury, nothing but the public treasure will be able to satisfy their demands.

We must not be surprized to see their suffrages given for money. It is impossible to make great largesses to the people without great extortion: and, to compass this, the state must be subverted. The greater the advantages they seem to derive from their liberty, the nearer they approach towards the critical moment of losing it. Petty tyrants arise, who have all the vices of a single tyrant. The small remains of liberty soon become insupportable; a single tyrant starts up, and the people are stripped of every thing, even of the profits of their corruption.

Democracy hath, therefore, two excesses to avoid; the spirit of inequality, which leads to aristocracy or monarchy; and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest.

True it is, that those, who corrupted the Greek republics, did not always become tyrants. This was because they had a greater passion for eloquence than for the military art. Besides, there reigned an implacable hatred in the breasts of the Greeks against those who subverted a republican government; and, for this reason, anarchy degenerated into annihilation, instead of being changed into tyranny.

But Syracuse, being situated in the midst of a great number of petty states, whose government had been changed from oligarchy to tyranny[¶], and being governed by a senate^{*} scarcely ever mentioned in history, underwent such miseries as are the consequence of a more than ordinary corruption. This city, ever a prey to licentiousness[†] or oppression, equally labouring under the sudden and alternate succession of liberty and servitude, and, notwithstanding her external strength, constantly determined to a revolution by the least foreign power; this city, I say, had in her bosom an immense multitude of people, whose fate it was to have always this cruel alternative, either of choosing a tyrant to govern them, or of acting the tyrant themselves.

CHAP. III.

Of the Spirit of extreme Equality.

AS distant as heaven is from earth, so is the true spirit of equality from that of extreme equality. The former does not imply that every body should command, or that no one

should be commanded, but that we obey or command our equals. It endeavours not to shake off the authority of a master, but that its masters should be none but its equals.

In the state of nature, indeed, all men are born equal; but they cannot continue in this equality: society makes them lose it, and they recover it only by the protection of the laws.

Such is the difference between a well regulated democracy and one that is not so, that, in the former, men are equal only as citizens, but, in the latter, they are equal also as magistrates, as senators, as judges, as fathers, as husbands, or as masters.

The natural place of virtue is near to liberty; but it is not nearer to excessive liberty than to servitude.

CHAP. IV.

Particular Cause of the Corruption of the People.

GREAT success, especially when chiefly owing to the people, intoxicates them to such a degree that it is impossible to contain them within bounds. Jealous of their magistrates, they soon become jealous likewise of the magistracy; enemies to those who govern, they soon prove enemies also to the constitution. Thus it was that the victory over the Persians, in the straits of Salamis, corrupted the republic of Athens[†]; and thus the defeat of the Athenians ruined the republic of Syracuse[‡].

Marseilles never experienced those great transitions from lowness to grandeur; this was owing to the prudent conduct of that republic, who always preserved her principles.

CHAP. V.

Of the Corruption of the Principle of Aristocracy.

ARISTOCRACY is corrupted if the power of the nobles becomes arbitrary: when this is the case, there can no longer be any virtue either in the governors or the governed.

If the reigning families observe the laws, it is a monarchy with several monarchs, and, in its own nature, one of the most excellent; for almost all these monarchs are tied down by the laws. But, when they do not observe them, it is a despotic state, swayed by a great many despotic princes.

In the latter case, the republic consists only in the nobles: the body governing is the republic; and the body governed is the despotic state; which form two of the most heterogeneous bodies in the world.

The extremity of corruption is when the power of the nobles becomes hereditary[§]; for then they can hardly have any moderation. If they are only a few, their power is greater, but their security less; if they are a larger number, their power is less, and their security greater: insomuch, that power goes on increasing, and security diminishing, up to the very despotic prince, who is encircled with excess of power and danger.

The great number, therefore, of nobles, in an hereditary aristocracy, renders the government less violent: but, as there is less virtue, they fall into a spirit of supineness and negligence, by which the state loses all its strength and activity[¶].

An aristocracy may maintain the full vigour of its constitution, if the laws be such as are apt to render the nobles more sensible of the perils and fatigues, than of the pleasure, of command; and if the government be in such a situation as to have something to dread, while security shelters under its protection, and uncertainty threatens from abroad.

As a certain kind of confidence forms the glory and stability of monarchies, republics, on the contrary, must have something to apprehend^{*}. A fear of the Persians supported the laws of Greece. Carthage and Rome were alarmed and strengthened by each other. Strange, that, the greater security those states enjoyed, the more, like stagnated waters, they were subject to corruption!

CHAP. VI.

Of the Corruption of the Principle of Monarchy.

AS democracies are subverted when the people despoil the senate, the magistrates, and judges, of their functions, so monarchies are corrupted when the prince insensibly deprives societies or cities of their privileges. In the former case, the multitude usurps the power, in the latter, it is usurped by a single person.

“The destruction of the dynasties of Tsin and Souï (says a Chinese author) was owing to this, the princes, instead of confining themselves, like their ancestors, to a general inspection, the only one worthy of a sovereign, wanted to govern every thing immediately by themselves[†].”

The Chinese author gives us, in this instance, the cause of the corruption of almost all

monarchies.

Monarchy is destroyed, when a prince thinks he shews a greater exertion of power in changing, than in conforming to, the order of things; when he deprives some of his subjects of their hereditary employments to bestow them arbitrarily upon others; and when he is fonder of being guided by fancy than judgement.

Again, it is destroyed, when the prince, directing every thing entirely to himself, calls the state to his capital, the capital to his court, and the court to his own person.

It is destroyed, in fine, when the prince mistakes his authority, his situation, and the love of his people; and when he is not fully persuaded that a monarch ought to think himself secure, as a despotic prince ought to think himself in danger.

CHAP. VII.

The same Subject continued.

THE principle of monarchy is corrupted, when the first dignities are marks of the first servitude, when the great men are deprived of public respect, and rendered the low tools of arbitrary power.

It is still more corrupted, when honour is set up in contradiction to honours, and when men are capable of being loaded, at the very same time, with infamy[†] and with dignities.

It is corrupted, when the prince changes his justice into severity; when he puts, like the Roman emperors, a Medusa's head on his breast[‡]; and when he assumes that menacing and terrible air which Commodus ordered to be given to his statues[§].

Again, it is corrupted, when mean and abject souls grow vain of the pomp attending their servitude, and imagine that the motive which induces them to be entirely devoted to their prince exempts them from all duty to their country.

But if it be true, (and indeed the experience of all ages has shewn it,) that, in proportion as the power of the monarch becomes boundless and immense, his security diminishes, is the corrupting of this power, and the altering of its very nature, a less crime than that of high-treason against the prince?

CHAP. VIII.

Danger of the Corruption of the Principle of monarchical Government.

THE danger is not when the state passes from one moderate to another moderate government, (as from a republic to a monarchy, or from a monarchy to a republic,) but when it precipitates from a moderate to a despotic government.

Most of the European nations are still governed by the principles of morality. But if, from a long abuse of power, or the fury of conquest, despotic sway should prevail to a certain degree, neither morals nor climate would be able to withstand its baleful influence: and then human nature would be exposed, for some time at least, even in this beautiful part of the world, to the insults with which she has been abused in the other three.

CHAP. IX.

How ready the Nobility are to defend the Throne.

THE English nobility buried themselves, with Charles the first, under the ruins of the throne; and, before that time, when Philip the second endeavoured to tempt the French with the allurements of liberty, the crown was constantly supported by a nobility who think it an honour to obey a king, but consider it as the lowest disgrace to share the power with the people.

The house of Austria has ever used her endeavours to oppress the Hungarian nobility; little thinking how serviceable that very nobility would be one day to her. She would fain have drained their country of money, of which they had no plenty; but took no notice of the men, with whom it abounded. When princes combined to dismember her dominions, the several parts of that monarchy fell motionless, as it were, one upon another. No life was then to be seen but in those very nobles, who, resenting the affronts offered to the sovereign, and forgetting the injuries done to themselves, took up arms to avenge her cause, and considered it as the highest glory bravely to die and to forgive.

CHAP. X.

Of the Corruption of the Principle of despotic Government.

THE principle of despotic government is subject to a continual corruption, because it is, even in its nature, corrupt. Other governments are destroyed by particular accidents, which do violence to the principles of each constitution; this is ruined by its own

intrinsic imperfections, when some accidental causes do not prevent the corrupting of its principles. It maintains itself, therefore, only when circumstances, drawn from the climate, religion, situation, or genius of the people, oblige it to conform to order, and to admit of some rule. By these things its nature is forced, without being changed; its ferocity remains; and it is made tame and tractable only for a time.

CHAP. XI.

Natural Effects of the Goodness and Corruption of the Principles of Government.

WHEN once the principles of government are corrupted, the very best laws become bad, and turn against the state: but, when the principles are sound, even bad laws have the same effect as good; the force of the principle draws every thing to it.

The inhabitants of Crete used a very singular method, to keep the principal magistrates dependent on the laws; which was that of *insurrection*. Part of the citizens rose up in arms, ¶ put the magistrates to flight, and obliged them to return to a private life. This was supposed to be done in consequence of the law. One would have imagined that an institution of this nature, which established sedition to hinder the abuse of power, would have subverted any republic whatsoever; and yet it did not subvert that of Crete. The reason is this: *

When the ancients would express a people that had the strongest affection for their country, they were sure to mention the inhabitants of Crete: *Our country*, said Plato, † a name so dear to the Cretans. They called it by a name which signifies the love of a mother for her children. ‡ Now, the love of our country sets every thing to right.

The laws of Poland have likewise their *insurrection*: but the inconveniences thence arising plainly shew that the people of Crete alone were capable of using such a remedy with success.

The gymnic exercises, established among the Greeks, had the same dependence on the goodness of the principle of government. "It was the Lacedæmonians and Cretans (said Plato ¶) that opened those celebrated academies which gave them so eminent a rank in the world. Modesty at first was alarmed; but it yielded to the public utility." In Plato's time these institutions were admirable, § as they had a relation to a very important object, which was the military art. But, when virtue fled from Greece, the military art was destroyed by these institutions; people appeared then on the arena, not for improvement. but for debauch. ¶

Plutarch informs us,^{*} that the Romans in his time were of opinion that those games had been the principal cause of the slavery into which the Greeks were fallen. On the contrary, it was the slavery of the Greeks that corrupted those exercises. In Plutarch's time[†] their fighting naked in the parks, and their wrestling, infected the young people with a spirit of cowardice, inclined them to infamous passions, and made them mere dancers: but, under Epaminondas, the exercise of wrestling made the Thebans win the famous battle of Leuctra.[‡]

There are very few laws which are not good, while the state retains its principles. Here I may apply what Epicurus said of riches: "It is not the liquor, but the vessel, that is corrupted."

CHAP. XII.

The same Subject continued.

IN Rome the judges were chosen at first from the order of senators. This privilege the Gracchi transferred to the knights: Drusus gave it to the senators and knights; Sylla to the senators only; Cotta to the senators, knights, and public treasurers: Cæsar excluded the latter: Antony made decuries of senators, knights, and centurions.

When once a republic is corrupted, there is no possibility of remedying any of the growing evils, but by removing the corruption and restoring its lost principles: every other correction is either useless or a new evil. While Rome preserved her principles entire, the judicial power might, without any abuse, be lodged in the hands of senators: but, as soon as this city became corrupt, to whatever body that power was transferred, whether to the senate, to the knights, to the treasurers, to two of those bodies, to all three together, or to any other; matters still went wrong. The knights had no more virtue than the senate; the treasurers no more than the knights; and these as little as the centurions.

After the people of Rome had obtained the privilege of sharing the magistracy with the patricians, it was natural to think that their flatterers would immediately become arbiters of the government. But no such thing ever happened. It was observable, that the very people, who had rendered the plebeians capable of public offices, ever fixed their choice upon the patricians. Because they were virtuous, they were magnanimous; and, because they were free, they had a contempt of power. But, when their morals were corrupted, the more power they were possessed of, the less prudent was their conduct; till, at length, upon becoming their own tyrants and slaves, they lost the strength of liberty, to fall into the weakness and impotency of licentiousness.

CHAP. XIII.

The Effect of an Oath among virtuous People.

THERE is no nation, says Livy[¶], that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer respected.

Such was the influence of an *oath* among those people, that nothing bound them stronger to the laws. They often did more, for the observance of an oath, than they would ever have performed for the thirst of glory, or for the love of their country.

When Quintus Cincinnatus the consul wanted to raise an army in the city against the *Æqui* and the *Volsci*, the tribunes opposed him. "Well, said he, let all those, who have taken an oath to the consul of the preceding year, march under my banner."[§] In vain did the tribunes cry out that this oath was no longer binding, and that, when they took it, Quintus was but a private person: the people were more religious than those who pretended to direct them; they would not listen to the distinctions or equivocations of the tribunes.

When the same people thought of retiring to the *Sacred Mount*, they felt some remorse from the oath they had taken to the consuls that they would follow them into the field.[¶] They entered then into a design of killing the consuls, but dropped it when they were given to understand that their oath would still be binding. Now, it is easy to judge of the notion they entertained of the violation of an oath, from the crime they intended to commit.

After the battle of Cannæ the people were seized with such a panic, that they would fain have retired to Sicily: but, Scipio having prevailed upon them to swear they would not stir from Rome, the fear of violating this oath surpassed all other apprehensions. Rome was a ship held by two anchors, religion and morality, in the midst of a furious tempest.

CHAP. XIV.

How the smallest Change of the Constitution is attended with the Ruin of its Principles.

ARISTOTLE mentions the city of Carthage as a well regulated republic. Polybius tells us,^{*} that there was this inconvenience, at Carthage, in the second Punic war, that the senate had lost almost all their authority. We are informed, by Livy, that, when Hannibal returned to Carthage, he found that the magistrates and the principal citizens had abused their power, and converted the public revenues to their private emolument.

The virtue, therefore, of the magistrates, and the authority of the senate, both fell at the same time; and all was owing to the same cause.

Every one knows the wonderful effects of the censorship among the Romans. There was a time when it grew burthensome; but still it was supported, because there was more luxury than corruption. Claudius[†] weakened its authority; by which means the corruption became greater than the luxury, and the censorship dwindled away of itself.[‡] After various interruptions and resumptions, it was entirely laid aside till it became altogether useless; that is, till the reigns of Augustus and Claudius.

CHAP. XV.

Sure Methods of preserving the three Principles.

I shall not be able to make myself rightly understood, till the reader has perused the four following chapters.

CHAP. XVI.

Distinctive Properties of a Republic.

IT is natural for a republic to have only a small territory; otherwise it cannot long subsist. In an extensive republic there are men of large fortunes, and consequently of less moderation: there are trusts too considerable to be placed in any single subject; he has interests of his own; he soon begins to think that he may be happy and glorious by oppressing his fellow-citizens; and that he may raise himself to grandeur on the ruins of his country.

In an extensive republic, the public good is sacrificed to a thousand private views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen; abuses have less extent, and of course are less protected.

The long duration of the republic of Sparta was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty glory.

It was the spirit of the Greek republics to be as contented with their territories as with their laws. Athens was first fired with ambition, and gave it to Lacedæmon; but it was an ambition rather of commanding a free people than of governing slaves; rather of

directing than of breaking the union. All was lost upon the starting up of monarchy, a government whose spirit is more turned to increase of dominion.

Excepting particular circumstances^{*}, it is difficult for any other than a republican government to subsist longer in a single town. A prince of so petty a state would naturally endeavour to oppress his subjects, because his power would be great, while the means of enjoying it, or of causing it to be respected, would be inconsiderable. The consequence is, he would trample upon his people. On the other hand, such a prince might be easily crushed by a foreign, or even a domestic, force; the people might every instant unite and rise up against him. Now, as soon as the sovereign of a single town is expelled, the quarrel is over; but, if he has many towns, it only begins.

CHAP. XVII.

Distinctive Properties of a Monarchy.

A monarchical state ought to be of a moderate extent. Were it small, it would form itself into a republic; were it very large, the nobility, possessed of great estates, far from the eye of the prince, with a private court of their own, and secure moreover from sudden executions, by the laws and manners of the country, such a nobility, I say, might throw off their allegiance, having nothing to fear from too slow and too distant a punishment.

Thus, Charlemagne had scarce founded his empire when he was obliged to divide it: whether the governors of the provinces refused to obey; or whether, in order to keep them more under subjection, there was a necessity of parcelling the empire into several kingdoms.

After the decease of Alexander, his empire was divided. How was it possible for those Greek and Macedonian chiefs, who were each of them free and independent, or commanders at least of the victorious bands dispersed throughout that vast extent of conquered land, how was it possible, I say, for them to obey?

Attila's empire was dissolved soon after his death; such a number of kings, who were no longer under restraint, could not resume their fetters.

The sudden establishment of unlimited power is a remedy, which, in those cases, may prevent a dissolution. But how dreadful the remedy, which, after the enlargement of dominion, opens a new scene of misery!

The rivers hasten to mingle their waters with the sea; and monarchies lose themselves in despotic power.

CHAP. XVIII.

Particular Case of the Spanish Monarchy.

LET not the example of Spain be produced against me; it rather proves what I affirm. To preserve America, she did what even despotic power itself does not attempt; she destroyed the inhabitants. To preserve her colony, she was obliged to keep it dependent even for its subsistence.

In the Netherlands, she essayed to render herself arbitrary, and, as soon as she abandoned the attempt, her perplexity increased. On the one hand, the Walloons would not be governed by Spaniards; and, on the other, the Spanish soldiers refused to submit to Walloon officers[†].

In Italy, she maintained her ground merely by exhausting herself and by enriching that country. For those, who would have been pleased to have got rid of the king of Spain, were not in a humour to refuse his gold.

CHAP. XIX.

Distinctive Properties of a despotic Government.

A large empire supposes a despotic authority in the person who governs. It is necessary that the quickness of the prince's resolutions should supply the distance of the places they are sent to; that fear should prevent the remissness of the distant governor or magistrate; that the law should be derived from a single person, and should shift continually, according to the accidents which incessantly multiply in a state in proportion to its extent.

CHAP. XX.

Consequence of the preceding Chapters.

IF it be therefore the natural property of small states to be governed as a republic; of middling ones, to be subject to a monarch; and of large empires, to be swayed by a despotic prince; the consequence is, that, in order to preserve the principles of the established government, the state must be supported in the extent it has acquired, and

that the spirit of this state will alter in proportion as it contracts or extends its limits.

CHAP. XXI.

Of the Empire of China.

BEFORE I conclude this book, I shall answer an objection that may be made to the foregoing doctrine.

Our missionaries inform us that the government of the vast empire of China is admirable, and that it has a proper mixture of fear, honour, and virtue. Consequently, I must have given an idle distinction, in establishing the principles of the three governments.

But I cannot conceive what this honour can be, among a people who act only through fear of being bastinated[±].

Again, our merchants are far from giving us any such accounts of the virtue so much talked of by the missionaries; we need only consult them in relation to the robberies and extortions of the mandarines[‡]. I likewise appeal to another unexceptionable witness, the great lord Anson.

Besides, father *Perennin's* letters, concerning the emperor's proceedings against some of the princes of the blood[§], who had incurred his displeasure by their conversion, plainly shew us a settled plan of tyranny, and barbarities committed by rule, that is, in cold blood.

We have, likewise, monsieur *de Mairan's*, and the same father *Perennin's*, letters on the government of China. I find, therefore, that, after a few proper questions and answers, the whole mystery is unfolded.

Might not our missionaries have been deceived by an appearance of order? Might not they have been struck with that constant exercise of a single person's will? an exercise by which they themselves are governed, and which they are so pleased to find in the courts of the Indian princes; because, as they go thither only in order to introduce great changes, it is much easier to persuade those princes that there are no bounds to their power, than to convince the people that there are none to their submission[¶].

In fine, there is frequently some kind of truth even in errors themselves. It may be owing to particular, and perhaps very extraordinary, circumstances, that the Chinese government is not so corrupt as one might naturally expect. The climate, and some other physical causes, may, in that country, have had so strong an influence on their

morals, as, in some measure, to produce wonders.

The climate of China is surprizingly favourable to the propagation of the human species. The women are the most prolific in the whole world. The most barbarous tyranny can put no stop to the progress of propagation. The prince cannot say there, like Pharaoh, "Let us deal wisely with them lest they multiply." He would rather be reduced to Nero's wish, that mankind had all but one head. In spite of tyranny, China, by the force of its climate, will be ever populous, and triumph over the tyrannical oppressor.

China, like all other countries that live chiefly upon rice, is subject to frequent famines. When the people are ready to starve, they disperse, in order to seek for nourishment: in consequence of which, gangs of robbers are formed on every side. Most of them are extirpated in their very infancy, others swell, and are likewise suppressed. And yet, in so great a number of such distant provinces, some band or other may happen to meet with success. In that case, they maintain their ground, strengthen their party, form themselves into a military body, march up to the capital, and place their leader on the throne.

From the very nature of things, a bad administration is here immediately punished. The want of subsistence, in so populous a country, produces sudden disorders. The reason why the redress of abuses, in other countries, is attended with such difficulty, is, because their effects are not immediately felt; the prince is not informed in so sudden and sensible a manner as in China.

The emperor of China is not taught, like our princes, that, if he governs ill, he will be less happy in the other life, less powerful and less opulent in this. He knows, that, if his government be not just, he will be stript both of empire and life.

As China grows every day more populous, notwithstanding the exposing of children^{*}, the inhabitants are incessantly employed in tilling the lands for their subsistence. This requires a very extraordinary attention in the government. It is their perpetual concern that every man should have it in his power to work, without the apprehension of being deprived of the fruits of his labour. Consequently, this is not so much a civil, as a domestic, government.

Such has been the origin of those regulations which have been so greatly extolled. They wanted to make the laws reign in conjunction with despotic power; but whatever is joined to the latter loses all its force. In vain did this arbitrary sway, labouring under its own inconveniences, desire to be fettered; it armed itself with its chains, and is become still more terrible.

China is therefore a despotic state, whose principle is fear. Perhaps, in the earliest dynasties, when the empire had not so large an extent, the government might have deviated a little from this spirit; but the case is otherwise at present.

Endnotes

[¶] See Plutarch, in the lives of Timoleon and Dio.

[*] It was that of the six hundred, of whom mention is made by Diodorus.

[†] Upon the expulsion of the tyrants, they made citizens of strangers and mercenary troops, which gave rise to civil wars. *Aristot. Polit. lib. 5. cap. 3.* The people having been the cause of the victory over the Athenians the republic was changed. *Ibid. cap. 4.* The passion of two young magistrates, one of whom carried off the other's boy, and, in revenge, the other debauched his wife, was attended with a change in the form of this republic. *Ibid. lib. 7. cap. 4.*

[‡] *Aristot. Polit. lib. 5. cap. 4.*

[||] *Ibid.*

[§] The aristocracy is changed into an oligarchy.

[¶] Venice is one of those republics that has enacted the best laws for correcting the inconveniences of an hereditary aristocracy.

[*] Justin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no farther emulation, they spent their revenues in feasts; *frequentius scenam quam castra visentes.* Then it was that the Macedonians emerged from obscurity: l. 6.

[†] Compiement of works made under the *Mings*, by father Du Halde.

[‡] Under the reign of Tiberius, statues were erected to, and triumphal ornaments conferred on, informers; which debased these honours to such a degree, that those who had really merited them disdained to accept of them. *Frag. of Dio, book 58.* taken from *the extract of virtues and vices*, by Constantine Porphyrog. See, in Tacitus, in what manner *Nero*, on the discovery and punishment of a pretended conspiracy, bestowed triumphal ornaments on Petronius Turpilianus, Nerva, and Tigellinus. *Annal. book 14.* See, likewise, how the generals refused to serve, because they contemned the military honours; *pervulgatis triumphis insignibus.* Tacit. *Annal. book 13.*

[||] In this state, the prince knew extremely well the principle of his government.

[§] Herodian.

[¶] *Aristot. Polit. book 2, chap. 10.*

[*] They always united immediately against foreign enemies; which was called *syncretism*. Plut. Mor. p. 88.

[†] Repub. lib. 9.

[‡] Plutarch's Morals, treatise *whether a man advanced in years ought to meddle with public affairs*.

[||] Repub. lib. 5.

[§] The gymnastic art was divided into two parts, *dancing* and *wrestling*. In Crete they had the armed dances of the Curetes; at Sparta they had those of Castor and Pollux; at Athens the armed dances of Pallas, which were extremely proper for those that were not yet of age for military service. Wrestling is the image of war, said Plato, *of laws*, book 7. He commends antiquity for having established only two dances, the pacific and the Pyrrhic. See how the latter dance was applied to the military art, *Plato, ibid*.

[¶]

. *Aut libidinosæ*

Iedæas Lacedæmonis palæstras.

Mart. lib. 4, ep. 55.

[*] Plutarch's Morals, in the treatise entitled, *Questions concerning the affairs of the Romans*.

[†] Ibid.

[‡] Plutarch's Morals, *Table Propositions*, book 2.

[||] Book 1.

[§] Livy, book 3.

[¶] Ibid. book 3.

[*] About a hundred years after.

[†] See book 11th, chap. 12th.

[‡] See Dio, book 38. Cicero's life in Plutarch, Cicero to Atticus, book 4th, letter 10 and 15. Asconius on Cicero *de divinatione*.

[*] As when a petty sovereign supports himself betwixt two great powers by means of their mutual jealousy; but then he has only a precarious existence.

[†] See the history of the United-Provinces, by Mons. Le Clerc.

[‡] It is the cudgel that governs China, says father Du Halde.

[||] Among others, *De Lange's* relation.

[§] Of the family of Sourmama. Edifying Letters, 18th Collection.

[¶] See, in father Du Halde, how the missionaries availed themselves of the authority of Canhi to silence the mandarines, who constantly declared, that, by the laws of the country, no foreign worship could be established in the empire.

[*] See the order of Tsongtou for tilling the land, in the Edifying Letters, 21st collection.

BOOK IX. OF LAWS, IN THE RELATION THEY BEAR TO A DEFENSIVE FORCE.

CHAP. I.

In what Manner Republics provide for their Safety.

IF a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection.

To this twofold inconveniency democracies and aristocracies are equally liable, whether they be good or bad. The evil is in the very thing itself, and no form can redress it.

It is therefore very probable that mankind would have been, at length, obliged to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean, a confederate republic.

This form of government is a convention, by which several petty states agree to become members of a larger one, which they intend to establish. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of farther associations, till they arrive to such a degree of power, as to be able to provide for the security of the whole body.

It was these associations that so long contributed to the prosperity of Greece. By these

the Romans attacked the whole globe; and by these alone the whole globe withstood them. For, when Rome was arrived to her highest pitch of grandeur, it was the associations beyond the Danube and the Rhine, associations formed by the terror of her arms, that enabled the barbarians to resist her.

From hence it proceeds that Holland[†], Germany, and the Swiss Cantons, are considered in Europe as perpetual republics.

The associations of cities were formerly more necessary than in our times. A weak defenceless town was exposed to greater danger. By conquest, it was deprived not only of the executive and legislative power, as at present, but moreover of all human property[‡].

A republic of this kind, able to withstand an external force, may support itself without any internal corruption; the form of this society prevents all manner of inconveniences.

If a single member should attempt to usurp the supreme power, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great an influence over one, this would alarm the rest; were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped, and overpower him before he could be settled in his usurpation.

Should a popular insurrection happen in one of the confederate states, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

As this government is composed of petty republics, it enjoys the internal happiness of each; and, with regard to its external situation, by means of the association, it possesseth all the advantages of large monarchies.

CHAP. II.

That a confederate Government ought to be composed of States of the same Nature, especially of the republican Kind.

THE Canaanites were destroyed by reason they were petty monarchies, that had no union nor confederacy for their common defence: and, indeed, a confederacy is not agreeable to the nature of petty monarchies.

As the confederate republic of Germany consists of free cities, and of petty states subject to different princes, experience shews us, that it is much more imperfect than that of Holland and Swisserland.

The spirit of monarchy is war and enlargement of dominion: peace and moderation is the spirit of a republic. These two kinds of government cannot naturally subsist in a confederate republic.

Thus we observe, in the Roman history, that, when the Veientes had chosen a king, they were immediately abandoned by all the other petty republics of Tuscany. Greece was undone as soon as the kings of Macedon obtained a seat among the Amphictyons.

The confederate republic of Germany, composed of princes and free towns, subsists by means of a chief, who is, in some respects, the magistrate of the union, in others, the monarch.

CHAP. III.

Other Requisites in a confederate Republic.

IN the republic of Holland, one province cannot conclude an alliance without the consent of the others. This law, which is an excellent one, and even necessary in a confederate republic, is wanting in the Germanic constitution, where it would prevent the misfortunes that may happen to the whole confederacy through the imprudence, ambition, or avarice, of a single member. A republic, united by a political confederacy, has given itself entirely up, and has nothing more to resign.

It is difficult for the united states to be all of equal power and extent. The Lycian^{*} republic was an association of twenty-three towns; the large ones had three votes in the common council, the middling ones two, and the small towns one. The Dutch republic consists of seven princes of different extent of territory, which have each one voice.

The cities of Lycia[†] contributed to the expences of the state according to the proportion of suffrages. The provinces of the united Netherlands cannot follow this proportion; they must be directed by that of their power.

In Lycia[‡], the judges and town magistrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland, they are not chosen by the common council, but each town names its magistrates. Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia.

CHAP. IV.

In what Manner despotic Governments provide for their Security.

AS republics provide for their security by uniting, despotic governments do it by separating, and by keeping themselves, as it were, single. They sacrifice a part of the country; and, by ravaging and desolating the frontiers, they render the heart of the empire inaccessible.

It is a received axiom, in geometry, that the greater the extent of bodies, the more their circumference is relatively small. This practice, therefore, of laying the frontiers waste, is more tolerable in large than in middling states.

A despotic government does all the mischief to itself that could be committed by a cruel enemy whose arms it were unable to resist.

It preserves itself, likewise, by another kind of separation, which is by putting the most distant provinces into the hands of a great vassal. The Mogul, the king of Persia, and the emperors of China, have their feudatories; and the Turks have found their account in putting the Tartars, the Moldavians, the Walachians, and formerly the Transylvanians, between themselves and their enemies.

CHAP. V.

In what Manner a monarchical Government provides for its Security.

A monarchy never destroys itself like a despotic government. But a kingdom of a moderate extent is liable to sudden invasions: it must therefore have fortresses to defend its frontiers, and troops to garrison those fortresses. The least spot of ground is disputed with military skill and resolution. Despotic states make incursions against one another: it is monarchies only that wage war.

Fortresses are proper for monarchies: despotic governments are afraid of them. They dare not intrust their officers with such a command, as none of them have any affection for the prince or his government.

CHAP. VI.

Of the defensive Force of States in general.

TO preserve a state in its due force, it must have such an extent, as to admit of a proportion between the celerity with which it may be invaded, and that with which it may defeat the invasion. As an invader may appear on every side, it is requisite that the states should be able to make, on every side, its defence; consequently it should be of a moderate extent, proportioned to the degree of velocity that nature has given to man, to enable him to move from one place to another.

France and Spain are exactly of a proper extent. They have so easy a communication for their forces, as to be able to convey them immediately to what part they have a mind: the armies unite and pass with rapidity from one frontier to another, without any apprehension of such difficulties as require time to remove.

It is extremely happy for France that the capital stands near to the different frontiers in proportion to their weakness; and the prince has a better view of each part of his country, according as it is more exposed.

But, when a vast empire, like Persia, is attacked, it is several months before the troops are assembled in a body; and then they are not able to make such forced marches, for that space of time, as they could for fifteen days. Should the army on the frontiers be defeated, it is soon dispersed, because there is no neighbouring place of retreat. The victor, meeting with no resistance, advances with all expedition, sits down before the capital, and lays siege to it, when there is scarce time sufficient to summon the governors of the provinces to its relief. Those who foresee an approaching revolution hasten it by their disobedience: for men, whose fidelity is entirely owing to the danger of punishment, are easily corrupted as soon as it becomes distant; their aim is their own private interest: the empire is subverted, the capital taken, and the conqueror disputes the several provinces with the governors.

The real power of a prince does not consist so much in the facility he meets with in making conquests, as in the difficulty an enemy finds in attacking him, and, if I may so speak, in the immutability of his condition. But the increase of territory obliges a government to lay itself more open to an enemy.

As monarchs, therefore, ought to be endued with wisdom in order to increase their power, they ought likewise to have an equal share of prudence to confine it within bounds. Upon removing the inconveniences of too small a territory, they should have their eye constantly on the inconveniences which attend its extent.

CHAP. VII.

A Reflexion.

THE enemies of a great prince, whose reign was protracted to an unusual length, have very often accused him, rather, I believe, from their own fears, than upon any solid foundation, of having formed and carried on a project of universal monarchy. Had he attained his aim, nothing would have been more fatal to his subjects, to himself, to his family, and to all Europe. Heaven, that knows our true interests, favoured him more, by preventing the success of his arms, than it could have done by crowning him with victories. Instead of raising him to be the only sovereign in Europe, it made him happier by rendering him the most powerful.

The subjects of this prince, who, in travelling abroad, are never affected but with what they have left at home; who, on quitting their own habitations, look upon glory as their chief object, and, in distant countries, as an obstacle to their return; who disgust you even by their good qualities, because they are tainted with so much vanity; who are capable of supporting wounds, perils, and fatigues, but not of foregoing their pleasures; who are supremely fond of gaiety, and comfort themselves for the loss of a battle by a song upon the general; those subjects, I say, would never have the solidity requisite for an enterprize of this kind; which, if defeated in one country, would be unsuccessful every where else; and, if once unsuccessful, would be so for ever.

CHAP. VIII.

A particular Case, in which the defensive Force of a State is inferior to the offensive.

IT was a saying of the lord of Coucy to king Charles V. "that the English are never weaker, nor easier overcome, than in their own country." The same was observed of the Romans; the same of the Carthaginians; and the same will happen to every power that sends armies to distant countries, in order to re-unite, by discipline and military force, those who are divided among themselves by political or civil interests. The state finds itself weakened by the disorder that still continues, and more so by the remedy.

The lord of Coucy's maxim is an exception to the general rule, which disapproves of wars against distant countries: and this exception confirms likewise the rule, because it takes place only with regard to those by whom such wars are undertaken.

CHAP. IX.

Of the relative Force of States.

ALL grandeur, force, and power, are relative. Care, therefore, must be taken, that, in endeavouring to increase the real grandeur, the relative be not diminished.

Under the reign of Lewis XIV. France was at its highest pitch of relative grandeur. Germany had not yet produced such powerful princes as have since appeared in that country. Italy was in the same case. England and Scotland were not yet formed into one united kingdom. Arragon was not joined to Castile: the distant branches of the Spanish monarchy were weakened by it, and weakened it in their turn: and Muscovy was as little known in Europe as Crim-Tartary.

CHAP. X.
Of the Weakness of neighbouring States.

WHENSOEVER a state lies contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the ruin of the latter, because this is the happiest situation imaginable; nothing being so convenient as for one prince to be near another who receives for him all the rebuff and insults of fortune: and it seldom happens that, by subduing such a state, the real power of the conqueror is as much increased as the relative is diminished.

Endnotes

[†] It is composed of about fifty different republics, all different from one another. *State of the United-Provinces*, by M. Janisson.

[‡] Civil liberty, goods, wives, children, temples, and even burying-places.

[*] Strabo, lib. 14.

[†] Ibid.

[‡] Ibid.

BOOK X. OF LAWS, IN THE RELATION THEY BEAR TO OFFENSIVE FORCE.

CHAP. I.

Of offensive Force.

OFFENSIVE force is regulated by the law of nations; which is the political law of each country, considered in its relation to every other.

CHAP. II.

Of War.

THE life of governments is like that of man. The latter has a right to kill in case of natural defence; the former have a right to wage war for their own preservation.

In the case of natural defence I have a right to kill, because my life is, in respect to me, what the life of my antagonist is to him. In the same manner a state wages war, because its preservation is like that of any other being.

With individuals the right of natural defence does not imply a necessity of attacking. Instead of attacking, they need only have recourse to proper tribunals. They cannot, therefore, exercise this right of defence, but in sudden cases, when immediate death would be the consequence of waiting for the assistance of the law. But, with states, the right of natural defence carries along with it sometimes the necessity of attacking; as, for instance, when one nation sees that a continuance of peace will enable another to destroy her, and that to attack that nation instantly is the only way to prevent her own destruction.

From thence it follows, that petty states have oftener a right to declare war than great ones, because they are oftener in the case of being afraid of destruction.

The right, therefore, of war is derived from necessity and strict justice. If those who direct the conscience or councils of princes do not abide by this maxim, the consequence is dreadful. When they proceed on arbitrary principles of glory, convenience, and utility, torrents of blood must overspread the earth.

But, above all, let them not plead such an idle pretext as the glory of the prince: his glory is nothing but pride; it is a passion, and not a legitimate right.

It is true the fame of his power might increase the strength of his government; but it might be equally increased by the reputation of his justice.

CHAP. III.

Of the Right of Conquest.

FROM the right of war comes that of conquest; which is the consequence of that right, and ought therefore to follow its spirit.

The right the conqueror has over a conquered people is directed by four sorts of laws; the law of nature, which makes every thing tend to the preservation of the species; the law of natural reason, which teaches us to do to others what we would have done to ourselves; the law that forms political societies, whose duration nature has not limited; and, in fine, the law derived from the nature of the thing itself. Conquest is an acquisition, and carries with it the spirit of preservation and use, not of destruction.

The inhabitants of a conquered country are treated by the conqueror one of the four following ways: either he continues to rule them according to their own laws, and assumes to himself only the exercise of the political and civil government; or he gives them new political and civil government; or he destroys and disperses the society; or, in fine, he exterminates the people.

The first way is conformable to the law of nations now followed; the fourth is more agreeable to the law of nations followed by the Romans; in respect to which, I leave the reader to judge how far we have improved upon the ancients. We must give due commendations to our modern refinements in reason, religion, philosophy, and manners.

The authors of our public law, guided by ancient histories, without confining themselves to cases of strict necessity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by supposing the conquerors to be invested with I know not what right to kill: from thence they have drawn consequences as terrible as the very principle, and established maxims which the conquerors themselves, when possessed of the least grain of sense, never presumed to follow. It is a plain case, that, when the conquest is completed, the conqueror has no longer a right to kill, because he has no longer the plea of natural defence and self-preservation.

What has led them into this mistake is, that they imagined the conqueror had a right to destroy the state; from whence they inferred, that he had a right to destroy the men that compose it: a wrong consequence from a false principle. For, from the destruction of the state, it does not at all follow, that the people, who compose it, ought to be also destroyed. The state is the association of men, and not the men themselves; the citizen may perish, and the man remain.

From the right of killing, in the case of conquest, politicians have drawn that of reducing

to slavery; a consequence as ill grounded as the principle.

There is no such thing as a right of reducing people to slavery, but when it becomes necessary for the preservation of the conquest. Preservation, and not servitude, is the end of conquest; though servitude may happen sometimes to be a necessary means of preservation.

Even in that case it is contrary to the nature of things that the slavery should be perpetual. The people enslaved ought to be rendered capable of becoming subjects. Slavery in conquests is an accidental thing. When, after the expiration of a certain space of time, all the parts of the conquering state are connected with the conquered nation, by custom, marriages, laws, associations, and by a certain conformity of disposition, there ought to be an end of the slavery. For the rights of the conqueror are founded entirely on the opposition between the two nations in those very articles, whence prejudices arise and the want of mutual confidence.

A conqueror, therefore, who reduces the conquered people to slavery, ought always to reserve to himself the means (for means there are without number) of restoring them to their liberty.

These are far from being vague and uncertain notions. Thus our ancestors acted; those ancestors who conquered the Roman empire. The laws they made in the heat and transport of passion, and in the insolence of victory, were gradually softened; those laws were at first severe, but were afterwards rendered impartial. The Burgundians, Goths, and Lombards, would have the Romans continue a conquered people; but the laws of *Euric*, *Gundebald*, and *Rotharis*, made the Romans and barbarians fellow-citizens.^{*}

Charlemagne, to tame the Saxons, deprived them of their liberty and property. Lewis the Debonnaire made them a free people[†]; and this was one of the most prudent regulations during his whole reign. Time and servitude had softened their manners, and they ever after adhered to him with the greatest fidelity.

CHAP. IV.

Some Advantages of a conquered People.

INSTEAD of inferring such destructive consequences from the right of conquest, much better would it have been for politicians to mention the advantages which this very right may sometimes give to a conquered people; advantages which would be more sensibly and more universally experienced, were our law of nations exactly followed, and established in every part of the globe.

Conquered countries are, generally speaking, degenerated from their original institution. Corruption has crept in, the execution of the laws has been neglected, and the government is grown oppressive. Who can question but such a state would be a gainer, and derive some advantages from the very conquest itself, if it did not prove destructive? When a government is arrived to that degree of corruption as to be incapable of reforming itself, it would not lose much by being new moulded. A conqueror, who enters triumphant into a country, where the moneyed men have, by a variety of artifices, insensibly arrived at innumerable ways of encroaching on the public; where the miserable people, who see abuses grown into laws, are ready to sink under the weight of oppression, yet think they have no right to apply for redress; a conqueror, I say, may make a total change; and then the tyranny of those wretches will be the first thing exposed to his resentment.

We have beheld, for instance, countries oppressed by the farmers of the revenues, and eased afterwards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuses have been often redressed without any interposition of the conqueror.

Sometimes the frugality of a conquering nation has enabled them to allow the conquered those necessaries of which they had been deprived under a lawful prince.

A conquest may destroy pernicious prejudices, and lay, if I may presume to use the expression, the nation under a better genius.

What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them, but they filled their heads with a frantic superstition: they might have set slaves at liberty; they made free men slaves: they might have undeceived them with regard to the abuse of human sacrifices; instead of that, they destroyed them. Never should I have finished, were I to recount all the good they might have done, and all the mischief they committed.

It is a conqueror's business to repair a part of the mischief he has occasioned. The right, therefore, of conquest I define thus: a necessary, lawful, but unhappy, power, which leaves the conqueror under a heavy obligation of repairing the injuries done to humanity.

CHAP. V.

Gelon, King of Syracuse.

THE noblest treaty of peace ever mentioned in history is, in my opinion, that which Gelon made with the Carthaginians. He insisted upon their abolishing the custom of

sacrificing their children[†]. Glorious indeed! After having defeated three hundred thousand Carthaginians, he required a condition that was advantageous only to themselves; or, rather, he stipulated in favour of human nature.

The Bactrians exposed their aged fathers to be devoured by large mastiffs: a custom suppressed by Alexander[‡], whereby he obtained a signal triumph over superstition.

CHAP. VI.

Of Conquests made by a Republic.

IT is contrary to the nature of things, that, in a confederate government, one state should make any conquest over another, as in our days we have seen in Switzerland.[§] In mixt confederate republics, where the association is between petty republics and monarchies of a small extent, this is not so absurd.

Contrary it is also to the nature of things that a democratical republic should conquer towns which cannot enter into the sphere of its democracy. It is necessary that the conquered people should be capable of enjoying the privileges of sovereignty, as was settled in the very beginning among the Romans. The conquest ought to be limited to the number of citizens fixt for the democracy.

If a democratical republic subdues a nation in order to govern them as subjects, it exposes its own liberty, because it intrusts too great a power to those who are appointed to the command of the conquered provinces.

How dangerous would have been the situation of the republic of Carthage had Hannibal made himself master of Rome! What would not he have done in his own country had he been victorious, — he who caused so many revolutions in it after his defeat?^{*}

Hanno could never have dissuaded the senate from sending succours to Hannibal had he used no other argument than his own jealousy. The Carthaginian senate, whose wisdom is so highly extolled by Aristotle, (and which has been evidently proved by the prosperity of that republic,) could never have been determined by other than solid reasons. They must have been stupid not to see that an army, at the distance of three hundred leagues, would necessarily be exposed to losses which required reparation.

Hanno's party insisted that Hannibal should be delivered up to the Romans.[†] They could not at that time be afraid of the Romans; they were therefore apprehensive of Hannibal.

It was impossible, some will say, for them to imagine that Hannibal had been so successful. But how was it possible for them to doubt of it? Could the Carthaginians, a

people spread over all the earth, be ignorant of what was transacting in Italy? No: they were sufficiently acquainted with it, and for that reason they did not care to send supplies to Hannibal.

Hanno became more resolute after the battle of Trebia, after the battle of Thrasimenus, after that of Cannæ: it was not his incredulity that increased, but his fear.

CHAP. VII.

The same Subject continued.

THERE is still another inconvenience in conquests made by democracies. Their government is ever odious to the conquered states. It is apparently monarchical: but, in reality, it is much more oppressive than monarchy, as the experience of all ages and countries evinces.

The conquered people are in a melancholy situation: they neither enjoy the advantages of a republic, nor those of a monarchy.

What has been here said of a popular state is applicable to aristocracy.

CHAP. VIII.

The same Subject continued.

WHEN a republic, therefore, keeps another nation in subjection, it should endeavour to repair the inconveniences arising from the nature of its situation, by giving it good laws, both for the political and civil government of the people.

We have an instance of an island in the Mediterranean, subject to an Italian republic, whose political and civil laws, with regard to the inhabitants of that island, were extremely defective. The act of indemnity,^{*} by which it ordained that no one should be condemned to bodily punishment in consequence of the private knowledge of the governor, *ex informata conscientia*, is still recent in every body's memory. There have been frequent instances of the people's petitioning for privileges: here the sovereign grants only the common right of all nations.

CHAP. IX.

Of Conquests made by a Monarchy.

IF a monarchy can long subsist before it is weakened by its increase, it will become formidable; and its strength will remain entire while pent up by the neighbouring monarchies.

It ought not, therefore, to aim at conquests beyond the natural limits of its government. So soon as it has passed these limits it is prudence to stop.

In this kind of conquest things must be left as they were found; the same courts of judicature, the same laws, the same customs, the same privileges: there ought to be no other alteration than that of the army and of the name of the sovereign.

When a monarchy has extended its limits by the conquest of neighbouring provinces, it should treat those provinces with great lenity.

If a monarchy has been long endeavouring at conquests, the provinces of its ancient demesne are generally ill-used: they are obliged to submit both to the new and to the ancient abuses, and to be depopulated by a vast metropolis that swallows up the whole. Now, if, after having made conquests round this demesne, the conquered people were treated like the ancient subjects, the state would be undone; the taxes, sent by the conquered provinces to the capital, would never return; the inhabitants of the frontiers would be ruined, and consequently the frontiers would be weaker; the people would be disaffected; and the subsistence of the armies designed to act and remain there would become more precarious.

Such is the necessary state of a conquering monarchy; a shocking luxury in the capital; misery in the provinces somewhat distant; and plenty in the most remote. It is the same with such a monarchy as with our planet; fire at the center, verdure on the surface, and, between both, a dry, cold, and barren, earth.

CHAP. X.

Of one Monarchy that subdues another.

SOMETIMES one monarchy subdues another. The smaller the latter, the better it is over-awed by fortresses; and, the larger it is, the better will it be preserved by colonies.

CHAP. XI.

Of the Manners of a conquered People.

IT is not sufficient, in those conquests, to let the conquered nation enjoy their own laws; it is perhaps more necessary to leave them also their manners, because people in general have a stronger attachment to these than to their laws.

The French have been driven nine times out of Italy, because, as historians say,[†] of their insolent familiarities with the fair sex. It is too much for a nation to be obliged to bear, not only with the pride of conquerors, but with their incontinence and indiscretion: these are, without doubt, most grievous and intolerable, as they are the source of infinite outrages.

CHAP. XII.

Of a Law of Cyrus.

FAR am I from thinking that a good law which Cyrus made to oblige the Lydians to practise none but mean or infamous professions. It is true, he directed his attention to an object of the greatest importance; he thought of guarding against revolts, and not invasions: but invasions will soon come, when the Persians and Lydians unite and corrupt each other. I would therefore much rather support, by laws, the simplicity and rudeness of the conquering nation, than the effeminacy of the conquered.

Aristodemus, tyrant of Cumæ,[†] used all his endeavours to banish courage, and to enervate the minds of youth. He ordered that boys should let their hair grow in the same manner as girls; that they should deck it with flowers, and wear long robes of different colours down to their heels; that, when they went to their masters of music and dancing, they should have women with them to carry their umbrelloes, perfumes, and fans, and to present them with combs and looking-glasses whenever they bathed. This education lasted till the age of twenty; an education that could be agreeable to none but to a petty tyrant, who exposes his sovereignty to defend his life.

CHAP. XIII.

CHARLES XII.

THIS prince, who depended entirely on his own strength, hastened his ruin by forming designs that could never be executed but by a long war; a thing which his kingdom was unable to support.

It was not a declining state he undertook to subvert, but a rising empire. The Russians made use of the war, he waged against them, as of a military school. Every defeat brought them nearer to victory; and, losing abroad, they learnt to defend themselves at home.

Charles, in the deserts of Poland, imagined himself sovereign of the whole world. Here he wandered, and with him, in some measure, wandered Sweden; whilst his capital enemy acquired new strength against him, locked him up, made settlements along the Baltic, destroyed or subdued Livonia.

Sweden was like a river, whose waters are cut off at the fountain-head, in order to change its course.

It was not the affair of *Pultova* that ruined Charles. Had he not been destroyed at that place, he would in another. The casualties of fortune are easily repaired; but who can be guarded against events that incessantly arise from the nature of things?

But neither nature nor fortune was ever so much against him as he himself.

He was not directed by the present situation of things, but by a kind of plan of his forming; and even this he followed very ill. He was not an Alexander; but he would have made an excellent soldier under that monarch.

Alexander's project succeeded because it was prudently concerted. The bad success of the Persians in their several invasions of Greece, the conquests of Agesilaus, and the retreat of the ten thousand, had shewn to demonstration the superiority of the Greeks in their manner of fighting and in their arms; and it was well known that the Persians were too proud to be corrected.

It was no longer possible for them to weaken Greece by divisions: Greece was then united under one head, who could not pitch upon a better method of rendering her insensible of her servitude, than by flattering her vanity with the destruction of her hereditary enemy, and with the hopes of the conquest of Asia.

An empire, cultivated by the most industrious nation in the world, that followed agriculture from a principle of religion; an empire, abounding with every conveniency of life; furnished the enemy with all necessary means of subsisting.

It was easy to judge, by the pride of those kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by their forwardness in venturing battles; and that the flattery of their courtiers would never permit them to doubt of their grandeur.

The project was not only wise, but wisely executed. Alexander, in the rapidity of his

conquests, even in the imperuosity of his passion, had, if I may so express myself, a flash of reason by which he was directed, and which those, who would fain have made a romance of his history, and whose minds were more corrupt than his, could not conceal from our view. Let us descend more minutely into his history.

CHAP. XIV.

ALEXANDER.

HE did not set out upon his expedition till he had secured Macedonia against the neighbouring barbarians and completed the reduction of Greece; he availed himself of this conquest for no other end than for the execution of his grand enterprize; he rendered the jealousy of the Lacedæmonians of no effect; he attacked the maritime provinces; he caused his land forces to keep close to the sea coast, that they might not be separated from his fleet; he made an admirable use of discipline against numbers; he never wanted provisions; and, if it be true, that victory gave him every thing, he, in his turn, did every thing to obtain it.

In the beginning of his enterprize, a time when the least check might have proved his destruction, he trusted very little to fortune; but, when his reputation was established by a series of prosperous events, he sometimes had recourse to temerity. When, before his departure for Asia, he marched against the Triballians and Illyrians, you find he waged war^{*} against those people in the very same manner as Cæsar afterwards conducted that against the Gauls. Upon his return to Greece[†], it was in some measure against his will that he took and destroyed Thebes. When he invested the city, he wanted the inhabitants to come into terms of peace; but they hastened their own ruin.

When it was debated whether he should attack the Persian fleet[‡], it is Parmenio that shews his presumption, Alexander his wisdom. His aim was to draw the Persians from the sea-coast, and to lay them under a necessity of abandoning their marine, in which they had a manifest superiority. Tyre being from principle attached to the Persians, who could not subsist without the commerce and navigation of that city, Alexander destroyed it. He subdued Egypt, which Darius had left bare of troops, while he was assembling immense armies in another world.

To the passage of the Granicus Alexander owed the conquest of the Greek colonies; to the battle of Issus, the reduction of Tyre and Egypt; to the battle of Arbela, the empire of the world.

After the battle of Issus, he suffered Darius to escape, and employed his time in securing and regulating his conquests: after the battle of Arbela, he pursued him so close^{||} as to leave him no place of shelter in his empire. Darius enters his towns. his

provinces, to quit them the next moment; and Alexander marches with such rapidity, that the empire of the world seems to be rather the prize of an Olympian race than the fruit of a great victory.

In this manner he carried on his conquests; let us now see how he preserved them.

He opposed those who would have had him treat the Greeks as masters^s and the Persians as slaves. He thought only of uniting the two nations, and of abolishing the distinctions of a conquering and a conquered people. After he had completed his victories, he relinquished all those prejudices that had helped him to obtain them. He assumed the manners of the Persians, that he might not chagrine them too much by obliging them to conform to those of the Greeks. It was this humanity which made him shew so great a respect for the wife and mother of Darius; and this that made him so continent. What a conqueror! he is lamented by all the nations he has subdued! What an usurper! at his death, the very family he has cast from the throne is all in tears. These were the most glorious passages in his life, and such as history cannot produce an instance of in any other conqueror.

Nothing consolidates a conquest more than the union formed between the two nations by marriages. Alexander chose his wives from the nation he had subdued; he insisted on his courtiers doing the same; and the rest of the Macedonians followed the example.

The Franks and Burgundians permitted those marriages[¶]: the Visigoths forbid them in Spain, and afterwards allowed them^{*}. By the Lombards they were not only allowed but encouraged[†]. When the Romans wanted to weaken Macedonia, they ordered that there should be no inter-marriages between the people of different provinces.

Alexander, whose aim was to unite the two nations, thought fit to establish in Persia a great number of Greek colonies. He built, therefore, a multitude of towns; and so strongly were all the parts of this new empire cemented, that, after his decease, amidst the disturbances and confusion of the most frightful civil wars, when the Greeks had reduced themselves, as it were, to a state of annihilation, not a single province of Persia revolted.

To prevent Greece and Macedon from being too much exhausted, he sent a colony of Jews[‡] to Alexandria: the manners of those people signified nothing to him, provided he could be sure of their fidelity.

He not only suffered the conquered nations to retain their own customs and manners, but likewise their civil laws; and frequently the very kings and governors to whom they had been subject. The Macedonians^{¶¶} he placed at the head of the troops, and the natives of the country at the head of the government; rather choosing to run the hazard of a particular disloyalty (which sometimes happened) than of a general revolt.

He paid a great respect to the ancient traditions, and to all the public monuments of the

glory or vanity of nations. The Persian monarchs having destroyed the temples of the Greeks, Babylonians, and Egyptians, Alexander rebuilt them^s. Few nations submitted to his yoke to whose religion he did not conform: and his conquests seem to have been intended only to make him the particular monarch of each nation, and the first inhabitant of each city. The aim of the Romans, in conquest, was, to destroy; his, to preserve: and, wherever he directed his victorious arms, his chief view was to atchieve something, from whence that country might derive an increase of prosperity and power. To attain this end, he was enabled, first of all, by the greatness of his genius; secondly, by his frugality and private œconomy¹; thirdly, by his profusion in matters of importance. He was close and reserved in his private expences, but generous to the highest degree in those of a public nature. In regulating his household, he was the private Macedonian; but, in paying the troops, in sharing his conquests with the Greeks, and in his largesses to every soldier in his army, he was Alexander.

He committed two very bad actions, in setting Persepolis on fire, and slaying Clitus; but he rendered them famous by his repentance. Hence it is that his crimes are forgot, while his regard for virtue was recorded: they were considered rather as unlucky accidents, than as his own deliberate acts. Posterity, struck with the beauty of his mind, even in the midst of his irregular passion, can view him only with pity, but never with an eye of hatred.

Let us draw a comparison between him and Cæsar. The Roman general, by attempting to imitate the Asiatic monarch, flung his fellow-citizens into a state of despair for a matter of mere ostentation; the Macedonian prince, by the same imitation, did a thing which was quite agreeable to his original scheme of conquest.

CHAP. XV.

New Methods of preserving a Conquest.

WHEN a monarch has subdued a large country, he may make use of an admirable method, equally proper for moderating despotic power and for preserving the conquest: it is a method practised by the conquerors of China.

In order to prevent the vanquished nation from falling into despair, the victors from growing insolent and proud, the government from becoming military, and to contain the two nations within their duty, the Tartar family, now on the throne of China, has ordained that every military corps in the provinces should be composed half of Chinese and half Tartars, to the end that the jealousy between the two nations may keep them within bounds. The courts of judicature are likewise half Chinese and half Tartars. This is productive of several good effects. 1. The two nations are a check to one another. 2.

They both preserve the civil and military power, and one is not destroyed by the other.
3. The conquering nation may spread itself without being weakened and lost. It is likewise enabled to withstand civil and foreign wars. The want of so wise an institution as this has been the ruin of almost all the conquerors that ever existed.

CHAP. XVI.

Of Conquests made by a despotic Prince.

WHEN a conquest happens to be vastly large, it supposes a despotic power; and then the army dispersed in the provinces is not sufficient. There should be always a body of faithful troops near the prince, ready to fall instantly upon any part of the empire that may chance to waver. This military corps ought to awe the rest, and to strike terror into those, who, through necessity, have been intrusted with any authority in the empire. The emperor of China has always a large body of Tartars near his person, ready upon all occasions. In India, in Turkey, in Japan, the prince has always a body-guard, independent of the other regular forces. This particular corps keeps the dispersed troops in awe.

CHAP. XVII.

The same Subject continued.

WE have observed, that the countries subdued by a despotic monarch ought to be held by a vassal. Historians are very lavish of their praises on the generosity of those conquerors who restored the princes to the throne whom they had vanquished. Extremely generous, then, were the Romans, who made such a number of kings, in order to have instruments of slavery^{*}. A proceeding of that kind is absolutely necessary. If the conqueror intends to preserve the country which he has subdued, neither the governors he sends will be able to contain the subjects within duty, nor he himself the governors. He will be obliged to strip his ancient patrimony of troops in order to secure his new dominions. The miseries of each nation will be common to both; civil broils will spread themselves from one to the other. On the contrary, if the conqueror restores the legitimate prince to the throne, he will of course have an ally; by the junction of whose forces his own power will be augmented. We have a recent instance of this in *Shah Nadir*, who conquered the Mogul, seized his treasures, and left him in possession of Indostan.

Endnotes

[*] See the code of barbarian laws.

[†] See the anonymous author of the life of Lewis the Debonnaire, in Duchesne's collection, tom. 2. p. 296.

[‡] See M. Barbeyrac's collection, art. 112.

[||] Strabo, lib. 2.

[§] With regard to Tockenburg.

[*] He was at the head of a faction.

[†] Hanno wanted to deliver Hannibal up to the Romans, as Cato would fain have delivered up Cæsar to the Gauls.

[*] Of the 18th of October, 1738, printed at Genoa, by Franchelli. Vietiamo al nostro general governatore in detta isola di condannare in avvenire solamente *ex informata conscientia* persona alcuna nazionale in pena afflittiva; potra ben si arrestare ed incarcerare le persone che gli sarranno sospette, salvo di renderne poi a noi conto sollecitamente. Art. 6.

[†] See Puffendorf's Universal History.

[‡] Dionys. Halicar. l. 7.

[*] See Arrian. de expedit. Alexandri, lib. 1.

[†] Ibid.

[‡] Ibid.

[||] See Arrian. de expedit. Alexandri.

[§] This was Aristotle's Advice. Plutarch's *Morals*, of the fortune and virtue of Alexander.

[¶] See the law of the Burgundians, tit. 12. art. 5.

[*] See the law of the Visigoths, book 3. tit 1. §. 1. which abrogates the ancient law, that had more regard, it says, to the difference of nations than to that of people's conditions.

[†] See the law of the Lombards, book 2. tit. 7. §. 1. & 2.

[‡] The kings of Syria, abandoning the plan laid down by the founder of the empire, resolved to oblige the Jews to conform to the manners of the Greeks; a resolution that gave the most terrible shock to their government.

[||] See Arrian, de expedit. Alexandri, lib. 3. and others.

[§] Ibid.

[¶] See Arrian, de expedit. Alexandri, lib. 3. and others.

[*] Ut haberent instrumenta servitutis & reges.

BOOK XI. OF THE LAWS WHICH ESTABLISH POLITICAL LIBERTY, WITH REGARD TO THE CONSTITUTION.

CHAP. I.

A general Idea.

I make a distinction between the laws that establish political liberty, as it relates to the constitution, and those by which it is established, as it relates to the citizen. The former shall be the subject of this book; the latter I shall examine in the next.

CHAP. II.

Different Significations of the Word, Liberty.

THERE is no word that admits of more various significations, and has made more different impressions on the human mind, than that of *liberty*. Some have taken it for a facility of deposing a person on whom they had conferred a tyrannical authority: others, for the power of choosing a superior whom they are obliged to obey; others, for the right of bearing arms, and of being thereby enabled to use violence: others, in fine, for the privilege of being governed by a native of their own country, or by their own laws.^{*} A certain nation, for a long time, thought liberty consisted in the privilege of wearing a long beard.[‡] Some have annexed this name to one form of government exclusive of others: those who had a republican taste applied it to this species of polity: those who liked a monarchical state gave it to monarchy.[†] Thus they have all applied the name of *liberty* to the government most suitable to their own customs and inclinations; and as, in republics, the people have not so constant and so present a view of the causes of

their misery, and as the magistrates seem to act only in conformity to the laws, hence liberty is generally said to reside in republics, and to be banished from monarchies. In fine, as in democracies the people seem to act almost as they please, this sort of government has been deemed the most free, and the power of the people has been confounded with their liberty.

CHAP. III.

In what Liberty consists.

IT is true that, in democracies, the people seem to act as they please; but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must have continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit; and, if a citizen could do what they forbid, he would be no longer possessed of liberty, because all his fellow-citizens would have the same power.

CHAP. IV.

The same Subject continued.

DEMOCRATIC and aristocratic states are not in their own nature free. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power: but constant experience shews us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say, that virtue itself has need of limits?

To prevent this abuse, it is necessary, from the very nature of things, power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.

CHAP. V.

Of the End or View of different Governments.

THOUGH all governments have the same general end, which is that of preservation, yet each has another particular object. Increase of dominion was the object of Rome; war, that of Sparta; religion, that of the Jewish laws; commerce, that of Marseilles; public tranquillity, that of the laws of China^{*}; navigation, that of the laws of Rhodes; natural liberty, that of the policy of the savages; in general, the pleasures of the prince, that of despotic states; that of monarchies, the prince's and the kingdom's glory: the independence of individuals is the end aimed at by the laws of Poland; from thence results the oppression of the whole.[†]

One nation there is also in the world, that has, for the direct end of its constitution, political liberty. We shall presently examine the principles on which this liberty is founded: if they are sound, liberty will appear in its highest perfection.

To discover political liberty in a constitution, no great labour is requisite. If we are capable of seeing it where it exists, it is soon found, and we need not go far in search of it.

CHAP. VI.

Of the Constitution of England.

IN every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other, simply, the executive power of the state.

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a

tyrannical manner.

Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

Most kingdoms in Europe enjoy a moderate government, because the prince, who is invested with the two first powers, leaves the third to his subjects.

In Turkey, where these three powers are united in the sultan's person, the subjects groan under the most dreadful oppression.

In the republics of Italy, where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods, for its support, as even that of the Turks; witness the state-inquisitors,^{*} and the lion's mouth into which every informer may at all hours throw his written accusations.

In what a situation must the poor subject be, under those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and, as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

The whole power is here united in one body; and, though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

Hence it is that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting, in their own persons, all the branches of magistracy, and all the great offices of state.

I allow, indeed, that the mere hereditary aristocracy of the Italian republics does not exactly answer to the despotic power of the Eastern princes. The number of magistrates sometimes moderates the power of the magistracy; the whole body of the nobles do not always concur in the same design; and different tribunals are erected, that temper each other. Thus, at Venice, the legislative power is in the *council*, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the mischief is, that these different tribunals are composed of magistrates all belonging to the same body; which constitutes almost one and the same power.

The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people,^{*} at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires.

By this method, the judicial power, so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate.

In accusations of a deep and criminal nature, it is proper the person accused should have the privilege of choosing, in some measure, his judges, in concurrence with the law; or, at least, he should have a right to except against so great a number, that the remaining part may be deemed his own choice.

The other two powers may be given rather to magistrates or permanent bodies, because they are not exercised on any private subject; one being no more than the general will of the state, and the other the execution of that general will.

But, though the tribunals ought not to be fixt, the judgements ought; and to such a degree, as to be ever conformable to the letter of the law. Were they to be the private opinion of the judge, people would then live in society without exactly knowing the nature of their obligations.

The judges ought likewise to be of the same rank as the accused, or, in other words, his peers; to the end, that he may not imagine he is fallen into the hands of persons inclined to treat him with rigour.

If the legislature leaves the executive power in possession of a right to imprison those subjects who can give security for their good behaviour, there is an end of liberty; unless they are taken up in order to answer, without delay, to a capital crime; in which case they are really free, being subject only to the power of the law.

But, should the legislature think itself in danger, by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who, in that case, would lose their liberty only for a while, to preserve it for ever.

And this is the only reasonable method that can be substituted to the tyrannical magistracy of the *Ephori*, and to the *state inquisitors* of Venice, who are also despotical.

As, in a country of liberty, every man who is supposed a free agent ought to be his own governor, the legislative power should reside in the whole body of the people. But, since this is impossible in large states, and in small ones is subject to many inconveniences, it is fit the people should transact by their representatives what they cannot transact by

themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests than with those of other places; and are better judges of the capacity of their neighbours than of that of the rest of their countrymen. The members, therefore, of the legislature should not be chosen from the general body of the nation; but it is proper, that, in every considerable place, a representative should be elected by the inhabitants.

The great advantage of representatives is, their capacity of discussing public affairs. For this, the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy.

It is not at all necessary that the representatives, who have received a general instruction from their constituents, should wait to be directed on each particular affair, as is practised in the diets of Germany. True it is, that, by this way of proceeding, the speeches of the deputies might, with greater propriety, be called the voice of the nation; but, on the other hand, this would occasion infinite delays; would give each deputy a power of controlling the assembly; and, on the most urgent and pressing occasions, the wheels of government might be stopped by the caprice of a single person.

When the deputies, as Mr. Sidney well observes, represent a body of people, as in Holland, they ought to be accountable to their constituents; but it is a different thing in England, where they are deputed by boroughs.

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation as to be deemed to have no will of their own.

One great fault there was in most of the ancient republics, that the people had a right to active resolutions, such as require some execution, a thing of which they are absolutely incapable. They ought to have no share in the government but for the choosing of representatives, which is within their reach. For, though few can tell the exact degree of men's capacities, yet there are none but are capable of knowing, in general, whether the person they choose is better qualified than most of his neighbours.

Neither ought the representative body to be chosen for the executive part of government, for which it is not so fit; but for the enacting of laws, or to see whether the laws in being are duly executed; a thing suited to their abilities, and which none indeed but themselves can properly perform.

In such a state, there are always persons distinguished by their birth, riches, or honours: but, were they to be confounded with the common people, and to have only the weight of a single vote, like the rest, the common liberty would be their slavery,

and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have, therefore, in the legislature ought to be proportioned to their other advantages in the state; which happens only when they form a body that has a right to check the licentiousness of the people, as the people have a right to oppose any encroachment of theirs.

The legislative power is, therefore, committed to the body of the nobles, and to that which represents the people; each having their assemblies and deliberations apart, each their separate views and interests.

Of the three powers abovementioned, the judiciary is, in some measure, next to nothing: there remain, therefore, only two: and, as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose.

The body of the nobility ought to be hereditary. In the first place, it is so in its own nature; and, in the next, there must be a considerable interest to preserve its privileges: privileges, that, in themselves, are obnoxious to popular envy, and of course, in a free state, are always in danger.

But, as an hereditary power might be tempted to pursue its own particular interests, and forget those of the people, it is proper, that, where a singular advantage may be gained by corrupting the nobility, as in the laws relating to the supplies, they should have no other share in the legislation than the power of rejecting, and not that of resolving.

By the *power of resolving*, I mean, the right of ordaining by their own authority, or of amending what has been ordained by others. By the *power of rejecting*, I would be understood to mean, the right of annulling a resolution taken by another; which was the power of the tribunes at Rome. And, though the person possessed of the privilege of rejecting may likewise have the right of approving, yet this approbation passes for no more than a declaration that he intends to make no use of his privilege of rejecting, and is derived from that very privilege.

The executive power ought to be in the hands of a monarch, because this branch of government, having need of dispatch, is better administered by one than by many: on the other hand, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person.

But, if there were no monarch, and the executive power should be committed to a certain number of persons, selected from the legislative body, there would be an end of liberty, by reason the two powers would be united; as the same persons would sometimes possess, and would be always able to possess, a share in both.

Were the legislative body to be a considerable time without meeting, this would likewise put an end to liberty. For, of two things, one would naturally follow; either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power, which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representative, and moreover would cut out too much work for the executive power, so as to take off its attention to its office, and oblige it to think only of defending its own prerogatives and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and, in that case, if the legislative body were once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people, who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next: but, were it to be always the same body, the people, upon seeing it once corrupted, would no longer expect any good from its laws; and, of course, they would either become desperate or fall into a state of indolence.

The legislative body should not meet of itself. For a body is supposed to have no will but when it is met: and besides, were it not to meet unanimously, it would be impossible to determine which was really the legislative body, the part assembled, or the other. And, if it had a right to prorogue itself, it might happen never to be prorogued; which would be extremely dangerous, in case it should ever attempt to encroach on the executive power. Besides, there are seasons (some more proper than others) for assembling the legislative body: it is fit, therefore, that the executive power should regulate the time of meeting, as well as the duration, of those assemblies, according to the circumstances and exigences of a state, known to itself.

Were the executive power not to have a right of restraining the encroachments of the legislative body, the latter would become despotic: for, as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper, on the other hand, that the legislative power should have a right to stay the executive. For, as the execution has its natural limits, it is useless to confine it: besides, the executive power is generally employed in momentary operations. The power, therefore, of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the executive part of government; which was attended with infinite mischiefs.

But, if the legislative power, in a free state, has no right to stay the executive, it has a right, and ought to have the means, of examining in what manner its laws have been

executed; an advantage which this government has over that of Crete and Sparta, where the Cosmi and the Ephori gave no account of their administration.

But, whatever may be the issue of that examination, the legislative body ought not to have a power of arraigning the person, nor, of course, the conduct, of him who is entrusted with the executive power. His person should be sacred, because, as it is necessary, for the good of the state, to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried there is an end of liberty.

In this case, the state would be no longer a monarchy, but a kind of republic, though not a free government. But, as the person, intrusted with the executive power, cannot abuse it without bad counsellors, and such as hate the laws as ministers, though the laws protect them, as subjects these men may be examined and punished: an advantage which this government has over that of *Gnidus*, where the law allowed of no such thing as calling the *Amymones*^{*} to an account, even after their administration[†]; and therefore the people could never obtain any satisfaction for the injuries done them.

Though, in general, the judiciary power ought not to be united with any part of the legislative, yet this is liable to three exceptions, founded on the particular interest of the party accused.

The great are always obnoxious to popular envy; and, were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege, which the meanest subject is possessed of in a free state, of being tried by his peers. The nobility, for this reason, ought not to be cited before the ordinary courts of judicature, but before that part of the legislature which is composed of their own body.

It is possible that the law, which is clear-sighted in one sense, and blind in another, might, in some cases, be too severe. But, as we have already observed, the national judges are no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderating either its force or rigour. That part, therefore, of the legislative body, which we have just now observed to be a necessary tribunal on another occasion, is also a necessary tribunal in this: it belongs to its supreme authority to moderate the law in favour of the law itself, by mitigating the sentence.

It might also happen, that a subject, intrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not, or would not, punish. But, in general, the legislative power cannot try causes; and much less can it try this particular case, where it represents the party aggrieved, which is the people. It can only, therefore, impeach. But before what court shall it bring its impeachment? Must it go and demean itself before the ordinary tribunals, which are its inferiors, and, being composed moreover of men who are chosen

from the people as well as itself, will naturally be swayed by the authority of so powerful an accuser? No: in order to preserve the dignity of the people and the security of the subject, the legislative part which represents the people must bring in its charge before the legislative part which represents the nobility, who have neither the same interests nor the same passions.

Here is an advantage which this government has over most of the ancient republics where this abuse prevailed, that the people were at the same time both judge and accuser.

The executive power, pursuant to what has been already said, ought to have a share in the legislature by the power of rejecting; otherwise it would soon be stripped of its prerogative. But, should the legislative power usurp a share of the executive, the latter would be equally undone.

If the prince were to have a part in the legislature by the power of resolving, liberty would be lost. But, as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting.

The change of government at Rome was owing to this, that neither the senate, who had one part of the executive power, nor the magistrates, who were entrusted with the other, had the right of rejecting, which was entirely lodged in the people.

Here, then, is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative.

These three powers should naturally form a state of repose or inaction: but, as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert.

As the executive power has no other part in the legislative than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose; because, as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposals which were made against its will.

In some ancient commonwealths, where public debates were carried on by the people in a body, it was natural for the executive power to propose and debate in conjunction with the people; otherwise their resolutions must have been attended with a strange confusion.

Were the executive power to determine the raising of public money otherwise than by

giving its consent, liberty would be at an end; because it would become legislative in the most important point of legislation.

If the legislative power were to settle the subsidies, not from year to year, but for ever, it would run the risk of losing its liberty, because the executive power would be no longer dependent; and, when once it was possessed of such a perpetual right, it would be a matter of indifference whether it held it of itself or of another. The same may be said if it should come to a resolution of intrusting, not an annual, but a perpetual, command of the fleets and armies to the executive power.

To prevent the executive power from being able to oppress, it is requisite that the armies with which it is intrusted should consist of the people, and have the same spirit as the people, as was the case at Rome till the time of *Marius*. To obtain this end, there are only two ways; either that the persons employed in the army should have sufficient property to answer for their conduct to their fellow-subjects, and be enlisted only for a year, as was customary at Rome; or, if there should be a standing-army composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortress, should be suffered.

When once an army is established, it ought not to depend immediately on the legislative, but on the executive, power; and this from the very nature of the thing, its business consisting more in action than deliberation.

It is natural for mankind to set a higher value upon courage than timidity, on activity than prudence, on strength than counsel. Hence the army will ever despise a senate, and respect their own officers: they will naturally slight the orders sent them by a body of men whom they look upon as cowards, and therefore unworthy to command them: so that, as soon as the troops depend entirely on the legislative body, it becomes a military government; and, if the contrary has ever happened, it has been owing to some extraordinary circumstances. It is because the army was always kept divided; it is because it was composed of several bodies, that depended each on a particular province; it is because the capital towns were strong places, defended by their natural situation, and not garrisoned with regular troops. Holland, for instance, is still safer than Venice; she might drown or starve the revolted troops; for, as they are not quartered in towns capable of furnishing them with necessary subsistence, this subsistence is of course precarious.

In perusing the admirable treatise of Tacitus on the manners of the Germans,^{*} we find it is from that nation the English have borrowed the idea of their political government. This beautiful system was invented first in the woods.

As all human things have an end, the state we are speaking of will lose its liberty, will

perish. Have not Rome, Sparta, and Carthage, perished? It will perish when the legislative power shall be more corrupt than the executive.

It is not my business to examine whether the English actually enjoy this liberty, or not. Sufficient it is for my purpose to observe, that it is established by their laws; and I inquire no farther.

Neither do I pretend by this to undervalue other governments, nor to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design; I who think that even the highest refinement of reason is not always desirable, and that mankind generally find their account better in mediums than in extremes?

Harrington, in his *Oceana*, has also enquired into the utmost degree of liberty to which the constitution of a state may be carried. But, of him, indeed, it may be said, that, for want of knowing the nature of real liberty, he busied himself in pursuit of an imaginary one; and that he built a Chalcedon, though he had a Byzantium before his eyes.

CHAP. VII.

Of the Monarchies we are acquainted with.

THE monarchies we are acquainted with have not, like that we have been speaking of, liberty for their direct view: the only aim is the glory of the subject, of the state, and of the sovereign. But from hence there results a spirit of liberty, which, in those states, is capable of achieving as great things, and of contributing as much, perhaps, to happiness, as liberty itself.

Here the three powers are not distributed and founded on the model of the constitution above-mentioned: they have each a particular distribution, according to which they border more or less on political liberty; and, if they did not border upon it, monarchy would degenerate into despotic government.

CHAP. VIII.

Why the Ancients had not a clear Idea of Monarchy.

THE ancients had no notion of a government founded on a body of nobles, and much less on a legislative body composed of the representatives of the people. The republics of Greece and Italy were cities that had each their own form of government, and

convened their subjects within their walls. Before Rome had swallowed up all the other republics, there was scarce any where a king to be found, no, not in Italy, Gaul, Spain, or Germany; they were all petty states or republics. Even Africa itself was subject to a great commonwealth, and Asia Minor was occupied by Greek colonies. There was, therefore, no instance of deputies of towns or assemblies of the states: one must have gone as far as Persia to find a monarchy.

I am not ignorant that there were confederate republics, in which several towns sent deputies to an assembly; but I affirm there was no monarchy on that model.

The first plan, therefore, of the monarchies we are acquainted with was thus formed. The German nations, that conquered the Roman empire, were certainly a free people. Of this we may be convinced by only reading Tacitus *On the Manners of the Germans*. The conquerors spread themselves over all the country; living mostly in the fields, and very little in towns. When they were in Germany, the whole nation was able to assemble. This they could no longer do, when dispersed through the conquered provinces. And yet, as it was necessary that the nation should deliberate on public affairs, pursuant to their usual method before the conquest, they had recourse to representative. Such is the origin of the Gothic government amongst us. At first, it was mixt with aristocracy and monarchy; a mixture attended with this inconveniency, that the common people were bond-men. The custom afterwards succeeded of granting letters of enfranchisement, and was soon followed by so perfect a harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince's prerogative, that I really think there never was in the world a government so well tempered as that of each part of Europe, so long as it lasted. Surprizing, that the corruption of the government of a conquering nation should have given birth to the best species of constitution that could possibly be imagined by man!

CHAP. IX.

Aristotle's Manner of thinking.

ARISTOTLE is greatly puzzled in treating of monarchy^{*}. He makes five species; and he does not distinguish them by the form of constitution, but by things merely accidental, as the virtues and vices of the prince; or by things extrinsecal, such as tyranny usurped or inherited.

Among the number of monarchies, he ranks the Persian empire and the kingdom of Sparta. But is it not evident that the one was a despotic state and the other a republic?

The ancients, who were strangers to the distribution of the three powers in the

government of a single person, could never form a just idea of monarchy.

CHAP. X.

What other Politicians thought.

TO temper monarchy, Arybas, king[†] of Epirus, found no other remedy than a republic. The Molossi, not knowing how to limit the same power, made two kings[‡]; by which means the state was weakened more than the prerogative: they wanted rivals, and they created enemies.

Two kings were tolerable no where but at Sparta; here they did not form, but were only a part of, the constitution.

CHAP. XI.

Of the Kings of the heroic Times of Greece.

IN the heroic times of Greece, a kind of monarchy arose that was not of long duration[¶]. Those, who had been inventors of arts, who had fought in their country's cause, who had established societies, or distributed lands among the people, obtained the regal power, and transmitted it to their children. They were kings, priests, and judges. This was one of the five species of monarchy mentioned by Aristotle[¶]; and the only one that can give us any idea of the monarchical constitution. But the plan of this constitution is opposite to that of our modern monarchies.

The three powers were there distributed in such a manner, that the people were the legislature^{*}, and the king had the executive, together with the judiciary, power; whereas, in modern monarchies, the prince is invested with the executive and legislative powers, or, at least, with part of the legislative, but does not act in a judiciary capacity.

In the government of the kings of the heroic times, the three powers were ill-distributed. Hence those monarchies could not long subsist. For, as soon as the people got the legislative power into their hands, they might, as they every where did, upon the very least caprice, subvert the regal authority.

Among a free people, possessed of the legislative power, and enclosed within walls, where every thing tending towards oppression appears still more odious, it is the master-piece of legislation to know where to place properly the judiciary power. But it

could not be in worse hands than in those of the person to whom the executive power had been already committed. From that very instant the monarch became terrible. But, at the same time, as he had no share in the legislature, he could make no defence against it; thus his power was, in one sense, too great, in another, too little.

They had not as yet discovered that the true function of a prince was to appoint judges, and not to sit as judge himself. The opposite policy rendered the government of a single person insupportable. Hence all these kings were banished. The Greeks had no notion of the proper distribution of the three powers in the government of one person; they could see it only in that of many; and this kind of constitution they distinguished by the name of *polity*[†].

CHAP. XII.

Of the Government of the Kings of Rome, and in what Manner the three Powers were there distributed.

THE government of the kings of Rome had some relation to that of the kings of the heroic times of Greece. Its subversion, like the latter's, was owing to its general defect, though, in its own particular nature, it was exceeding good.

In order to give an adequate idea of this government, I shall distinguish that of the first five kings, that of Servius Tullus, and that of Tarquin.

The crown was elective; and, under the five first kings, the senate had the greatest share in the election.

Upon the king's decease, the senate examined whether they should continue the established form of government. If they thought proper to continue it, they named a magistrate[‡] taken from their own body, who chose a king: the senate were to approve of the election, the people to confirm it, and the augurs to declare the approbation of the gods. If any of these three conditions were wanting, they were obliged to proceed to another election.

The constitution was a mixture of monarchy, aristocracy, and democracy; and such was the harmony of power, that there was no instance of jealousy or dispute in the first reigns. The king commanded the armies, and had the direction of the sacrifices; he had the power of determining^{||} civil and criminal[§] causes; he called the senate together, convened the people, laid some affairs before the latter, and regulated the rest with the senate^{*}.

The authority of the senate was very great. The kings oftentimes pitched upon senators with whom they sat in judgement; and they never laid any affair before the people till it had been previously debated[†] in that august assembly.

The people had the right of choosing[‡] magistrates, of consenting to the new laws, and, with the king's permission, of making war and peace: but they had not the judicial power. When Tullus Hostilius referred the trial of Horatius to the people, he had his particular reasons, which may be seen in Dionysius Halicarnasseus^{SS}.

The constitution altered under^{|||} Servius Tullus. The senate had no share in his election; he caused himself to be proclaimed by the people; he resigned the power of hearing civil causes[¶], reserving none to himself but those of a criminal nature; he laid all affairs directly before the people; eased them of the taxes, and imposed the whole burthen on the patricians. Hence, in proportion as he weakened the regal, together with the senatorian, power, he augmented that of the plebeians^{*}.

Tarquin would neither be chosen by the senate nor by the people: he considered Servius Tullus as an usurper, and seized the crown as his hereditary right. He destroyed most of the senators; those who remained he never consulted; nor did he even so much as summon them to assist at his decisions[†]. Thus his power increased: but the odium of that power received a new addition, by usurping also the authority of the people, against whose consent he enacted several laws. The three powers were, by these means, re-united in his person; but the people, at a critical minute, recollected that they were legislators, and there was an end of Tarquin.

CHAP. XIII.

General Reflections on the State of Rome after the Expulsion of its Kings.

IT is impossible to be tired of so agreeable a subject as ancient Rome: thus strangers, at present, leave the modern palaces of that celebrated capital to visit the ruins; and thus the eye, after recreating itself with the view of flowery meads, is pleased with the wild prospect of rocks and mountains.

The patrician families were at all times possessed of great privileges. These distinctions, which were considerable under the kings, became much more important after their expulsion. Hence arose the jealousy of the plebeians, who wanted to reduce them. The contest struck at the constitution without weakening the government; for it was very indifferent of what family were the magistrates, provided the magistracy preserved its authority.

An elective monarchy, like that of Rome, necessarily supposeth a powerful aristocratic body to support it; without which it changes immediately into tyranny or into a popular state. But a popular state has no need of this distinction of families to maintain itself. To this it was owing that the patricians, who were a necessary part of the constitution under the regal government, became a superfluous branch under the consuls; the people could suppress them without hurting themselves, and change the constitution without corrupting it.

After Servius Tullus had reduced the patricians, it was natural that Rome should fall from the regal hands into those of the people. But the people had no occasion to be afraid of relapsing under a regal power by reducing the patricians.

A state may alter two different ways; either by the amendment, or by the corruption, of the constitution. If it has preserved its principles, and the constitution changes, this is owing to its amendment; if, upon changing the constitution, its principles are lost, this is because it has been corrupted.

The government of Rome, after the expulsion of the kings, should naturally have been a democracy. The people had already the legislative power in their hands; it was their unanimous consent that had expelled the Tarquins; and, if they had not continued steady to those principles, the Tarquins might easily have been restored. To pretend that their design in expelling them was to render themselves slaves to a few families, is quite absurd. The situation, therefore, of things required that Rome should have formed a democracy, and yet this did not happen. There was a necessity that the power of the principal families should be tempered, and that the laws should have a bias to democracy.

The prosperity of states is frequently greater, in the insensible transition from one constitution to another, than in either of those constitutions. Then it is that all the springs of government are upon the stretch; that the citizens assert their claims; that friendships or enmities are formed amongst the jarring parties; and that there is a noble emulation between those who defend the ancient, and those who are strenuous in promoting the new, constitution.

CHAP. XIV.

In what Manner the Distribution of the three Powers began to change, after the Expulsion of the Kings.

THERE were four things that greatly prejudiced the liberty of Rome. The patricians had engrossed to themselves all public employments whatever; an exorbitant power was

annexed to the consulate; the people were often insulted; and, in fine, they had scarce any influence at all left in the public suffrages. These four abuses were redressed by the people.

1st. It was regulated, that the plebeians might aspire to some magistracies; and by degrees they were rendered capable of them all, except that of *interrex*.

2^d. the consulate was dissolved into several other magistracies[‡]: prætors were created, on whom the power was conferred of trying private causes; quæstors^{*} were nominated for determining those of a criminal nature, ædiles were established for the civil administration; treasurers[‡] were made for the management of the public money; and, in fine, by the creation of censors, the consuls were divested of that part of the legislative power which regulates the morals of the citizens, and the transient polity of the different bodies of the state. The chief privileges left them were, to preside in the great meetings[†] of the people, to assemble the senate, and to command the armies.

3^d. The sacred laws appointed tribunes, who had a power of checking the encroachments of the patricians, and prevented not only private, but likewise public, injuries.

In fine, the plebeians increased their influence in the general assemblies. The people of Rome were divided in three different manners; by centuries, by curiæ, and by tribes; and, whenever they gave their votes, they were convened one of those three ways.

In the first, the patricians, the leading men, the rich, and the senate, which was very near the same thing, had almost the whole authority; in the second they had less, and less still in the third.

The division into centuries was a division rather of estates and fortunes than of persons. The whole people were distributed into a hundred and ninety-three centuries[‡], which had each a single vote. The patricians and leading men composed the first ninety-eight centuries; and the other ninety-five consisted of the remainder of the citizens. In this division, therefore, the patricians were masters of the suffrages.

In the division into curiæ[§], the patricians had not the same advantages: some, however, they had; for it was necessary to consult the augurs, who were under the direction of the patricians; and no proposal could be made there to the people unless it had been previously laid before the senate, and approved of by a *senatus consultum*. But, in the division into tribes, they had nothing to do either with the augurs or with the decrees of the senate; and the patricians were excluded.

Now, the people endeavoured constantly to have those meetings by curiæ which had been customary by centuries; and by tribes, those they used to have before by curiæ: by which means, the direction of public affairs soon devolved from the patricians to the

plebeians.

Thus, when the plebeians obtained the power of trying the patricians, a power which commenced in the affair of Coriolanus[¶], they insisted upon assembling by tribes^{*}, and not by centuries: and, when the new magistracies[†] of tribunes and ædiles were established in favour of the people, the latter obtained that they should meet by curiæ, in order to nominate them; and, after their power was quite settled, they gained[‡] so far their point as to assemble by tribes, to proceed to this nomination.

CHAP. XV.

In what Manner Rome, in the flourishing State of that Republic, suddenly lost its Liberty.

IN the heat of the contests between the patricians and plebeians, the latter insisted upon having fixt laws, to the end that the public judgements should no longer be the effects of capricious will or arbitrary power. The senate, after a great deal of resistance, acquiesced, and decemvirs were nominated to compose those laws. It was thought proper to grant them an extraordinary power, because they were to give laws to parties whose views and interests it was almost impossible to unite. The nomination of all magistrates was suspended; and the decemvirs were chosen in the comitia sole administrators of the republic. Thus they found themselves invested with the consular and with the tribunitian power. By one, they had the privilege of assembling the senate; by the other, that of convening the people: but they assembled neither senate nor people. Ten men only of the republic had the whole legislative, the whole executive, and the whole judiciary, power. Rome saw herself enslaved by as cruel a tyranny as that of Tarquin. When Tarquin trampled on the liberty of that city, she was seized with indignation at the power he had usurped; when the decemvirs exercised every act of oppression, she was astonished at the extraordinary power she had granted.

What a strange system of tyranny! A tyranny carried on by men who had obtained the political and military power merely from their knowledge in civil affairs; and who, at that very juncture, stood in need of the courage of those citizens to protect them abroad, who so tamely submitted to domestic oppression.

The spectacle of Virginia's death, whom her father immolated to chastity and liberty, put an end to the power of the decemvirs. Every man became free, because every man had been injured: each shewed himself a citizen, because each had the tie of a parent. The senate and the people resumed a liberty which had been committed to ridiculous tyrants.

No people were so easily moved with public spectacles as the Romans. That of the impurpled body of Lucretia put an end to the regal government. The debtor, who appeared in the forum covered with wounds, caused an alteration in the republic. The decemvirs owed their expulsion to the tragedy of Virginia. To condemn Manlius, it was necessary to keep the people from seeing the Capitol. Cæsar's bloody garment flung Rome again into slavery.

CHAP. XVI.

Of the legislative Power in the Roman Republic.

THERE were no rights to contest under the decemvirs; but, upon the restoration of liberty, jealousies revived; and, so long as the patricians had any privileges left, they were sure to be stripped of them by the plebeians.

The mischief would not have been so great had the plebeians been satisfied with this success; but they also injured the patricians as citizens. When the people assembled by curiæ, or centuries, they were composed of senators, patricians, and plebeians. In their disputes the plebeians gained this point, ¶ that they alone, without patricians or senate, should enact the laws called plebiscita; and the assemblies, in which they were made, had the name of comitia by tribes. Thus there were cases in which the patricians* had no share in the legislative power, but † were subject to the legislation of another body of the state. This was the extravagance of liberty. The people, to establish a democracy, acted against the very principles of that government. One would have imagined that so exorbitant a power must have destroyed the authority of the senate. But Rome had admirable institutions. Two of these were especially remarkable; one by which the legislative power of the people was established, and the other by which it was limited.

The censors, and, before them, the consuls, ‡ modelled and created, as it were, every five years, the body of the people: they exercised the legislation on the very part that was possessed of the legislative power. "Tiberius Gracchus (says Cicero) caused the free-men to be admitted into the tribes, not by the force of his eloquence, but by a word, by a gesture; which had he not effected, the republic, whose drooping head we are at present scarce able to uphold, would not even exist."

On the other hand, the senate had the power of rescuing, as it were, the republic out of the hands of the people, by creating a dictator, before whom the sovereign bowed his head, and the most popular laws were silent. §

CHAP. XVII.

Of the executive Power in the same Republic.

JEALOUS as the people were of their legislative power, yet they had no great uneasiness about the executive. This they left almost intirely to the senate and to the consuls, reserving scarce any thing more to themselves than the right of choosing the magistrates, and of confirming the acts of the senate and of the generals.

Rome, whose passion was to command, whose ambition was to conquer, whose commencement and progress were one continued usurpation, had constantly affairs of the greatest weight upon her hands; her enemies were ever conspiring against her, or she against her enemies.

As she was obliged to behave on the one hand with heroic courage, and on the other with consummate prudence, it was requisite, of course, that the management of affairs should be committed to the senate. Thus the people disputed every branch of the legislative power with the senate, because they were jealous of their liberty; but they had no disputes about the executive, because they were animated with the love of glory.

So great was the share the senate took in the executive power, that, as Polybius[†] informs us, foreign nations imagined that Rome was an aristocracy. The senate disposed of the public money, and farmed out the revenue; they were arbiters of the affairs of their allies; they determined war or peace, and directed, in this respect, the consuls; they fixed the number of the Roman and of the allied troops, disposed of the provinces and armies to the consuls or prætors, and, upon the expiration of the year of command, had the power of appointing successors; they decreed triumphs, received and sent embassies; they nominated, rewarded, punished, and were judges of kings, declared them allies of the Roman people, or stripped them of that title.

The consuls levied the troops which they were to carry into the field; had the command of the forces by sea and land; disposed of the forces of the allies; were invested with the whole power of the republic in the provinces; gave peace to the vanquished nations, imposed conditions on them, or referred them to the senate.

In the earliest times, when the people had some share in the affairs relating to war or peace, they exercised rather their legislative than their executive power. They scarce did any thing else but confirm the acts of the kings, and, after their expulsion, those of the consuls or senate. So far were they from being the arbiters of war, that we have instances of its having been often declared, notwithstanding the opposition of the tribunes. But, growing wanton in their prosperity, they increased their executive power.

Thus they^{*} created the military tribunes, the nomination of whom, till then, had belonged to the generals; and, some time before the first Punic war, they decreed, that only their own body should have the right[†] of declaring war.

CHAP. XVIII.

Of the judiciary Power in the Roman Government.

THE judiciary power was given to the people, to the senate, to the magistrates, and to particular judges. We must see in what manner it was distributed, beginning with their civil affairs.

The consuls had[†] the judiciary power after the expulsion of the kings, as the prætors were judges after the consuls. Servius Tullus had divested himself of the power of determining of civil causes, which was not resumed by the consuls, except in some very rare[‡] cases, for that reason called *extraordinary*[§]. They were satisfied with naming the judges and establishing the several tribunals. By a discourse of *Appius Claudius*, in Dionysius[¶] Halicarnasseus, it appears, that, so early as the 259th year of Rome, this was looked upon as a settled custom among the Romans; and it is not tracing it very high to refer it to Servius Tullus.

Every year, the prætor made a list[†] of such as he chose for the office of judges during his magistracy. A sufficient number was pitched upon for each cause; a custom very near the same as that now practised in England. And what was extremely favourable to liberty^{*} was, the prætor's fixing the judges with the[‡] consent of the parties. The great number of exceptions, that can be made in England, amounts pretty near to this very custom.

The judges decided only the questions^{*} relating to matter of fact: for example, whether a sum of money had been paid or not; whether an act had been committed or not. But, as to questions of[†] law, as these required a certain capacity, they were always carried before the tribunal of the centumvirs[§].

The kings reserved to themselves the judgement of criminal affairs, and in this were succeeded by the consuls. It was in consequence of this authority that *Brutus* put his children, and all those who were concerned in the Tarquinian conspiracy, to death. This was an exorbitant power. The consuls, already invested with the military command, extended the exercise of it even to civil affairs; and their procedures, being stripped of all forms of justice, were rather exertions of violence than legal judgements.

This gave rise to the *Valerian law*, by which it was made lawful to appeal to the people from every decision of the consuls that endangered the life of a citizen. The consuls had no longer a power of pronouncing sentence in capital cases against a Roman citizen, without the consent of the people[¶].

We see, in the first conspiracy for the restoration of the Tarquins, that the criminals

were tried by Brutus the consul; in the second, the senate and comitia were assembled to try them[†].

The laws, distinguished by the name of *sacred*, allowed the plebeians the privilege of choosing tribunes; from whence was formed a body, whose pretensions at first were immense. It is hard to determine which was greater, the insolence of the plebeians in demanding, or the condescension of the senate in granting. The Valerian law allowed of appeals to the people; that is, to the people composed of senators, patricians, and plebeians. The plebeians made a law that appeals should be brought before their own body. A question was soon after started, whether the plebeians had a right to try a patrician: this was the subject of a dispute to which the impeachment of Coriolanus gave rise, and which ended with that affair. When Coriolanus was accused by the tribunes before the people, he insisted, contrary to the spirit of the Valerian law, that, as he was a patrician, none but the consuls had a power to try him: on the other hand, the plebeians also, contrary to the spirit of that same law, pretended, that none but their body were empowered to be his judges, and accordingly they pronounced sentence upon him.

This was moderated by the law of the twelve tables; whereby it was ordained, that none but the *great assemblies* of the people[†] should try a citizen in capital cases. Hence the body of the plebeians, or (which amounts to the very same) the comitia by tribes, had no longer any power of hearing criminal causes, except such as were punished with fines. To inflict a capital punishment, a *law* was requisite; but, to condemn to a pecuniary mulct, there was occasion only for a *plebiscitum*.

This regulation of the law of the twelve tables was extremely prudent. It produced an admirable balance between the body of the plebeians and the senate: for, as the full judiciary power of both depended on the greatness of the punishment and the nature of the crime, it was necessary they should both agree.

The Valerian law abolished all the remains of the Roman government any way relative to that of the kings of the heroic times of Greece. The consuls were divested of the power to punish crimes. Though all crimes are public, yet we must distinguish between those which more nearly concern the mutual intercourse of citizens, and those which more immediately interest the state in the relation it bears to its subjects. The first are called private; the second, public. The latter were tried by the people; and, in regard to the former, they named, by particular commission, a quæstor for the prosecution of each crime. The person chosen by the people was frequently one of the magistrates, sometimes a private man. He was called the *quæstor of parricide*, and is mentioned in the law of the twelve tables.[†]

The quæstor nominated the judge of the question, who drew lots for the judges, and regulated the tribunal. in which he presided.[‡]

Here it is proper to observe what share the senate had in the nomination of the quæstor, that we may see how far the two powers were balanced. Sometimes the senate caused a dictator to be chosen, in order to exercise the office of quæstor^S; at other times they ordained that the people should be convened by a tribune, with a view of proceeding to the nomination of a quæstor[¶]: and, in fine, the people frequently appointed a magistrate to make his report to the senate concerning a particular crime, and to desire them to name a quæstor, as may be seen in the judgement upon *Lucius Scipio*^{*} in Livy.[†]

In the year of Rome 604, some of these commissions were rendered permanent.[‡] All criminal causes were gradually divided into different parts; to which they gave the name of *perpetual questions*. Different prætors were created, to each of whom some of those questions were assigned. They had a power, conferred upon them for the term of a year, of trying such criminal causes as were any way relative to those questions, and then they were sent to govern their province.

At Carthage the senate of the hundred was composed of judges who enjoyed that dignity for life[¶]: But, at Rome, the prætors were annual; and the judges were not even for so long a term, but were nominated for each cause. We have already shewn, in the sixth chapter of this book, how favourable this regulation was to liberty in particular governments.

The judges were chosen from the order of senators, till the time of the Gracchi. *Tiberius Gracchus* caused a law to pass, that they should be taken from the equestrian order; a change so very considerable, that the tribune boasted of having cut, by one *rogation* only, the sinews of the senatorian dignity.

It is necessary to observe, that the three powers may be very well distributed in regard to the liberty of the constitution, though not so well in respect to the liberty of the subject. At Rome the people had the greatest share of the legislative, a part of the executive, and part of the judiciary, power; by which means they had so great a weight in the government, as required some other power to balance it. The senate, indeed, had part of the executive power, and some share of the legislative^S; but this was not sufficient to counterbalance the weight of the people. It was necessary that they should partake of the judiciary power; and accordingly they had a share when the judges were chosen from among the senators. But, when the Gracchi deprived the senators of the judicial power[¶], the senate were no longer able to withstand the people. To favour, therefore, the liberty of the subject, they struck at that of the constitution: but the former perished with the latter.

Infinite were the mischiefs that from thence arose. The constitution was changed at a time when the fire of civil discord had scarce left any such thing as a constitution. The knights ceased to be that middle order which united the people to the senate; and the

chain of the constitution was broke.

There were even particular reasons against transferring the judiciary power to the equestrian order. The constitution of Rome was founded on this principle, that none should be enlisted as soldiers but such as were men of sufficient property to answer for their conduct to the republic. The knights, as persons of the greatest property, formed the cavalry of the legions. But, when their dignity increased, they refused to serve any longer in that capacity, and another kind of cavalry was obliged to be raised. Thus Marius enlisted all sorts of people into his army, and soon after the republic was lost.*

Besides, the knights were the farmers of the revenue; men whose great rapaciousness increased the public calamities. Instead of giving to such as those the judicial power, they ought to have been constantly under the eye of the judges. This we must say in commendation of the ancient French laws, that they have acted towards the officers of the revenue with as great a diffidence as would be observed between enemies. When the judiciary power at Rome was transferred to the publicans, there was then an end of all virtue, polity, laws, and government.

Of this we find a very ingenuous description in some fragments of Diodorus Siculus and Dio. "Mutius Scevola (says Diodorus†) wanted to revive the ancient manners and the laudable custom of sober and frugal living; for his predecessors, having entered into a contract with the farmers of the revenue, who at that time were possessed of the judiciary power at Rome, had infected the province with all manner of corruption. But Scevola made an example of the publicans, and imprisoned those by whom others had been confined."

Dio informs us‡, that Publius Rutilius, his lieutenant, was equally obnoxious to the equestrian order, and that, upon his return, they accused him of having received some presents, and condemned him to a fine; upon which he instantly made a cession of his goods. His innocence appeared in this, that he was found to be worth a great deal less than what he was charged with having extorted, and he shewed a just title to what he possessed: but he would not live any longer in the same city with such profligate wretches.

¶ The Italians, says Diodorus again, bought up whole droves of slaves in Sicily, to till their lands, and to take care of their cattle; but refused them a necessary subsistence. These wretches were then forced to go and rob on the highways, armed with lances and clubs, covered with beasts skins, and followed by large mastiffs. Thus the whole province was laid waste, and the inhabitants could not call any thing their own but what was secured by fortresses. There was neither proconsul nor prætor that could or would oppose this disorder, or that presumed to punish these slaves, because they belonged to the knights, who, at Rome, were possessed of the judiciary power§. And yet this was one of the causes of the war of the slaves. But I shall add only one word more. A

profession, deaf and inexorable, that can have no other view than lucre, that was always asking and never granting, that impoverished the rich and increased even the misery of the poor; such a profession, I say, should never have been intrusted with the judiciary power at Rome.

CHAP. XIX.

Of the Government of the Roman Provinces.

SUCH was the distribution of the three powers in Rome. But they were far from being thus distributed in the provinces: liberty prevailed in the center, and tyranny in the extreme parts.

While Rome extended her dominions no farther than Italy, the people were governed as confederates, and the laws of each republic were preserved. But, when she enlarged her conquests, and the senate had no longer an immediate inspection over the provinces, nor the magistrates residing at Rome were any longer capable of governing the empire, they were obliged to send prætors and proconsuls. Then it was that the harmony of the three powers was lost. The persons appointed to that office were intrusted with a power which comprehended that of all the Roman magistracies; nay, even that of the people¹. They were despotic magistrates, extremely well adapted to the distance of the places to which they were destined. They exercised the three powers; and were, if I may presume to use the expression, the bashaws of the republic.

We have elsewhere observed, that, in a commonwealth, the same magistrate ought to be possessed of the executive power, as well civil as military. Hence a conquering republic can hardly communicate her government, and rule the conquered state according to her own constitution. And, indeed, as the magistrate she sends to govern is invested with the executive power, both civil and military, he must also have the legislative: for who is it that could make laws without him? It is necessary, therefore, that the governor she sends be intrusted with the three powers, as was practised in the Roman provinces.

It is more easy for a monarchy to communicate its government, because the officers it sends have, some the civil, and others the military, executive power; which does not necessarily imply a despotic authority.

It was a privilege of the utmost consequence to a Roman citizen to have none but the people for his judges. Were it not for this, he would have been subject, in the provinces, to the arbitrary power of a proconsul or of a proprætor. The city never felt the tyranny, which was exercised only on conquered nations.

Thus, in the Roman world, as at Sparta, the freemen enjoyed the highest degree of liberty, while those who were slaves laboured under the extremity of servitude.

While the citizens paid taxes they were raised with great justice and equality. The regulation of Servius Tullus was observed, who had distributed the people into six classes, according to their difference of property, and fixed the several shares of the public imposts in proportion to that which each person had in the government. Hence they bore with the greatness of the tax, because of their proportionable greatness of credit; and consoled themselves for the smallness of their credit, because of the smallness of the tax.

There was also another thing worthy of admiration, which is, that, as Servius Tullus's division into classes was in some measure the fundamental principle of the constitution, it thence followed that an equal levying of the taxes was so connected with this fundamental principle, that the one could not be abolished without the other.

But, while the city paid the taxes as she pleased, or paid none at all^{*}, the provinces were plundered by the knights, who were the farmers of the public revenue. We have already made mention of their oppressive extortions, with which all history abounds.

"All Asia (says Mithridates[†]) expects me as her deliverer; so great is the hatred which the rapaciousness of the proconsuls[‡], the consiscations made by the officers of the revenue, and the quirks and cavils of judicial proceedings[¶], have excited against the Romans."

Hence it was that the strength of the provinces did not increase, but rather weakened, the strength of the republic. Hence it was that the provinces looked upon the loss of the liberty of Rome as the epocha of their own freedom.

CHAP. XX.

The End of this Book.

I should be glad to inquire into the distribution of the three powers in all the moderate governments we are acquainted with, in order to calculate the degrees of liberty which each may enjoy. But we must not always exhaust a subject, so as to leave no work at all for the reader. My business is not to make people read, but to make them think.

Endnotes

[*] I have copied, *says Cicero*, Scaevola's edict, which permits the Greeks to terminate their difference among themselves according to their own laws: this makes them consider themselves as a free people.

[||] The Russians could not bear that Czar Peter should make them cut it off.

[†] The Cappadocians refused the condition of a republican state, which was offered them by the Romans.

[*] The natural end of a state that has no foreign enemies, or that thinks itself secured against them by barriers.

[†] Inconveniency of the *Liberum veto*.

[*] At Venice.

[*] As at Athens.

[*] These were magistrates chosen annually by the people. See Stephen of Byzantium.

[†] It was lawful to accuse the Roman magistrates after the expiration of their several offices. See, in Dionys. Halicarn. l. 9. the affair of *Genutius*, the tribune.

[*] De minoribus rebus principes consultant, de majoribus omnes; ita tamen ut ea quoque, quorum penes plebem arbitrium est, apud principes pertractentur.

[*] Polit. book 3, chap. 14.

[†] See Justin, book 17.

[‡] Arist. Polit. book 5, chap. 8.

[||] Aristot. Polit. book 3, chap. 14.

[¶] Aristot. Polit. book 3. chap. 14.

[*] See what Plutarch says, in the Life of *Theseus*. See likewise Thucydides, book 1.

[†] Aristot. Polit. book 4, chap. 8.

[‡] Dionys. Halicarn. book 2, p. 120. & book 4, p. 242 & 243.

[||] See *Tanaquil's* discourse on Livy, book 1, dec. 1. and the regulations of Servius Tullus, in Dionys. Halicarn. book 4, p. 229.

[§] See Dionys. Halicarn. book 2, p. 118. and book 3, p. 171.

[*] It was by virtue of a senatus consultum that Tullus Hostilius ordered Alba to be destroyed. Dionys. Halicarn. book 3, p. 167 and 172.

[†] Ibid. b. 4, p. 276.

[‡] Ibid. book 2. And yet they could not have the nomination of all offices, since Valerius Publicola made that famous law, by which every citizen was forbid to exercise any employment, unless he had obtained it by the suffrage of the people.

[§§] Book 3, p. 159.

[|||] Dionys. Halicarn. book 4.

[¶] He divested himself of half the regal power, says Dionys. Halicarn. book 4, p. 229.

[*] It was thought, that, if he had not been prevented by Tarquin, he would have established a popular government. Dionys. Halicarn. book 4, p. 243.

[†] Dionys. Halicarn. book 4.

[‡] Livy, 1 decad. book 6.

[*] *Quæstores parricidii* Pomponius, leg. 2. ff. de orig. Jur.

[||] Plutarch, *Life of Publicola*.

[†] Comitiis centuriatis.

[‡] See Livy, book 1. and Dionys. Halicarn. book 4 and 7.

[§] Dionys. Halicarn. book 9, p. 598.

[¶] Ibid. book 7.

[*] Contrary to the ancient custom, as may be seen in Dionys. Halicarnass. book 5. p. 320.

[†] Dionys. Halicarn. book 6, p. 410 and 411.

[‡] See Dionys. Halicarn. book 9, p. 650.

[||] Dionys, Halicarn. book 11, p. 725.

[*] By the sacred laws the plebeians had a power of making the plebiscita by themselves, without admitting the patricians into their assembly. Dionys. Halicarn. book 6, p. 410. and book 7, p. 430.

[†] By the law enacted after the expulsion of the decemvirs the patricians were made subject to the plebiscita, though they had not a right of voting there. Livy, book 3. and Dionys. Halicarn. book 11, p. 725. This law was confirmed by that of Publius Philo, the dictator, in the year of Rome 416. Livy, book 8.

[‡] In the year 312 of Rome the consuls performed still the business of surveying the people and their estates, as appears by Dionys. Halicarn. book 11.

[§] Such as those by which it was allowed to appeal, from the decisions of all the magistrates, to the people.

[†] Book 6.

[*] In the year of Rome 444. Livy, 1 decad. book 9. As the war against Perseus appeared somewhat dangerous, it was ordained, by a senatus-consultum, that this law should be suspended, and the people agreed to it. Livy, dec. 5, book 2.

[†] They extorted it from the senate, says *Freinshemius*, dec. 2, book 6.

[‡] There is no manner of doubt but the consuls had the power of trying civil causes before the creation of the prætors. See Livy, dec. 1, book 2, p. 19. Dionys. Halicarn. book 10, p. 627. and the same book, p. 645.

[||] The tribunes frequently tried causes by themselves only; but nothing rendered them more odious. Dionys. Halicarn. book 11, p. 709.

[§] *Judicia extraordinaria*. See the Institutes, book 4.

[¶] Book 6, p. 360.

[†] Album judicium.

[*] "Our ancestors, says *Cicero pro Cluentio*, would not suffer any man, whom the parties had not agreed to, to be judge of the least pecuniary affair, much less of a citizen's reputation."

[||] See, in the fragments of the Servilian, Cornelian, and other laws, in what manner these laws appointed judges for the crimes they proposed to punish. They were often pitched upon by choice; sometimes by lot; or, in fine, by lot mixt together with choice.

[*] Seneca de Benefic. lib. 3, cap. 7, *in fine*.

[†] See Quintilian, lib. 4, p. 54, in fol. edit. of Paris, 1541.

[§] *Leg. 2. ff. de Orig. Jur.* Magistrates, who were called decemvirs, presided in court, the whole under a prætor's direction.

[¶] Quoniam de capite civis Romani, injussu populi Romani, non erat permissum consulibus jus dicere. See Pomponius, *Leg. 2. ff. de Orig. Jur.*

[‡] Dionys. Halicarn. book 5, p. 322.

[†] The comitia by centuries. Thus Manlius Capitolinus was tried in these comitia. Livy, dec. 1, book 6, p. 60.

[‡] Pomponius, in the second Law in the Digest de Orig. Jur.

[||] See a fragment of Ulpian, who gives another of the Cornelian law: it is to be met with in the *Collation of the Mosaic and Roman Laws*, tit. 1. de sicariis & homicidiis.

[§] This took place, especially in regard to crimes committed in Italy, which were subject chiefly to the inspection of the senate. See Livy, 1 decad. book 9. concerning the conspiracies of Capua.

[¶] This was the case in the prosecution for the murder of Posthumius, in the year 340 of Rome. See Livy.

[*] This judgement was passed in the year of Rome 567.

[†] Book 8.

[‡] Cicero in Bruto.

[||] This is proved from Livy, book 43, who says that Hannibal rendered their magistracy annual.

[§] The *senatus-consultums* were of force for the space of a year, though not confirmed by the people. Dionys. Halicarn. book 9, p. 595. and book 11, p. 735.

[¶] In the year 630.

[*] *Capite censos plerosque*. Sallust. de Bello Jugurth.

[†] Fragment of this author, book 36, in the Collection of Constantine Porphyrogenitus, of *virtues and vices*.

[‡] Fragment of his history, taken from the *Extract of virtues and vices*.

[||] Fragment of the 34th book, in the *Extract of virtues and vices*.

[§] Penes quos Romæ tum judicia erant, arque ex equestri ordine solerent sortito judices eligi in causa prætorum & proconsulum, quibus post administratam provinciam dies dicta erat.

[¶] They made their edicts upon entering the provinces.

[*] After the conquest of Macedonia the Romans paid no taxes.

[†] Speech taken from Trogus Pompeius, and related by Justin, book 38.

[‡] See the orations against Verres.

[||] It is well known what sort of a tribunal was that of Varus, which provoked the Germans to revolt.

BOOK XII. OF THE LAWS THAT FORM POLITICAL LIBERTY, AS RELATIVE TO THE SUBJECT.

CHAP. I.

Idea of this Book.

IT is not sufficient to have treated of political liberty as relative to the constitution; we must examine it likewise in the relation it bears to the subject.

We have observed, that, in the former case, it arises from a certain distribution of the three powers; but, in the latter, we must consider it in another light. It consists in security, or in the opinion people have of their security.

The constitution may happen to be free, and the subject not. The subject may be free, and not the constitution. In those cases the constitution will be free by right, and not in fact; the subject will be free in fact, and not by right.

It is the disposition only of the laws, and even of the fundamental laws, that constitutes liberty in relation to the constitution. But, as it regards the subject, manners, customs, or received examples, may give rise to it, and particular civil laws may encourage it, as we shall presently observe.

Farther; as, in most states, liberty is more checked or depressed than their constitution

requires, it is proper to treat of the particular laws that, in each constitution, are apt to assist or check the principle of liberty, which each state is capable of receiving.

CHAP. II.

Of the Liberty of the Subject.

PHILOSOPHICAL liberty consists in the free exercise of the will; or, at least, if we must speak agreeably to all systems, in an opinion that we have the free exercise of our will. Political liberty consists in security; or, at least, in the opinion that we enjoy security.

This security is never more dangerously attacked than in public or private accusations. It is therefore on the goodness of criminal laws that the liberty of the subject principally depends.

Criminal laws did not receive their full perfection all at once. Even in places where liberty has been most sought after it has not been always found. Aristotle^{*} informs us, that, at Cumæ, the parents of the accuser might be witnesses. So imperfect was the law, under the kings of Rome, that Servius Tullus pronounced sentence against the children of Ancus Martius, who were charged with having assassinated the king his father-in-law[†]. Under the first kings of France, Clotarius made a law[‡], that nobody should be condemned without being heard; which shews that a contrary custom had prevailed in some particular case, or among some barbarous people. It was Charondas that first established penalties against false witnesses[‡]. When the subject has no fence to secure his innocence, he has none for his liberty.

The knowledge already acquired in some countries, or that may be hereafter attained in others, concerning the surest rules to be observed in criminal judgements, is more interesting to mankind than any other thing in the world.

Liberty can be founded on the practice of this knowledge only; and, supposing a state to have the best laws imaginable in this respect, a person tried under that state, and condemned to be hanged the next day, would have much more liberty than a bashaw enjoys in Turkey.

CHAP. III.

The same Subject continued.

THOSE laws, which condemn a man to death on the deposition of a single witness, are

fatal to liberty. In right reason there should be two; because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale.

The Greeks[§] and Romans[¶] required one voice more to condemn: but our French laws insist upon two. The Greeks pretend that their custom was established by the Gods^{*}; but this more justly may be said of ours.

CHAP. IV.

That Liberty is favoured by the Nature and Proportion of Punishments.

LIBERTY is in its highest perfection when criminal laws derive each punishment from the particular nature of the crime. There are then no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.

There are four sorts of crimes. Those of the first species are prejudicial to religion; the second, to morals; the third, to the public tranquility; and the fourth, to the security of the subject. The punishments inflicted for these crimes ought to proceed from the nature of each of these species.

In the class of crimes that concern religion I rank only those which attack it directly, such as all simple sacrileges: for, as to crimes that disturb the exercise of it, they are of the nature of those which prejudice the tranquility or security of the subject, and ought to be referred to those classes.

In order to derive the punishment of simple sacrileges from the nature of the thing[†], it should consist in depriving people of the advantages conferred by religion, in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their presence, in execrations, comminations, and conjurations.

In things that prejudice the tranquility or security of the state, secret actions are subject to human jurisdiction: but, in those which offend the Deity, where there is no public act, there can be no criminal matter; the whole passes betwixt man and God, who knows the measure and time of his vengeance. Now, if magistrates, confounding things, should inquire also into hidden sacrileges, this inquisition would be directed to a kind of action that does not at all require it; the liberty of the subject would be subverted by arming the zeal of timorous, as well as of presumptuous, consciences against him.

The mischief arises from a notion, which some people have entertained, of revenging the cause of the Deity. But we must honour the Deity, and leave him to avenge his own cause. And, indeed, were we to be directed by such a notion, where would be the end of punishments? If human laws are to avenge the cause of an infinite Being, they will be directed by his infinity, and not by the weakness, ignorance, and caprice, of man.

An historian[†] of Provence relates a fact, which furnishes us with an excellent description of the consequences that may arise, in weak capacities, from the notion of avenging the Deity's cause. A Jew was accused of having blasphemed against the virgin Mary; and, upon conviction, was condemned to be flead alive. A strange spectacle was then exhibited: gentlemen masked, with knives in their hands, mounted the scaffold, and drove away the executioner, in order to be the avengers themselves of the honour of the blessed virgin. — I do not here choose to anticipate the reflections of the reader.

The second class consists of those crimes which are prejudicial to morals. Such is the violation of public or private continence; that is, of the police directing the manner in which the pleasure annexed to the conjunction of the sexes is to be enjoyed. The punishment of those crimes ought to be also derived from the nature of the thing. The privation of such advantages as society has attached to the purity of morals, fines, shame, necessity of concealment, public infamy, expulsion from home and society, and, in fine, all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect, these things are less founded on malice than on carelessness and self-neglect.

We speak here of none but crimes which relate merely to morals; for, as to those that are also prejudicial to the public security, such as rapes, they belong to the fourth species.

The crimes of the third class are those which disturb the public tranquility. The punishments ought therefore to be derived from the nature of the thing, and to be relative to this tranquility; such as imprisonment, exile, and other like chastisements, proper for reclaiming turbulent spirits and obliging them to conform to the established order.

I confine those crimes that injure the public tranquility to things which imply a bare offence against the police; for, as to those which, by disturbing the public peace, attack at the same time the security of the subject, they ought to be ranked in the fourth class.

The punishments inflicted upon the latter crimes are such as are properly distinguished by that name. They are a kind of retaliation, by which the society refuses security to a member who has actually or intentionally deprived another of his security. These punishments are derived from the nature of the thing, founded on reason, and drawn

from the very source of good and evil. A man deserves death when he has violated the security of the subject so far as to deprive, or attempt to deprive, another man of his life. This punishment of death is the remedy, as it were, of a sick society. When there is a breach of security with regard to property, there may be some reasons for inflicting a capital punishment: but it would be much better, and perhaps more natural, that crimes committed against the security of property should be punished with the loss of property; and this ought indeed to be the case if mens fortunes were common or equal. But, as those who have no property of their own are generally the readiest to attack that of others, it has been found necessary, instead of a pecuniary, to substitute a corporal, punishment.

All that I have here advanced is founded in nature, and extremely favourable to the liberty of the subject.

CHAP. V.

Of certain Accusations that require particular Moderation and Prudence.

IT is an important *maxim*, that we ought to be very circumspect in the prosecution of witchcraft and heresy. The accusation of these two crimes may be vastly injurious to liberty, and productive of infinite oppression, if the legislator knows not how to set bounds to it. For, as it does not directly point at a person's actions, but at his character, it grows dangerous in proportion to the ignorance of the people; and then a man is sure to be always in danger, because the most unexceptionable conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of his being guilty of the like crimes.

Under Manuel Comnenus, the *protestator*^{*} was accused of having conspired against the emperor, and of having employed, for that purpose, some secrets that render men invisible. It is mentioned, in the life of this emperor,[†] that *Aaron* was detected, as he was poring over a book of Solomon's, the reading of which was sufficient to conjure up whole legions of devils. Now, by supposing a power in witchcraft to rouse the infernal spirits to arms, people look upon a man whom they call a sorcerer as the person in the world most likely to disturb and subvert society; and, of course, they are disposed to punish him with the utmost severity.

But their indignation increases when witchcraft is supposed to have a power of subverting religion. The history of Constantinople^{*} informs us, that, in consequence of a revelation, made to a bishop, of a miracle's having ceased because of the magic practices of a certain person, both that person and his son were put to death. On how

many surprizing things did not this single crime depend! — That revelations should not be uncommon; that the bishop should be favoured with one; that it was real; that there had been a miracle in the case; that this miracle had ceased; that there was an art magic; that magic could subvert religion; that this particular person was a magician; and, in fine, that he had committed that magic act.

The emperor *Theodorus Lascaris* attributed his illness to witchcraft. Those who were accused of this crime had no other resource left than to handle a red hot iron without being hurt. Thus, among the Greeks, a person ought to have been a sorcerer, to be able to clear himself of the imputation of witchcraft. Such was the excess of their stupidity, that, to the most dubious crime in the world, they joined the most dubious proofs of innocence.

Under the reign of *Philip the Long* the Jews were expelled from France, being accused of having poisoned the springs with their lepers. So absurd an accusation ought to make us doubt of all those that are founded on public hatred.

I have not here asserted that heresy ought not to be punished; I said only that we ought to be extremely circumspect in punishing it.

CHAP. VI.

Of the Crime against Nature.

GOD forbid that I should have the least inclination to diminish the public horror against a crime which religion, morality, and civil government, equally condemn. It ought to be proscribed were it only for its communicating to one sex the weaknesses of the other, and for leading people, by a scandalous prostitution of their youth, to an ignominious old age. What I shall say concerning it will no ways diminish its infamy, being levelled only against the tyranny that may abuse the very horror we ought to have against the vice.

As a natural circumstance of this crime is secrecy, there are frequent instances of its having been punished by legislators upon the deposition of a child. This was opening a very wide door to calumny. "Justinian (says Procopius^{*}) published a law against this crime: he ordered an inquiry to be made, not only against those who were guilty of it after the enacting of that law, but even before. The deposition of a single witness, sometimes of a child, sometimes of a slave, was sufficient, especially against such as were rich, and against those of the green faction."

It is very odd that these three crimes, witchcraft, heresy, and that against nature; (of which, the first might easily be proved not to exist; the second, to be susceptible of an

infinite number of distinctions, interpretations, and limitations; the third, to be often obscure and uncertain;) it is very odd, I say, that these three crimes should, amongst us, be punished with fire.

I may venture to affirm, that the crime against nature will never make any great progress in society, unless people are prompted to it by some particular custom; as among the Greeks, where the youths of that country performed all their exercises naked; as amongst us, where domestic education is disused; as among the Asiatics, where particular persons have a great number of women whom they despise, while others can have none at all. Let there be no customs preparatory to this crime; let it, like every other violation of morals, be severely proscribed by the civil magistrate; and nature will soon defend or resume her rights. Nature, that fond, that indulgent, parent, has strewed her pleasures with a bounteous hand; and, while she fills us with delights, she prepares us, by means of our issue, (in whom we see ourselves, as it were, reproduced,) she prepares us, I say, for future satisfactions of a more exquisite kind than those very delights.

CHAP. VII.

Of the Crime of High-Treason.

IT is determined, by the laws of China, that whosoever shews any disrespect to the emperor is to be punished with death. As they do not mention in what this disrespect consists, every thing may furnish a pretext to take away a man's life, and to exterminate any family whatsoever.

Two persons of that country, who were employed to write the court-gazette, having inserted some circumstances relating to a certain fact that were not true, it was pretended that to tell a lie in the courtgazette was a disrespect shewn to the court; in consequence of which they were put to death^{*}. A prince of the blood having inadvertently made some mark on a memorial signed with the red pencil by the emperor, it was determined that he had behaved disrespectfully to the sovereign; which occasioned one of the most terrible persecutions against that family that ever was recorded in history[†].

If the crime of high-treason be indeterminate, this alone is sufficient to make the government degenerate into arbitrary power. I shall descant more largely on this subject when I come to treat[‡] of the composition of laws.

CHAP. VIII.

Of the bad Application of the Name of Sacrilege and High-Treason.

IT is likewise a shocking abuse to give the appellation of high-treason to an action that does not deserve it. By an imperial law[§] it was decreed, that those who called in question the prince's judgement, or doubted of the merit of such as he had chosen for a public office, should be prosecuted as guilty of sacrilege[¶]. Surely it was the cabinet-council and the prince's favourites who invented that crime. By another law it was determined that whosoever made any attempt to injure the ministers and officers belonging to the sovereign should be deemed guilty of high-treason, as if he had attempted to injure the sovereign himself[¶]. This law is owing to two princes^{*}, remarkable for their weakness; princes who were led by their ministers, as flocks by shepherds; princes who were slaves in the palace, children in the council, strangers to the army; princes, in fine, who preserved their authority only by giving it away every day. Some of those favourites conspired against their sovereigns. Nay, they did more; they conspired against the empire; they called in barbarous nations; and, when the emperors wanted to stop their progress, the state was so enfeebled, as to be under a necessity of infringing the law, and of exposing itself to the crime of high-treason, in order to punish those favourites.

And yet this is the very law which the judge of Monsieur de Cinq-Mars built upon[†], when, endeavouring to prove that the latter was guilty of the crime of high-treason for attempting to remove cardinal Richelieu from the ministry, he says, "Crimes that aim at the persons of ministers are deemed, by the imperial constitutions, of equal consequence with those which are levelled against the emperor's own person. A minister discharges his duty to his prince and to his country: to attempt, therefore, to remove him, is endeavouring to deprive the former one of his arms[‡], and the latter of part of its power." It is impossible for the meanest tools of power to express themselves in more servile language.

By another law of Valentinian, Theodosius, and Arcadius[§], false coiners are declared guilty of high-treason. But is not this confounding the ideas of things? Is not the very horror of high-treason diminished by giving that name to another crime?

CHAP. IX.

The same Subject continued.

PAULINUS having written to the emperor Alexander, that "he was preparing to prosecute, for high-treason, a judge who had decided contrary to his edict," the emperor answered, "that under his reign there was no such thing as indirect high-treason^{*}."

Faustinian wrote to the same emperor, that, as he had sworn by the prince's life never to pardon his slave, he found himself thereby obliged to perpetuate his wrath, lest he should incur the guilt of *læsa majestas*; upon which the emperor made answer, "Your fears are groundless[†], and you are a stranger to my principles."

It was determined, by a *senatus-consultum*[‡], that whosoever melted down any of the emperor's statues, which happened to be rejected, should not be deemed guilty of high-treason. The emperors, Severus and Antoninus, wrote to Pontius[§], that those who sold unconsecrated statues of the emperor should not be charged with high-treason. The same princes wrote to Julius Cassianus, that, if a person, in flinging a stone, should by chance strike one of the emperor's statues, he should not be liable to a prosecution for high-treason[¶]. The Julian law requires this sort of limitations; for, in virtue of this law, the crime of high-treason was charged, not only upon those who melted down the emperor's statues, but likewise on those who committed any such like action^{*}, which made it an arbitrary crime. When a number of crimes of *læsa majestas* had been established, they were obliged to distinguish the several sorts. Hence Ulpian, the civilian, after saying that the accusation of *læsa majestas* did not die with the criminal, adds, that this does not relate to[†] all the treasonable acts established by the Julian law, but only to that which implies an attempt against the empire or against the emperor's life.

CHAP. X.

The same Subject continued.

THERE was a law passed in England, under Henry VIII. by which whoever predicted the king's death was declared guilty of high-treason. This law was extremely vague: the terror of despotic power is so great, that it recoils upon those who exercise it. In this king's last illness the physicians would not venture to say he was in danger; and surely they acted very right[‡].

CHAP. XI.

Of Thoughts.

MARSYAS dreamt that he had cut Dionysius's throat[§]. Dionysius put him to death, pretending that he would never have dreamt of such a thing by night if he had not thought of it by day. This was a most tyrannical action; for, though it had been the subject of his thoughts. yet he had made no attempt[¶] towards it. The laws do not take

upon them to punish any other than overt acts.

CHAP. XII.

Of indiscreet Speeches.

NOTHING renders the crime of high-treason more arbitrary than declaring people guilty of it for indiscreet speeches. Speech is so subject to interpretation; there is so great a difference between indiscretion and malice; and frequently so little is there of the latter in the freedom of expression, that the law can hardly subject people to a capital punishment for words, unless it expressly declares what words they are^{*}.

Words do not constitute an overt act; they remain only in idea. When considered by themselves, they have generally no determinate signification; for this depends on the tone in which they are uttered. It often happens that, in repeating the same words, they have not the same meaning: this depends on their connection with other things; and sometimes more is signified by silence than by any expression whatever. Since there can be nothing so equivocal and ambiguous as all this, how is it possible to convert it into a crime of high-treason? Wherever this law is established, there is an end, not only of liberty, but even of its very shadow.

In the manifesto of the late Czarina against the family of the D'Olgoruckys[†], one of these princes is condemned to death for having uttered some indecent words concerning her person; another, for having maliciously interpreted her imperial laws, and for having offended her sacred person by disrespectful expressions.

Not that I pretend to diminish the just indignation of the public against those who presume to stain the glory of their sovereign: what I mean is, that, if despotic princes are willing to moderate their power, a milder chastisement would be more proper, on those occasions, than the charge of high-treason, a thing always terrible even to innocence itself[‡].

Overt acts do not happen every day; they are exposed to the eye of the public; and a false charge with regard to matters of fact may be easily detected. Words, carried into action, assume the nature of that action. Thus a man, who goes into a public market-place to incite the subject to revolt, incurs the guilt of high-treason, because the words are joined to the action, and partake of its nature. It is not the words that are punished, but an action in which words are employed. They do not become criminal, but when they are annexed to a criminal action. Every thing is confounded if words are construed into a capital crime, instead of considering them only as a mark of that crime.

The emperors, *Theodosius*, *Arcadius*, and *Honorius*, wrote thus to *Rufinus*, who was

præfectus prætorio: "Though a man should happen to speak amiss of our person, or government, we do not intend to punish him^S: if he has spoken through levity, we must despise him; if through folly, we must pity him; and, if he wrongs us, we must forgive him. Therefore, leaving things as they are, you are to inform us accordingly, that we may be able to judge of words by persons, and that we may duly consider whether we ought to punish or overlook them."

CHAP. XIII.

Of Writings.

IN writings there is something more permanent than in words; but, when they are no way preparative to high-treason, they cannot amount to that charge.

And yet *Augustus* and *Tiberius* subjected satirical writers to the same punishment as for having violated the law of majesty; *Augustus*[¶], because of some libels that had been written against persons of the first quality; *Tiberius*, because of those which he suspected to have been written against himself. Nothing was more fatal to Roman liberty. *Cremutius Cordus* was accused of having called *Cassius*, in his annals, the last of the Romans[¶].

Satirical writings are hardly known in despotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities, nor will, to write. In democracies they are not hindered, for the very same reason which causes them to be prohibited in monarchies: being generally levelled against men of power and authority, they flatter the malignancy of the people, who are the governing party. In monarchies they are forbidden; but rather as a subject of civil animadversion, than as a capital crime. They may amuse the general malevolence, please the malcontents, diminish the envy against public employments, give the people patience to suffer, and make them laugh at their sufferings.

But no government is so averse to satirical writings as the aristocratical. There the magistrates are petty sovereigns, but not great enough to despise affronts. If, in a monarchy, a satirical stroke is designed against the prince, he is placed on such an eminence that it does not reach him; but an aristocratical lord is pierced to the very heart. Hence the decemvirs, who formed an aristocracy, punished satirical writings with death^{*}.

CHAP. XIV.

Breach of Modesty in punishing Crimes.

THERE are rules of modesty observed by almost every nation in the world: now, it would be very absurd to infringe these rules in the punishment of crimes, the principal view of which ought always to be the establishment of order.

Was it the intent of those oriental nations who exposed women to elephants trained up for an abominable kind of punishment, was it, I say, their intent to establish one law by the breach of another?

By an ancient custom of the Romans it was not permitted to put girls to death till they were ripe for marriage. Tiberius found out an expedient of having them debauched by the executioner, before they were brought to the place of punishment[†]: that bloody and subtle tyrant destroyed the morals of the people, to preserve their customs.

When the magistrates of Japan caused women to be exposed naked in the market-places, and obliged them to go upon all four like beasts, modesty was shocked[‡]: but, when they wanted to compel a mother --- when they wanted to force a son --- I cannot proceed: even nature herself is struck with horror.

CHAP. XV.

Of the Infranchisement of Slaves, in Order to accuse their Master.

AUGUSTUS made a law, that the slaves of those who conspired against his person should be sold to the public, that they might depose against their master[§]. Nothing ought to be neglected which may contribute to the discovery of a heinous crime: it is natural, therefore, that, in a government where there are slaves, they should be allowed to inform; but they ought not to be admitted as witnesses.

Vindex discovered the conspiracy that had been formed in favour of Tarquin; but he was not admitted a witness against the children of Brutus. It was right to give liberty to a person who had rendered so great a service to his country; but it was not given him with a view of enabling him to render this service.

Hence the emperor Tacitus ordained, that slaves should not be admitted as witnesses against their masters, even in the case of high-treason^{||}: a law which was not inserted in Justinian's compilation.

CHAP. XVI.

Of Calumny, with Regard to the Crime of High-Treason.

TO do justice to the Cæsars, they were not the first devisers of the horrid laws which they enacted. It is Sylla^{*} that taught them that calumniators ought not to be punished: but the abuse was soon carried to such excess as to reward them[†].

CHAP. XVII.

Of the Revealing of Conspiracies.

IF thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, Let us go and serve other gods, thou shalt surely kill him, thou shalt stone him[‡]. This law of Deuteronomy cannot be a civil law among most of the nations known to us, because it would pave the way for all manner of wickedness.

No less severe is the law of several countries, which commands the subjects, on pain of death, to disclose conspiracies in which they are not even so much as concerned. When such a law is established in a monarchical government, it is very proper it should be under some restrictions.

It ought not to be applied, in its full severity, but to the strongest cases of high-treason. In those countries it is of the utmost importance not to confound the different degrees of this crime. In Japan, where the laws subvert every idea of human reason, the crime of concealment is applied even to the most ordinary cases.

A certain relation[§] makes mention of two young ladies, who were shut up for life in a box thick set with pointed nails; one for having had a love intrigue, and the other for not disclosing it.

CHAP. XVIII.

How dangerous it is, in Republics, to be too severe in punishing the Crime of High-Treason.

AS soon as a republic has compassed the destruction of those who wanted to subvert it, there should be an end of terrors, punishments, and even of rewards.

Great punishments, and consequently great changes, cannot take place without

investing some citizens with an exorbitant power. It is therefore more adviseable, in this case, to exceed in lenity, than in severity; to banish but few, rather than many; and to leave them their estates, instead of making a vast number of confiscations. Under pretence of avenging the republic's cause, the avengers would establish tyranny. The business is not to destroy the rebel, but the rebellion. They ought to return as quick as possible into the usual track of government, in which every one is protected by the laws, and no one injured.

The Greeks set no bounds to the vengeance they took of tyrants, or of those they suspected of tyranny: they put their children to death[¶]; nay, sometimes five of their nearest relations^{*}; and they proscribed an infinite number of families. By such means their republics suffered the most violent shocks: exiles, or the return of the exiled, were always epochas that indicated a change of the constitution.

The Romans had more sense. When Cassius was put to death for having aimed at tyranny, the question was proposed, whether his children should undergo the same fate: but they were preserved. "They, says Dionysius Halicarnasseus[¶], who wanted to change this law at the end of the Marsian and civil laws, and to exclude from public offices the children of those who had been proscribed by Sylla, are very much to blame."

We find, in the wars of Marius and Sylla, to what excess the Romans had gradually carried their barbarity. Such scenes of cruelty, it was hoped, would never be revived. But, under the triumvirs, they committed greater acts of oppression, though with some appearance of lenity; and it is provoking to see what sophisms they make use of to cover their inhumanity. Appian has given us^S the formula of the proscriptions. One would imagine they had no other aim than the good of the republic; with such calmness do they express themselves; such advantages do they point out to the state; such expediency do they shew in the means they adopt; such security do they promise to the opulent; such tranquillity to the poor; so apprehensive do they seem of endangering the lives of the citizens; so desirous of appeasing the soldiers; such felicity, in fine, do they presage to the commonwealth^{*}.

Rome was drenched in blood when Lepidus triumphed over Spain: yet, by an unparalleled absurdity, he ordered public rejoicings in that city, upon pain of proscription[†].

CHAP. XIX.

In what Manner the Use of Liberty is suspended in a Republic.

IN countries where liberty is most esteemed there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are, in England, what they call *bills of attainder*[§]. These are relative to those Athenian laws by which a private person was condemned^{*}, provided they were made by the unanimous suffrage of six thousand citizens. They are relative also to those laws which were made at Rome against private citizens, and were called *privileges*[†]. These were never passed but in the great meetings of the people. But, in what manner soever they were enacted, Cicero was for having them abolished, because the force of a law consists in its being made for the whole community[‡]. I must own, notwithstanding, that the practice of the freest nation that ever existed induces me to think that there are cases in which a veil should be drawn for a while over liberty, as it was customary to cover the statues of the gods.

CHAP. XX.

Of Laws favourable to the Liberty of the Subject in a Republic.

IN popular governments it often happens that accusations are carried on in public, and every man is allowed to accuse whomsoever he pleases. This rendered it necessary to establish proper laws, in order to protect the innocence of the subject. At Athens, if an accuser had not the fifth part of the votes on his side, he was obliged to pay a fine of a thousand drachms. Æschines, who accused Ctesiphon, was condemned to pay this fine[§]. At Rome a false accuser was branded with infamy^{*}, by marking the letter *K* on his forehead. Guards were also appointed to watch the accuser, in order to prevent his corrupting either the judges or the witnesses[†].

I have already taken notice of that Athenian and Roman law, by which the party accused was allowed to withdraw before judgement was pronounced.

CHAP. XXI.

Of the Cruelty of Laws, in Respect to Debtors, in a Republic.

GREAT is the superiority which one fellow-subject has already over another, by lending him money, which the latter borrows in order to spend, and, of course, has no longer in his possession. What must be the consequence if the laws of a republic make a farther addition to this servitude and subjection?

At Athens and Rome^{*} it was first permitted to sell such debtors as were insolvent. Solon

redressed this abuse at Athens[†], by ordaining that no man's body should answer for his civil debts. But the decemvirs[‡] did not reform the same custom at Rome; and, though they had Solon's regulation before their eyes, yet they did not choose to follow it. This is not the only passage of the law of the twelve tables in which the decemvirs shew their design of checking the spirit of democracy.

Often did those cruel laws against debtors throw the Roman republic into danger. A man, all covered with wounds, made his escape from his creditor's house, and appeared in the forum[§]. The people were moved with this spectacle, and other citizens, whom their creditors durst no longer confine, broke loose from their dungeons. They had promises made them, which were all broke. The people, upon this, having withdrawn to the Sacred Mount, obtained not an abrogation of those laws, but a magistrate to defend them. Thus they quitted a state of anarchy, but were soon in danger of falling under tyranny. Manlius, to render himself popular, was going to set those citizens at liberty, who by their inhuman creditors^{||} had been reduced to slavery. Manlius's designs were prevented; but without remedying the evil. Particular laws facilitated to debtors the means of paying[¶]; and, in the year of Rome 428, the consuls proposed a law^{*}, which deprived creditors of the power of confining their debtors in their own houses[†]. An usurer, by name *Papirius*, attempted to corrupt the chastity of a young man named *Publius*, whom he kept in irons. *Sextus's* crime gave to Rome its political liberty: that of *Papirius* gave it also the civil.

Such was the fate of this city, that new crimes confirmed the liberty which those of a more ancient date had procured it. *Appius's* attempt upon Virginia flung the people again into that horror against tyrants with which the misfortune of *Lucretia* had first inspired them. Thirty-seven years after^{||} the crime of the infamous *Papirius* an action of the like criminal nature[‡] was the cause of the people's retiring to the *Janiculum*[§], and of giving new vigour to the law made for the safety of debtors.

Since that time creditors were oftener prosecuted by debtors for having violated the laws against usury, than the latter were sued for refusing to pay them.

CHAP. XXII.

Of Things that strike at Liberty in Monarchies.

LIBERTY often has been weakened in monarchies by a thing of the least use in the world to the prince: this is the naming of commissioners to try a private person.

The prince himself derives so very little advantage from those commissioners, that it is not worth while to change, for their sake, the common course of things. He is morally

sure that he has more of the spirit of probity and justice than his commissioners, who think themselves sufficiently justified by his nomination and orders, by a vague interest of state, and even by their very apprehensions.

Upon the arraignment of a peer, under Henry VIII. it was customary to try him by a committee of the house of lords: by which means he put to death as many peers as he pleased.

CHAP. XXIII.

Of Spies in Monarchies.

SHOULD I be asked whether there is any necessity for spies in monarchies, my answer would be, that the usual practice of good princes is not to employ them. When a man obeys the laws, he has discharged his duty to his prince: he ought at least to have his own house for an asylum, and the rest of his conduct should be exempt from inquiry. The trade of a spy might perhaps be tolerable were it practised by honest men; but the necessary infamy of the person is sufficient to make us judge of the infamy of the thing. A prince ought to act towards his subjects with candour, frankness, and confidence. He that has so much disquiet, suspicion, and fear, is an actor embarrassed in playing his part. When he finds that the laws are generally observed and respected, he may judge himself safe. The behaviour of the public answers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how should they do otherwise than love him, since he is the source of almost all bounties and favours; punishments being generally charged to the account of the laws? He never shews himself to his people but with a serene countenance: they have even a share of his glory, and they are protected by his power. A proof of his being beloved is, that his subjects have a confidence in him: what the minister refuses, they imagine the prince would have granted. Even under public calamities they do not accuse his person: they are apt to complain of his being misinformed or beset by corrupt men: *Did the prince but know*, say the people: these words are a kind of invocation, and a proof of the confidence they have in his person.

CHAP. XXIV.

Of anonymous Letters.

THE Tartars are obliged to put their names to their arrows, that the arm may be known which shoots them. When Philip of Macedon was wounded at the siege of a certain

town, these words were found on the javelin: *After has given this mortal wound to Philip^{*}*. If they who accuse a person did it merely to serve the public, they would not carry their complaint to the prince, who may be easily prejudiced; but to the magistrates, who have rules that are formidable only to calumniators. But, if they are unwilling to leave the laws open between them and the accused, it is a presumption they have reason to be afraid of them; and the least punishment they ought to suffer is, not to be credited. No notice, therefore, should ever be taken of those letters, except in cases that admit not of the delays of the ordinary course of justice, and in which the prince's welfare is concerned. Then it may be imagined that the accuser has made an effort, which has untied his tongue. But, in other cases, one ought to say, with the emperor Constantius: "We cannot suspect a person who has wanted an accuser, whilst he did not want an enemy[†]."

CHAP. XXV.

Of the Manner of governing in Monarchies.

THE royal authority is a spring that ought to move with the greatest freedom and ease. The Chinese boast of one of their emperors, who governed, they say, like the heavens; that is, by his example.

There are some cases in which a sovereign ought to exert the full extent of his power, and others in which he should reduce it within narrower limits. The sublimity of administration consists in knowing the proper degree of power which should be exerted on different occasions.

The whole felicity of monarchies consists in the opinion which the subjects entertain of the lenity of the government. A weak minister is ever ready to remind us of our slavery. But, granting even that we are slaves, he should endeavour to conceal our misery from us. All he can say or write is, that the prince is uneasy, that he is surprised, and that he will redress all grievances. There is a certain ease in commanding: the prince ought only to encourage, and let the laws menace^{*}.

CHAP. XXVI.

That, in a Monarchy, the Prince ought to be of easy Access.

THE utility of this maxim will appear from the inconveniency attending the contrary practice. "The Czar Peter I. says the sieur Perrv[†]. has published a new edict. by which

he forbids any of his subjects to offer him a petition till after having presented it to two of his officers. In case of refusal of justice, they may present him a third; but upon pain of death if they are in the wrong. After this no one ever presumed to offer a petition to the Czar."

CHAP. XXVII.

Of the Manners of a Monarch.

THE manners of a prince contribute as much as the laws themselves to liberty: like these, he may transfer men into brutes, and brutes into men. If he prefers free and generous spirits, he will have subjects: if he likes base dastardly souls, he will have slaves. Would he know the great art of ruling, let him call honour and virtue to attend his person, and let him encourage personal merit. He may even sometimes cast an eye on talents and abilities. Let him not be afraid of those rivals who are called men of merit; he is their equal when once he loves them. Let him gain the hearts of his people, without subduing their spirits. Let him render himself popular: he ought to be pleased with the affections of the lowest of his subjects; for they too are men. The common people require so very little condescension, that it is fit they should be humoured; the infinite distance between the sovereign and them will surely prevent them from giving him any uneasiness. Let him be exorable to supplication, and resolute against demands. Let him be sensible, in fine, that his people have his refusals, while his courtiers enjoy his favours.

CHAP. XXVIII.

Of the Regard which Monarchs owe to their Subjects.

PRINCES ought to be extremely circumspect with regard to raillery. It pleases with moderation, because it is an introduction to familiarity; but a satirical raillery is less excusable in them than in the meanest of their subjects; for it is they alone that give a mortal wound.

Much less should they offer a public affront to any of their subjects: kings were instituted to pardon and to punish; but never to insult.

When they affront their subjects their treatment is more cruel than that of the Turk or the Muscovite. The insults of these are a humiliation, not a disgrace: but both must follow from the insolent behaviour of monarchs.

Such is the prejudice of the eastern nations, that they look upon an affront from the prince as the effect of paternal goodness; and such, on the contrary, is our way of thinking, that, besides the cruel vexation of being affronted, we despair of ever being able to wipe off the disgrace.

Princes ought to be overjoyed to have subjects to whom honour is dearer than life; an incitement to fidelity as well as to courage.

They should remember the misfortunes that have happened to sovereigns for insulting their subjects, the revenge of *Chærea*, of the eunuch *Narses*, of count *Julian*, and, in fine, of the duchess of *Montpensier*, who, being enraged against Henry III. for having published some of her private failings, tormented him during her whole life.

CHAP. XXIX.

Of the civil Laws proper for mixing some Portion of Liberty in a despotic Government.

THOUGH despotic governments are of their own nature every where the same, yet, from circumstances, from a religious opinion, from prejudice, from received examples, from a particular turn of mind, from manners or morals, it is possible they may admit of a considerable difference.

It is useful that some particular notions should be established in those governments: thus, in China, the prince is considered as the father of his people; and, at the commencement of the empire of the Arabs, the prince was their preacher^{*}.

It is proper there should be some sacred book to serve for a rule; as the Koran among the Arabs, the books of Zoroaster among the Persians, the Vedam among the Indians, and the Classic Books among the Chinese. The religious code supplies the civil, and fixes the extent of arbitrary sway.

It is not at all amiss that, in dubious cases, the judges should consult the ministers of religion[†]: thus, in Turkey, the Cadis consult the Mollachs. But, if it is a capital crime, it may be proper for the particular judge, if such there be, to take the governor's advice, to the end that the civil and ecclesiastic power may be tempered also by the political authority.

CHAP. XXX.

The same Subject continued.

NOTHING but the very excess and rage of despotic power ordained that the father's disgrace should drag after it that of his wife and children: they are wretched enough already, without being criminals. Besides, the prince ought to leave suppliants or mediators between himself and the accused, to assuage his wrath, or to inform his justice.

It is an excellent custom of the Maldavians[‡], that, when a lord is disgraced, he goes every day to pay his court to the king, till he is taken again into favour: his presence disarms the prince's indignation.

In some despotic governments[¶] they have a notion that it is trespassing against the respect due to their prince to speak to him in favour of a person in disgrace. These princes seem to use all their endeavours to deprive themselves of the virtue of clemency.

Arcadius and *Honorius*, by a law[§] on which we have already descanted^{||}, positively declare that they will shew no favour to those who shall presume to petition them in behalf of the guilty^{*}. This was a very bad law indeed, since it is bad even under a despotic government.

The custom of Persia, which permits every man that pleases to leave the kingdom is excellent; and, though the contrary practice derives its origin from despotic power, which has ever considered the subjects as slaves[†], and those who quit the country as fugitives, yet the Persian practice is useful even to a despotic government, because the apprehension of people's withdrawing for debt restrains or moderates the oppressions of bashaws and extortioners.

Endnotes

[*] Politics, book 2.

[†] Tarquinius Priscus. See Dionys. Halicarn. book 4.

[‡] So early as the year 560.

[||] Aristot. Polit. book 2, chap. 12. He gave his laws at Thurium, in the 84th Olympiad.

[§] See Aristid. Orat. in Minervam.

[¶] Dionys. Halicarn. on the judgement of Coriolanus, book 7.

[*] Minervæ calculus.

[†] St. Lewis made such severe laws against those who swore, that the pope thought himself obliged to admonish him for it. This prince moderated his zeal, and softened his laws. — See his Ordinances.

[‡] Father Bougerel.

[*] *Nicetas*, Life of Manuel Comnenus, book 4.

[†] Ibid.

[*] History of the emperor Maurice, by *Theophylactus*, chap. 11.

[*] Secret History.

[*] Father Du Halde, tom. 1, p. 43.

[†] Father Parennin, in the Edifying Letters.

[‡] Book 29.

[§] Gratian, Valentinian, and Theodosius. This is the second in the Code *de crimin. sacril.*

[||] *Sacrilegii instar est dubitare an is dignus sit quem elegerit imperator.* Ibid. This law served as a model to that of Roger in the constitution of Naples, tit. 4.

[¶] The 5th law *ad leg. Jul. Maj.*

[*] Arcadius and Honorius.

[†] Memoirs of Montresor, tom. 1.

[‡] *Nam ipsi pars corporis nostri sunt.* The same law of the Code *ad leg. Jul. Maj.*

[§] It is the 9th of the Code Theodos. *de falsa moneta.*

[*] *Etiam ex aliis causis majestatis crimina cessant meo sæculo.* Leg. 1. eod. *ad leg. Jul. Maj.*

[†] *Alienam sectæ meæ sollicitudinem concepisti.* Leg. 2. eod. *ad leg. Jul. Maj.*

[‡] See the 4th law in ff. *ad leg. Jul. Maj.*

[§] See the 5th law, *ibid.*

[||] *Ibid.*

[*] *Aliudve quid simile admiserint.* Leg. 6. ff. ad leg. Jul. Maj.

[†] In the last law in ff. *ad leg. Jul. de adulteris.*

[‡] See Burnet's History of the Reformation.

[§] *Plutarch's* Life of Dionysius.

[||] The thought must be joined with some sort of action.

[*] *Si non tale sit delictum in quod vel scriptura legis descendit vel ad exemplum legis vindicandum est,* says Modestinus, in the seventh law, in ff. *ad leg. Jul. Maj.*

[†] In 1740.

[‡] *Nec lubricum linguæ ad pœnam facile trabendum est.* Modestin. in the 7th law, in ff. *ad leg. Jul. Maj.*

[§] *Si id ex levitate processerit, contemnendum est; si ex insania, miseratione dignissimum; si ab injuria, remittendum.* Leg. unica Cod. *Si quis imperat. maled.*

[||] *Tacitus's* Annals, book 1. This continued under the following reigns. See the first law in the Code *de famosis libellis.*

[¶] *Tacit.* Annal. book 4.

[*] The law of the twelve tables.

[†] *Suetonius,* in *Tiberio.*

[‡] Collection of voyages that contributed to the establishment of the East-India Company, tom. 5, part 2.

[§] *Dio,* in *Xiphilinus.*

[||] *Flavius Vopiscus,* in his life.

[*] *Sylla* made a law of majesty, which is mentioned in *Cicero's* orations, *pro Cluentio,* Art. 3. *in Pisonem,* Art. 21. 2d against *Verres,* Art. 5. *Familiar Epistles,* book 3, letter 11. *Cæsar* and *Augustus* inserted them in the Julian laws; others made additions to them.

[†] *Et quo quis distinctior accusator, eo magis honores assequatur, ac veluti sacrosanctus erat.* Tacit.

[‡] Deuteron. chap. xiii. v. 6.

[§] Collection of voyages that contributed to the establishment of the East-India Company, p. 423, book 5, part 2d.

[||] Dionys. Halicarn. Roman Antiquities, book 8.

[*] *Tyranno occiso, quinque ejus proximus cognatione magistratus necato.* Cic. de invent. lib. 2.

[¶] Book 8, p. 547.

[§] Of the civil wars, book 4.

[*] Quod felix faustumque fit.

[†] Sacris et epulis dent bunc diem: qui secus faxit inter proscriptos esto.

[§] It is not sufficient, in the courts of justice of that kingdom, that the evidence be of such a nature as to satisfy the judges; there must be a legal proof; and the law requires the deposition of two witnesses against the accused. No other proof will do. Now, if a person, who is presumed guilty of high-treason, should contrive to secrete the witnesses, so as to render it impossible for him to be legally condemned, the government then may bring a bill of attainder against him; that is, they may enact a particular law for that single fact. They proceed then in the same manner as in all other bills brought into parliament: it must pass the two houses, and have the king's consent; otherwise it is not a bill, that is, a sentence of the legislature. The person accused may plead against the bill by counsel, and the members of the house may speak in defence of the bill.

[*] Legem de singulari aliquo ne rogato, nisi sex millibus ita visum. *Ex Andocide de mysteriis.* This is what they called ostracism.

[†] De privis hominibus latae. *Cicero* de leg. lib. 3.

[‡] Scitum est juslum in omnes. *Cicero*, *ibid.*

[§] See *Philostratus*, book 1, Lives of the Sophists, life of Æschines. See likewise *Plutarch* and *Phocius*.

[*] By the Remmian law.

[†] Plutarch, in a treatise entitled, *How a person may reap advantage from his enemies*.

[*] A great many sold their children to pay their debts. *Plutarch*, life of Solon.

[†] *Plutarch*, life of Solon.

[‡] It appears, from history, that this custom was established among the Romans before the law of the twelve tables. *Livy*, 1 dec. book 2.

[§] *Dionys. Halicarn.* Rom. An. book 6.

[||] *Plutarch*, life of Furius Camillus.

[¶] See what follows, in the 24th chapter of the book of laws, as relative to the use of money.

[*] One hundred and twenty years after the law of the twelve tables, *eo anno plebi Romanæ velut aliud initium libertatis factum est, quod necti desierunt*. *Livy*, lib. 8.

[†] *Bona debitoris, non corpus obnoxium esset*. *Ibid*.

[||] The year of Rome 465.

[‡] That of *Platius*, who made an attempt upon the body of *Veturius Valerius Maximus*, book 6, art. 9. These two events ought not to be confounded; they are neither the same persons nor the same times.

[§] See a fragment of *Dronys. Halicarn.* in the extract of virtues and vices; *Livy's* epitome, book 2; and *Freinshemius*, book 2.

[*] *Plutarch's Morals, Comparison of some Roman and Greek Histories*, tom. 2, p. 487.

[†] Leg. VI. Cod. Theod. *de famosis libellis*.

[*] *Nerva*, says *Tacitus*, increased the ease of government.

[‡] *State of Russia*, p. 173. Paris edition, 1717.

[*] The caliphs.

[†] *History of the Tartars*, 3d part, p. 277, in the remarks.

[‡] See *Francis Pirard*.

[¶] As at present in Persia, according to sir John Chardin: this custom is very ancient. They put Cavades, says Procopius, into the castle of oblivion. There is a law which forbids any one to speak of those who are shut up, or even to mention their name.

[§] The fifth law in the cod. *ad leg. Jul. Maj.*

[||] In the 8th chapter of this book.

[*] Frederic copied this law in the Constitutions of Naples, book 1.

[†] In monarchies there is generally a law which forbids those who are invested with public employments to go out of the kingdom without the prince's leave. This law ought to be established also in republics: but, in those that have particular institutions, the prohibition ought to be general, in order to prevent the introduction of foreign manners.

BOOK XIII. OF THE RELATION WHICH THE LEVYING OF TAXES AND THE GREATNESS OF THE PUBLIC REVENUES HAVE TO LIBERTY.

CHAP. I.

Of the public Revenues.

THE *public revenues* are a portion that each subject gives of his property, in order to secure or enjoy the remainder.

To fix these revenues in a proper manner, regard should be had both to the necessities of the state and to those of the subject. The real wants of the people ought never to give way to the imaginary wants of the state.

Imaginary wants are those which flow from the passions and the weakness of the governors, from the vain conceit of some extraordinary project, from the inordinate desire of glory, and from a certain impotence of mind incapable of withstanding the impulse of fancy. Often have ministers of a restless disposition imagined that the wants of their own mean and ignoble souls were those of the state.

Nothing requires more wisdom and prudence than the regulation of that portion of which the subject is deprived, and that which he is suffered to retain.

The public revenues should not be measured by the people's abilities to give, but by what they ought to give; and, if they are measured by their abilities to give, it should be considered what they are able to give for a constancy.

CHAP. II.

That it is bad Reasoning to say that the Greatness of Taxes is good in its own Nature.

THERE have been instances, in particular monarchies, of petty states, exempt from taxes, that have been as miserable as the circumjacent places which groaned under the weight of exactions. The chief reason of this is, that the petty state can hardly have any such thing as industry, arts, or manufactures, because of its being subject to a thousand restraints from the great state by which it is environed. The great state is blessed with industry, manufactures, and arts; and establishes laws by which those several advantages are procured. The petty state becomes, therefore, necessarily poor, let it pay never so few taxes.

And yet some have concluded, from the poverty of those petty states, that, in order to render the people industrious, they should be loaded with taxes. But it would be a juster inference, that they ought to pay no taxes at all. None live here but wretches who retire from the neighbouring parts to avoid working; wretches, who, disheartened by labour, make their whole felicity consist in idleness.

The effect of wealth in a country is to inspire every heart with ambition: that of poverty is to give birth to despair. The former is excited by labour; the latter is soothed by indolence.

Nature is just to all mankind, and repays them for their industry: she renders them industrious by annexing rewards in proportion to their labour. But, if an arbitrary prince should attempt to deprive people of nature's bounty, they would fall into a disrelish of industry; and then indolence and inaction must be their only happiness.

CHAP. III.

Of Taxes in Countries where Part of the People are Villains or Bondmen.

THE state of villainage is sometimes established after a conquest. In that case the bondman or villain that tills the land ought to have a kind of partnership with his master. Nothing but a communication of loss or profit can reconcile those who are doomed to labour to such as are blessed with a state of affluence.

CHAP. IV.

Of a Republic in the like Case.

WHEN a republic has reduced a nation to the drudgery of cultivating her lands, she ought never to suffer the free subject to have a power of increasing the tribute of the bondman. This was not permitted at Sparta. Those brave people thought the Helotes^{*} would be more industrious in cultivating their lands, upon knowing that their servitude was not to increase: they imagined likewise that the masters would be better citizens, when they desired no more than what they were accustomed to enjoy.

CHAP. V.

Of a Monarchy in the like Case.

WHEN the nobles of a monarchical state cause the lands to be cultivated for their own use by a conquered people, they ought never to have a power of increasing the service or tribute^{*}. Besides, it is right the prince should be satisfied with his own demesne and the military service. But, if he wants to raise taxes on the vassals of his nobility, the lords of the several districts ought to be answerable for the tax[†], and be obliged to pay it for the vassals, by whom they may be afterwards reimbursed. If this rule be not followed, the lord and the collectors of the public taxes will harrass the poor vassal by turns, till he perishes with misery, or flies into the woods.

CHAP. VI.

Of a despotic Government in the like Case.

THE foregoing rule is still more indispensably necessary in a despotic government. The lord, who is every moment liable to be stripped of his lands and his vassals, is not so eager to preserve them.

When Peter I. thought proper to follow the custom of Germany, and to demand his taxes in money, he made a very prudent regulation, which is still followed in Russia. The gentleman levies the tax on the peasant, and pays it to the Czar. If the number of peasants diminishes, he pays all the same; if it increases, he pays no more; so that it is his interest not to worry or oppress his vassals.

CHAP. VII.

Of Taxes in Countries where Villainage is not established.

WHEN the inhabitants of a state are all free subjects, and each man enjoys his property with as much right as the prince his sovereignty, taxes may then be laid either on persons, on lands, on merchandizes, on two of these, or on all three together.

In the taxing of persons, it would be an unjust proportion to conform exactly to that of property. At Athens[‡] the people were divided into four classes. Those who drew five hundred measures of liquid or dry fruit from their estates paid a talent^{*} to the public; those who drew three hundred measures paid half a talent; those who had two hundred measures paid ten minæ; those of the fourth class paid nothing at all. The tax was fair, though it was not proportionable: if it did not follow the measure of peoples property, it followed that of their wants. It was judged that every man had an equal share of what was *necessary for nature*; that whatsoever was *necessary for nature* ought not to be taxed; that to this succeeded the useful, which ought to be taxed, but less than the superfluous; and that the largeness of the taxes on what was superfluous prevented superfluity.

In the taxing of lands, it is customary to make lifts or registers, in which the different classes of estates are ranged. But it is very difficult to know these differences, and still more so to find people that are not interested in mistaking them. Here therefore are two sorts of injustice, that of the man and that of the thing. But if in general the tax be not exorbitant, and the people continue to have plenty of necessaries, these particular acts of injustice will do no harm. On the contrary, if the people are permitted to enjoy only just what is necessary for subsistence, the least disproportion will be of the greatest consequence.

If some subjects do not pay enough, the mischief is not so great; their convenience and ease turn always to the public advantage: if some private people pay too much, their ruin redounds to the public detriment. If the government proportions its fortune to that of individuals, the ease and conveniency of the latter will soon make its fortune rise. The whole depends upon a critical moment: shall the state begin with impoverishing the subjects to enrich itself, or had it better wait to be enriched by its subjects? Is it more adviseable for it to have the former or the latter advantage? Which shall it chuse; to begin, or to end, with opulence?

The duties felt least by the people are those on merchandize, because they are not demanded of them in form. They may be so prudently managed, that the people themselves shall hardly know they pay them. For this purpose it is of the utmost consequence that the person who sells the merchandize should pay the duty. He is very sensible that he does not pay it for himself; and the consumer, who pays it in the main,

confounds it with the price. Some authors have observed that Nero had abolished the duty of the five and twentieth part arising from the sale of slaves^{*}; and yet he had only ordained that it should be paid by the seller instead of the purchaser; this regulation, which left the impost intire, seemed nevertheless to suppress it.

There are two states in Europe where the imposts are very heavy upon liquors; in one the brewer alone pays the duty, in the other it is levied indiscriminately upon all the consumers; in the first no body feels the rigor of the impost, in the second it is looked upon as a grievance. In the former the subject is sensible only of the liberty he has of not paying, in the latter he feels only the necessity that compels him to pay.

Farther, the obliging the consumers to pay requires a perpetual rummaging and searching into their houses. Now nothing is more contrary than this to liberty; and those who establish these sorts of duties have not surely been so happy as to hit upon the best method of collecting the revenue.

CHAP. VIII.

In what Manner the Deception is preserved.

IN order to make the purchaser confound the price of the commodity with the impost, there must be some proportion between the impost and the value of the commodity; for which reason there ought not to be an excessive duty upon merchandizes of little value. There are countries in which the duty exceeds seventeen or eighteen times the value of the commodity. In this case the prince removes the disguise: his subjects plainly see they are dealt with in an unreasonable manner; which renders them most exquisitely sensible of their servile condition.

Besides, the prince, to be able to levy a duty so disproportioned to the value of the commodity, must be himself the vender, and the people must not have it in their power to purchase it elsewhere: a practice subject to a thousand inconveniencies.

Smuggling being in this case extremely lucrative, the natural and most reasonable penalty, namely, the confiscation of the merchandize, becomes incapable of putting a stop to it; especially as this very merchandize is intrinsically of an inconsiderable value. Recourse must therefore be had to extravagant punishments, such as those inflicted for capital crimes. All proportion then of penalties is at an end. Persons, that cannot really be considered as vicious, are punished like the most infamous criminals; which, of all things in the world, is the most contrary to the spirit of a moderate government.

Again, in proportion as people are tempted to cheat the farmer of the revenues, the more the latter is enriched, and the former impoverished. To put a stop to smuggling,

the farmer must be invested with extraordinary means of oppressing, and then the country is ruined.

CHAP. IX.

Of a bad kind of Impost.

WE shall here, by the way, take notice of an impost laid in particular countries on the different articles of civil contracts. As these are things subject to very nice disquisitions, a vast deal of knowledge is necessary to make any tolerable defence against the farmer of the revenues, who interprets, in that case, the regulations of the prince, and exercises an arbitrary power over people's fortunes. Experience has demonstrated that a duty on the paper, on which the deeds are drawn, would be of far greater service.

CHAP. X.

That the Greatness of Taxes depends on the Nature of the Government.

TAXES ought to be very light in despotic governments; otherwise who would be at the trouble of tilling the land? Besides, how is it possible to pay heavy duties in a government that makes no manner of return to the different contributions of the subject?

The exorbitant power of the prince, and the extreme depression of the people, require that there should not be even a possibility of the least mistake between them. The taxes ought to be so easy to collect, and so clearly settled, as to leave no opportunity for the collectors to increase or diminish them. A portion of the fruits of the earth, a capitation, a duty of so much per cent. on merchandizes, are the only taxes suitable to that government.

Merchants in despotic countries ought to have a personal safeguard, to which all due respect should be paid. Without this they would be too weak to dispute with the custom-house officers.

CHAP. XI.

Of Confiscations.

WITH respect to confiscations, there is one thing very particular, that, contrary to the general custom, they are more severe in Europe than in Asia. In Europe not only the merchandizes, but even sometimes the ships and carriages are confiscated; which is never practised in Asia. This is because in Europe the merchant can have recourse to magistrates, who are able to shelter him from oppression; in Asia the magistrates themselves would be the greatest oppressors. What remedy could a merchant have against a bashaw, who was determined to confiscate his goods?

The prince therefore checks his own power, finding himself under a necessity of acting with some kind of lenity. In Turkey they raise only a single duty for the importation of goods, and afterwards the whole country is open to the merchant. Smuggling is not attended with confiscation or increase of duty. In China^{*} they never look into the baggage of those who are not merchants. Defrauding the customs in the territory of the Mogul is not punished with confiscation, but with doubling the duty. The Princes of[†] Tartary, who reside in towns, impose scarce any duty at all on the goods that pass through their country. In Japan, it is true, to cheat the customs is a capital crime; but this is because they have particular reasons for prohibiting all communication with foreigners; hence the fraud[‡] is rather a contravention of the laws made for the security of the government than of those of commerce.

CHAP. XII.

Relation between the Weight of Taxes and Liberty.

IT is a general rule that taxes may be heavier in proportion to the liberty of the subject, and that there is a necessity for reducing them in proportion to the increase of slavery. This has always been and always will be the case. It is a rule derived from nature that never varies. We find it in all parts, in England, in Holland, and in every state where liberty gradually declines, till we come to Turkey. Switzerland seems to be an exception to this rule, because they pay no taxes; but the particular reason for that exemption is well known, and even confirms what I have advanced. In those barren mountains provisions are so dear, and the country is so populous, that a Swiss pays four times more to nature, than a Turk does to the sultan.

A conquering people, such as were formerly the Athenians and the Romans, may rid themselves of all taxes, as they reign over vanquished nations. Then, indeed, they do not pay in proportion to their liberty, because in this respect they are no longer a people, but a monarch.

But the general rule still holds good. In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In despotic countries^{*} there is an equivalent for liberty, which is the lightness of the taxes.

In some monarchies in Europe there are[†] particular provinces, which, from the very nature of their civil government, are in a more flourishing condition than the rest. It is pretended that these provinces are not sufficiently taxed, because, through the goodness of their government, they are able to be taxed higher: hence the ministers seem constantly to aim at depriving them of this very government, from whence a diffusive blessing is derived, which redounds even to the prince's advantage.

CHAP. XIII.

In what Government Taxes are capable of Increase.

TAXES may be increased in most republics, because the citizen, who thinks he is paying himself, cheerfully submits to them, and moreover is generally able to bear their weight from the nature of the government.

In a monarchy taxes may be increased, because the moderation of the government is capable of procuring opulence: it is a recompence, as it were, granted to the prince for the respect he shews to the laws. In despotic governments they cannot be increased, because there can be no increase of the extremity of slavery.

CHAP. XIV.

That the Nature of the Taxes is relative to the Government.

A CAPITATION is more natural to slavery; a duty on merchandizes is more natural to liberty, by reason it has not so direct a relation to the person.

It is natural in a despotic government for the prince not to give money to his soldiers, or to those belonging to his court, but to distribute lands amongst them, and, of course, that there should be very few taxes. But, if the prince gives money, the most natural tax he can raise is a capitation, which can never be considerable. For, as it is impossible to make different classes of the contributors, because of the abuses that might arise from thence, considering the injustice and violence of the government, they are under an absolute necessity of regulating themselves by the rate of what even the poorest and most wretched are able to contribute.

The natural tax of moderate governments is the duty laid on merchandizes. As this is really paid by the consumer, though advanced by the merchant, it is a loan which the latter has already made to the former. Hence the merchant must be considered on the one side as the general debtor of the state, and on the other as the creditor of every individual. He advances to the state the duty which the consumer will some time or other refund; and he has paid for the consumer the duty which he has advanced for the merchandize. It is therefore obvious, that, in proportion to the moderation of the government, to the prevalence of the spirit of liberty, and to the security of private fortunes, a merchant has it in his power to advance money to the state, and to pay considerable duties for individuals. In England a merchant lends really to the government fifty or sixty pounds sterling for every tun of wine he imports. Where is the merchant that would dare do any such thing in a country like Turkey? And, were he so presumptuous, how could he do it with a crazy or shattered fortune?

CHAP. XV.

Abuse of Liberty.

TO these great advantages of liberty it is owing that liberty itself has been abused. Because a moderate government has been productive of admirable effects, this moderation has been laid aside; because great taxes have been raised, they wanted to carry them to excess: and, ungrateful to the hand of liberty of whom they received this present, they addressed themselves to slavery who never grants the least favour.

Liberty produces excessive taxes; the effect of excessive taxes is slavery; and slavery produces a diminution of tribute.

Most of the edicts of the eastern monarchs are to exempt every year some province of their empire from paying tribute^{*}. The manifestations of their will are favours. But in Europe the edicts of princes are disagreeable even before they are seen, because they always make mention of their own wants, but not a word of ours.

From an unpardonable indolence in the ministers of those countries, owing to the nature of the government, and frequently to the climate, the people derive this advantage, that they are not incessantly plagued with new demands. The public expence does not increase, because the ministers do not form new projects; and, if some by chance are formed, they are such as are soon executed. The governors of the state do not perpetually torment the people; for they do not perpetually torment themselves. But it is impossible there should be any fixed rule in our finances, since we always know that we shall have something or other to execute, without ever knowing what it is.

It is no longer customary with us to give the appellation of a great minister to a wise dispenser of the public revenues, but to a person of dexterity and cunning, who is clever at finding out what we call the ways and means.

CHAP. XVI.

Of the Conquests of the Mahometans.

IT was this excess of taxes^{*} that occasioned the prodigious facility with which the Mahometans carried on their conquests. Instead of a continual series of extortions, devised by the subtle avarice of the Greek emperors, the people were subjected to a simple tribute, which was paid and collected with ease. Thus they were far happier in obeying a barbarous nation than a corrupt government, in which they suffered every inconvenience of lost liberty with all the horror of present slavery.

CHAP. XVII.

Of the Augmentation of Troops.

A NEW distemper has spread itself over Europe, infecting our princes, and inducing them to keep up an exorbitant number of troops. It has its redoublings, and of necessity becomes contagious. For, as soon as one prince augments his forces, the rest of course do the same; so that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot as if his people were in danger of being exterminated; and they give the name of peace^{*} to this general effort of all against all. Thus is Europe ruined to such a degree, that, were private people to be in the same situation as the three most opulent powers of this part of the globe, they would not have necessary subsistence. We are poor with the riches and commerce of the whole world; and soon, by thus augmenting our troops, we shall be all soldiers, and be reduced to the very same situation as the Tartars[†].

Great princes, not satisfied with hiring or buying troops of petty states, make it their business on all sides to pay subsidies for alliances, that is, generally to throw away their money.

The consequence of such a situation is the perpetual augmentation of taxes; and the mischief, which prevents all future remedy, is, that they reckon no more upon their revenues, but in waging war against their whole capital. It is no unusual thing to see governments mortgage their funds even in time of peace, and to employ what they call

extraordinary means to ruin themselves; means so extraordinary indeed, that such are hardly thought on by the most extravagant young spendthrift.

CHAP. XVIII.

Of an Exemption from Taxes.

THE maxim of the great eastern empires of exempting such provinces, as have very much suffered, from taxes, ought to be extended to monarchical states. There are some indeed where this practice is established; yet the country is more oppressed than if no such rule took place; because, as the prince levies still neither more nor less, the state becomes bound for the whole. In order to ease a village that pays badly, they load another that pays better; the former is not relieved, and the latter is ruined. The people grow desperate between the necessity of paying, for fear of exactions, and the danger of paying, for fear of new burdens.

A well-regulated government ought to set aside, for the first article of its expence, a determinate sum to answer contingent cases. It is with the public as with individuals, who are ruined when they live up exactly to their income.

With regard to an obligation for the whole, amongst the inhabitants of the same village, some pretend^{*}, that it is but reasonable, because there is a possibility of a fraudulent combination on their side: but was it ever heard that upon mere supposition we are to establish a thing in itself unjust and ruinous to the state?

CHAP. XIX.

Which is most suitable to the Prince and to the People, the farming the revenues, or managing them by commission?

THE managing of the revenues by commission is like the conduct of a good father of a family, who collects his own rents himself with œconomy and order.

By this management of the revenues the prince is at liberty to press or retard the levy of the taxes, either according to his own wants or to those of his people. By this he saves to the state the immense profits of the farmers, who impoverish it a thousand ways. By this he prevents the people from being mortified with the sight of sudden fortunes. By this the public money passes through few hands, goes directly to the treasury, and consequently makes a quicker return to the people. By this the prince

avoids an infinite number of bad laws, extorted from him by the importunate avarice of the farmers, who pretend to offer a present advantage for regulations pernicious to posterity.

As the moneyed man is always the most powerful, the farmer renders himself arbitrary even over the prince himself: he is not the legislator, but he obliges the legislator to give laws.

I acknowledge that it is sometimes of use to farm out a new duty; for there is an art in preventing frauds which motives of interest suggest to the farmers, but commissioners never think on. Now, the manner of levying it being once established by the farmer, it may afterwards be safely entrusted to a commission. In England, the management of the excise and of the post-office was borrowed from that of the farmers of the revenue.

In republics, the revenues of the state are generally managed by commission. The contrary practice was a great defect in the Roman government[†]. In despotic governments, the people are infinitely happier where this management is established; witness Persia and China[‡]. The unhappiest of all are those where the prince farms out his sea-ports and trading cities. The history of monarchies abounds with mischiefs done by the farmers of the revenue.

Incensed at the oppressive extortions of the publicans, Nero formed a magnanimous but impracticable scheme of abolishing all kinds of imposts. He did not think of managing the revenues by commissioners, but he made four edicts: that the laws, enacted against publicans, which had hitherto been kept secret, should be promulged; that they should exact no claims for above a year backward; that there should be a prætor established to determine their pretensions without any formality; and that the merchants should pay no duty for their vessels. These were the halcyon days of that emperor.

CHAP. XX.

Of the Farmers of the Revenues.

WHEN the lucrative profession of a farmer of the revenue becomes likewise a post of honour, the state is ruined. It may do well enough in despotic governments, where this employment is oftentimes exercised by the governors themselves. But it is by no means proper in a republic; since a custom of the like nature destroyed that of Rome. Nor is it better in monarchies; nothing being more opposite to the spirit of this government. All the other orders of the state are dissatisfied; honour loses its whole value; the gradual and natural means of distinction are no longer respected; and the very principle of the

government is subverted.

It is true, indeed, that scandalous fortunes were raised in former times; but this was one of the calamities of the fifty years war. These riches were then considered as ridiculous; now we admire them.

Every profession has its particular lot: that of the tax-gatherers is wealth; and wealth is its own reward. Glory and honour fall to the share of that nobility who are sensible of no other happiness. Respect and esteem are for those ministers and magistrates whose whole life is a continued series of labour, and who watch day and night over the welfare of the empire.

Endnotes

[*] Plutarch.

[*] This is what induced Charlemagne to make his excellent institution upon this head. See the 5th book of the *Capitularies*, art. 303.

[†] This is the practice in Germany.

[‡] Pollux, book 8, chap. 10, art. 130.

[*] Or 60 minæ.

[*] *Vectigal quoque quintae et vicesimae venalium mancipiorum remissum specie magis quam vi; quia cum venditor pendere juberetur, in partem pretii emptoribus accrescebat.* Tacit. Annal. lib. 13.

[*] Father du Halde, tom. ii. p. 37.

[†] History of the Tartars, part 3d. p. 290.

[‡] Being willing to trade with foreigners without having any communication with them, they have pitched upon two nations for that purpose, the Dutch for the commerce of Europe, and the Chinese for that of Asia; they confine the factors and sailors in a kind of prison, and lay such a restraint upon them as tires their patience.

[*] In Russia the taxes are but small; they have been increased since the despotic power of the prince is exercised with more moderation. See the History of the Tartars, 2d part.

[‡] The *pays d'états*, where the states of the province assemble to deliberate on public affairs.

[*] This is the practice of the emperors of China.

[*] See in history the greatness, the iddity and even the solly, of those taxes. Anastasius invented a tax for breathing, *ut quisque pro haustu aeris penderet*.

[*] True it is that this state of effort is the chief support of the balance, because it checks the great powers.

[‡] All that is wanting for this is, to improve the new invention of the militia established in most parts of Europe, and carry it to the same excess as they do the regular troops.

[*] See *A Treatise on the Roman Finances*, chap. ii. printed at Paris by Briasson, 1740.

[‡] Cæsar was obliged to remove the publicans from the province of Asia, and to establish there another kind of regulation, as we learn from Dio: and Tacitus informs us that Macedonia and Achaia, provinces left by Augustus to the people of Rome, and consequently governed pursuant to the ancient plan, obtained to be of the number of those which the emperor governed by his officers.

[‡] See sir John Chardin's travels through Persia, tom. vi.

BOOK XIV. OF LAWS AS RELATIVE TO THE NATURE OF THE CLIMATE.

CHAP. I.

General Idea.

IF it be true, that the temper of the mind and the passions of the heart are extremely different in different climates, the laws ought to be relative both to the variety of those passions, and to the variety of those tempers.

CHAP. II.

Of the Difference of Men in different Climates.

A cold air^{*} constringes the extremities of the external fibres of the body; this increases their elasticity, and favours the return of the blood from the extreme parts to the heart.

It contracts[†] those very fibres; consequently, it increases also their force. On the contrary, a warm air relaxes and lengthens the extremes of the fibres; of course, it diminishes their force and elasticity.

People are therefore more vigorous in cold climates. Here, the action of the heart and the reaction of the extremities of the fibres are better performed, the temperature of the humours is greater, the blood moves freer towards the heart, and, reciprocally, the heart has more power. This superiority of strength must produce various effects; for instance, a greater boldness, that is, more courage; a greater sense of superiority, that is, less desire of revenge; a greater opinion of security, that is, more frankness, less suspicion, policy, and cunning. In short, this must be productive of very different tempers. Put a man into a close warm place, and, for the reasons above given, he will feel a great faintness. If, under this circumstance, you propose a bold enterprize to him, I believe you will find him very little disposed towards it: his present weakness will throw him into a despondency; he will be afraid of every thing, being in a state of total incapacity. The inhabitants of warm countries are, like old men, timorous; the people in cold countries are, like young men, brave. If we reflect on the late[‡] wars, (which are more recent in our memory, and in which we can better distinguish some particular effects, that escape us at a greater distance of time,) we shall find that the northern people, transplanted into southern regions[‡], did not perform such exploits as their countrymen, who, fighting in their own climate, possessed their full vigour and courage.

This strength of the fibres, in northern nations, is the cause that the coarser juices are extracted from their aliments. From hence two things result: one, that the parts of the chyle, or lymph, are more proper, by reason of their large surface, to be applied to, and to nourish, the fibres: the other, that they are less proper, from their coarseness, to give a certain subtlety to the nervous juice. Those people have, therefore, large bodies and but little vivacity.

The nerves, that terminate from all parts in the cutis, form each a nervous bundle; generally speaking, the whole nerve is not moved, but a very minute part. In warm climates, where the cutis is relaxed, the ends of the nerves are expanded, and laid open to the weakest action of the smallest objects. In cold countries, the cutis is constringed and the papillæ compressed; the miliary glands are in some measure paralytic; and the sensation does not reach the brain but when it is very strong, and proceeds from the whole nerve at once. Now, imagination, taste, sensibility, and vivacity, depend on an infinite number of small sensations.

I have observed the outermost part of a sheep's tongue, where, to the naked eye, it seems covered with papillæ. On these papillæ I have discerned, through a microscope, small hairs, or a kind of down; between the papillæ were pyramids, shaped towards the ends like pincers. Very likely these pyramids are the principal organ of taste.

I caused the half of this tongue to be frozen, and, observing it with the naked eye, I found the papillæ considerably diminished; even some rows of them were sunk into their sheath. The outermost part I examined with the microscope, and perceived no pyramids. In proportion as the frost went off, the papillæ seemed to the naked eye to rise, and with the microscope the miliary glands began to appear.

This observation confirms what I have been saying, that, in cold countries, the nervous glands are less expanded; they sink deeper into their sheaths, or they are sheltered from the action of external objects; consequently, they have not such lively sensations.

In cold countries they have very little sensibility for pleasure; in temperate countries they have more; in warm countries their sensibility is exquisite. As climates are distinguished by degrees of latitude, we might distinguish them also, in some measure, by those of sensibility. I have been at the opera in England and in Italy, where I have seen the same pieces and the same performers, and yet the same music produces such different effects on the two nations; one is so cold and phlegmatic, and the other so lively and enraptured, that it seems almost inconceivable.

It is the same with regard to pain, which is excited by the laceration of some fibre of the body. The Author of nature has made it an established rule, that this pain should be more acute in proportion as the laceration is greater: now, it is evident, that the large bodies and coarse fibres of the people of the North are less capable of laceration than the delicate fibres of the inhabitants of warm countries; consequently, the soul is there less sensible of pain. You must flay a Muscovite alive to make him feel.

From this delicacy of organs, peculiar to warm climates, it follows, that the soul is most sensibly moved by whatever relates to the union of the two sexes: here every thing leads to this object.

In northern climates, scarcely has the animal part of love a power of making itself felt. In temperate climates, love, attended by a thousand appendages, endeavours to please by things that have, at first, the appearance, though not the reality, of this passion. In warmer climates, it is liked for its own sake, it is the only cause of happiness, it is life itself.

In southern countries, a machine, of a delicate frame but strong sensibility, resigns itself either to a love which rises, and is incessantly laid, in a seraglio; or to a passion which leaves women in a greater independence, and is consequently exposed to a thousand inquietudes. In northern regions, a machine, robust and heavy, finds a pleasure in whatever is apt to throw the spirits into motion; such as hunting, travelling, war, and wine. If we travel towards the North, we meet with people who have few vices, many virtues, and a great share of frankness and sincerity. If we draw near the South, we fancy ourselves intirely removed from the verge of morality: here the

strongest passions are productive of all manner of crimes, each man endeavouring, let the means be what they will, to indulge his inordinate desires. In temperate climates, we find the inhabitants inconstant in their manners, as well as in their vices and virtues: the climate has not a quality determinate enough to fix them.

The heat of the climate may be so excessive as to deprive the body of all vigour and strength. Then the faintness is communicated to the mind: there is no curiosity, no enterprize, no generosity of sentiment; the inclinations are all passive; indolence constitutes the utmost happiness; scarcely any punishment is so severe as mental employment; and slavery is more supportable than the force and vigour of mind necessary for human conduct.

CHAP. III.

Contradiction in the Tempers of some Southern Nations.

THE Indians^{*} are naturally a pusillanimous people: even the children[†] of Europeans, born in India, lose the courage peculiar to their own climate. But how shall we reconcile this with their customs and penances so full of barbarity? The men voluntarily undergo the greatest hardships; and the women burn themselves: here we find a very odd compound of fortitude and weakness.

Nature, having framed these people of a texture so weak as to fill them with timidity, has formed them, at the same time, of an imagination so lively, that every object makes the strongest impression upon them. That delicacy of organs, which renders them apprehensive of death, contributes likewise to make them dread a thousand things more than death: the very same sensibility induces them to fly, and dare, all dangers.

As a good education is more necessary to children than to such as are arrived to a maturity of understanding, so the inhabitants of those countries have much greater need than the European nations of a wise legislator. The greater their sensibility, the more it behoves them to receive proper impressions, to imbibe no prejudices, and to let themselves be directed by reason.

At the time of the Romans, the inhabitants of the North of Europe were destitute of arts, education, and almost of laws: and yet the good sense, annexed to the gross fibres of those climates, enabled them to make an admirable stand against the power of Rome, till the memorable period in which they quitted their woods to subvert that great empire.

CHAP. IV.

Cause of the Immutability of Religion, Manners, Customs, and Laws, in the Eastern Countries.

IF, to that delicacy of organs which renders the eastern nations so susceptible of every impression, you add likewise a sort of indolence of mind, naturally connected with that of the body, by means of which they grow incapable of any exertion or effort, it is easy to comprehend, that, when once the soul has received an impression, she cannot change it. This is the reason that the laws, manners[±], and customs, even those which seem quite indifferent, such as their mode of dress, are the same to this very day, in eastern countries, as they were a thousand years ago.

CHAP. V.

That those are bad legislators who favour the Vices of the Climate, and good Legislators who oppose those Vices.

THE Indians believe that repose and non-existence are the foundation of all things, and the end in which they terminate. Hence they consider entire inaction as the most perfect of all states, and the object of their desires. To the supreme Being they give^{||} the title of immoveable. The inhabitants of Siam believe that their utmost happiness^S consists in not being obliged to animate a machine or to give motion to a body.

In those countries where the excess of heat enervates and exhausts the body, rest is so delicious, and motion so painful, that this system of metaphysics seems natural; and[¶] Foe, the legislator of the Indies, was directed by his own sensations, when he placed mankind in a state extremely passive: but his doctrine, arising from the laziness of the climate, favoured it also in its turn; which has been the source of an infinite deal of mischief.

The legislators of China were more rational, when, considering men not in the peaceful state which they are to enjoy hereafter, but in the situation proper for discharging the several duties of life, they made their religion, philosophy, and laws, all practical. The more the physical causes incline mankind to inaction, the more the moral causes should estrange them from it.

CHAP. VI.

Of Agriculture in warm Climates.

AGRICULTURE is the principal labour of man. The more the climate inclines him to shun this labour, the more the religion and laws of the country ought to excite him to it. Thus the Indian laws, which give the lands to the prince, and destroy the spirit of property among the subjects, increase the bad effects of the climate, that is, their natural indolence.

CHAP. VII.

Of Monkery.

THE very same mischiefs result from monkery: it had its rise in the warm countries of the East, where they are less inclined to action than to speculation.

In Asia, the number of dervises, or monks, seems to increase together with the warmth of the climate. The Indies, where the heat is excessive, are full of them, and the same difference is found in Europe.

In order to surmount the laziness of the climate, the laws ought to endeavour to remove all means of subsisting without labour: but, in the southern parts of Europe, they act quite the reverse; to those, who want to live in a state of indolence, they afford retreats the most proper for a speculative life, and endow them with immense revenues. These men, who live in the midst of a plenty which they know not how to enjoy, are in the right to give their superfluities away to the common people. The poor are bereft of property; and these men indemnify them by supporting them in idleness, so as to make them even grow fond of their misery.

CHAP. VIII.

An excellent Custom of China.

THE historical relations[¶] of China mention a ceremony^{*} of opening the grounds, which the emperor performs every year. The design of this public and solemn act is to excite[†] the people to tillage.

Farther, the emperor is every year informed of the husbandman who has distinguished himself most in his profession; and he makes him a mandarin of the eighth order.

Among the ancient Persians[†], the kings quitted their grandeur and pomp, on the eighth day of the month called *Chorrem-ruz*, to eat with the husbandmen. These institutions were admirably well calculated for the encouragement of agriculture.

CHAP. IX.

Means of encouraging Industry.

WE shall shew, in the nineteenth book, that lazy nations are generally proud. Now, the effect might well be turned against the cause, and laziness be destroyed by pride. In the South of Europe, where people have such a high notion of the point of honour, it would be right to give prizes to husbandmen who had excelled in agriculture, or to artists who had made the greatest improvements in their several professions. This practice has succeeded in our days in Ireland, where it has established one of the most considerable linen-manufactures in Europe.

CHAP. X.

Of the Laws relative to the Sobriety of the People.

IN warm countries, the aqueous part of the blood loses itself greatly by perspiration[‡]; it must, therefore, be supplied by a like liquid. Water is there of admirable use; strong liquors would congeal the globules[§] of blood that remain after the transuding of the aqueous humour.

In cold countries, the aqueous part of the blood is very little evacuated by perspiration. They may therefore make use of spirituous liquors, without which the blood would congeal. They are full of humours; consequently, strong liquors, which give a motion to the blood, are proper for those countries.

The law of Mahomet, which prohibits the drinking of wine, is therefore fitted to the climate of Arabia: and, indeed, before Mahomet's time, water was the common drink of the Arabs. The law[¶], which forbid the Carthaginians to drink wine, was also a law of the climate; and, indeed, the climate of those two countries is pretty near the same.

Such a law would be improper for cold countries, where the climate seems to force them to a kind of national intemperance, very different from personal ebriety. Drunkenness predominates throughout the world in proportion to the coldness and humidity of the climate. Go from the equator to the North pole, and you will find this

vice increasing together with the degree of latitude: go from the equator again to the South pole, and you will find the same vice travelling South^{*}, exactly in the same proportion.

It is very natural, that, where wine is contrary to the climate, and consequently to health, the excess of it should be more severely punished than in countries where intoxication produces very few bad effects to the person, fewer to the society, and where it does not make people frantic and wild, but only stupid and heavy. Hence those laws[†], which inflicted a double punishment for crimes committed in drunkenness, were applicable only to a personal, and not to a national, ebriety. A German drinks through custom, and a Spaniard by choice.

In warm countries, the relaxing of the fibres produces a great evacuation of the liquids, but the solid parts are less transpired. The fibres, which act but faintly, and have very little elasticity, are not much impaired; and a small quantity of nutritious juice is sufficient to repair them; for which reason, they eat very little.

It is the variety of wants, in different climates, that first occasioned a difference in the manner of living, and this gave rise to a variety of laws. Where people are very communicative, there must be particular laws; and others where there is but little communication.

CHAP. XI.

Of the Laws relative to the Distempers of the Climate.

HERODOTUS[‡] informs us, that the Jewish laws, concerning the leprosy, were borrowed from the practice of the Egyptians. And, indeed, the same distemper required the same remedies. The Greeks and the primitive Romans were strangers to these laws, as well as to the disease. The climate of Egypt and Palestine rendered them necessary; and the facility with which this disease is spread is sufficient to make us sensible of the wisdom and sagacity of those laws.

Even we ourselves have felt the effects of them. The croisades had brought the leprosy amongst us; but the wise regulations, made at that time, hindered it from infecting the mass of the people.

We find, by the law of the[§] Lombards, that this disease was spread in Italy before the croisades, and merited the attention of the legislature. Rotharis ordained that a leper should be expelled from his house, banished to a particular place, and rendered incapable of disposing of his property; because, from the very moment he had been turned out of his house, he was reckoned dead in the eye of the law. In order to

prevent all communication with lepers, they were rendered incapable of civil acts.

I am apt to think that this disease was brought into Italy by the conquests of the Greek emperors, in whose armies there might be some soldiers from Palestine or Egypt. Be that as it may, the progress of it was stopt till the time of the croisades.

It is related, that Pompey's soldiers, returning from Syria, brought a distemper home with them not unlike the leprosy. We have no account of any regulation made at that time; but it is highly probable that some such step was taken, since the distemper was checked till the time of the Lombards.

It is now two centuries since a disease, unknown to our ancestors, was first transplanted from the new world to ours, and came to attack human nature even in the very source of life and pleasure. Most of the principal families in the South of Europe were seen to perish by a distemper that was grown too common to be ignominious, and was considered in no other light than in that of its being fatal. It was the thirst of gold that propagated this disease; the Europeans went continually to America, and always brought back a new leven of it.

Reasons drawn from religion seemed to require that this punishment of guilt should be permitted to continue; but the infection had reached the bosom of matrimony, and given the vicious taint even to guiltless infants.

As it is the business of legislators to watch over the health of the citizens, it would have been a wise part in them to have stopped this communication by laws made on the plan of those of Moses.

The plague is a disease whose infectious progress is much more rapid. Egypt is its principal seat, from whence it spreads over the whole globe. Most countries in Europe have made exceeding good regulations to prevent this infection, and, in our times, an admirable method has been contrived to stop it; this is, by forming a line of troops round the infected country, which cuts off all manner of communication.

The Turks^s, who have no such regulations, see the Christians escape this infection, in the same town, and none but themselves perish: they buy the clothes of the infected, wear them, and proceed in their old way, as if nothing had happened. The doctrine of a rigid fate, which directs their whole conduct, renders the magistrate a quiet spectator; he thinks that every thing comes from the hand of God, and that man has nothing more to do than to submit.

CHAP. XII.

Of the Laws against Suicides.

WE do not find in history that the Romans ever killed themselves without a cause: but the English are apt to commit suicide most unaccountably; they destroy themselves even in the bosom of happiness. This action, among the Romans, was the effect of education, being connected with their principles and customs; among the English, it is the consequence of a distemper^{*}, being connected with the physical state of the machine, and independent of every other cause.

In all probability, it is a defect of the filtration of the nervous juice: the machine, whose motive faculties are often unexerted, is weary of itself; the soul feels no pain, but a certain uneasiness in existing. Pain is a local sensation, which leads us to the desire of seeing an end of it; the burthen of life, which prompts us to the desire of ceasing to exist, is an evil confined to no particular part.

It is evident that the civil laws of some countries may have reasons for branding suicide with infamy: but, in England, it cannot be punished without punishing the effects of madness.

CHAP. XIII.

Effects arising from the Climate of England.

IN a nation, so distempered by the climate as to have a disrelish of every thing, nay, even of life, it is plain, that the government most suitable to the inhabitants is that in which they cannot lay their uneasiness to any single person's charge, and in which, being under the direction of the laws rather than of the prince, it is impossible for them to change the government without subverting the laws themselves.

And, if this nation has likewise derived from the climate a certain impatience of temper, which renders them incapable of bearing the same train of things for any long continuance, it is obvious, that the government above-mentioned is the fittest for them.

This impatience of temper is not very considerable of itself; but it may become so when joined with courage.

It is quite a different thing from levity, which makes people undertake or drop a project without cause; it borders more upon obstinacy, because it proceeds from so lively a sense of misery that it is not weakened even by the habit of suffering.

This temper, in a free nation, is extremely proper for disconcerting the projects of

tyranny^{*}, which is always slow and feeble in its commencements, as in the end it is active and lively; which at first only stretches out a hand to assist, and exerts afterwards a multitude of arms to oppress.

Slavery is ever preceded by sleep. But a people, who find no rest in any situation, who continually explore every part, and feel nothing but pain, can hardly be lulled to sleep.

Politics are a smooth file, which cuts gradually, and attains its end by a slow progression. Now, the people of whom we have been speaking are incapable of bearing the delays, the details, and the coolness, of negotiations: in these they are more unlikely to succeed than any other nation; hence they are apt to lose by treaties what they obtain by their arms.

CHAP. XIV.

Other Effects of the Climate.

OUR ancestors, the ancient Germans, lived under a climate where the passions were extremely calm. Their laws decided only in such cases where the injury was visible to the eye, and went no farther. And, as they judged of the outrages done to men from the greatness of the wound, they acted with no other delicacy in respect to the injuries done to women. The law of[†] the Germans, on this subject, is very extraordinary. If a person uncovers a woman's head, he pays a fine of fifty sous; if he uncovers her leg up to the knee, he pays the same; and double from the knee upwards. One would think that the law measured the insults offered to women as we measure a figure in geometry; it did not punish the crime of the imagination, but that of the eye. But, upon the migration of a German nation into Spain, the climate soon found a necessity for different laws. The law of the Visigoths inhibited the surgeons to bleed a free woman, except either her father, mother, brother, son, or uncle, was present. As the imagination of the people grew warm, so did that of the legislators; the law suspected every thing when the people were become suspicious.

These laws had, therefore, a particular regard for the two sexes. But, in their punishments, they seem rather to humour the revengeful temper of private persons, than to administer public justice. Thus, in most cases, they reduced both the criminals to be slaves to the offended relations or to the injured husband: a free-born woman[‡], who had yielded to the embraces of a married man, was delivered up to his wife to dispose of her as she pleased. They obliged the slaves[§], if they found their master's wife in adultery, to bind her, and carry her to her husband; they even permitted her children^{||} to be her accusers, and her slaves to be tortured in order to convict her. Thus their laws were far better adapted to refine, even to excess, a certain point of honour,

than to form a good civil administration. We must not, therefore, be surprized, if count Julian was of opinion, that an affront of that kind ought to be expiated by the ruin of his king and country: we must not be surprized, if the Moors, with such a conformity of manners, found it so easy to settle and to maintain themselves in Spain, and to retard the fall of their empire.

CHAP. XV.

Of the different Confidence which the Laws have in the People, according to the Difference of Climates.

THE people of Japan are of so stubborn and perverse a temper, that neither their legislators nor magistrates can put any confidence in them: they set nothing before their eyes but judgments, menaces, and chastisements; every step they take is subject to the inquisition of the civil magistrate. Those laws, which, out of five heads of families, establish one as a magistrate over the other four; those laws which punish a family or a whole ward for a single crime; those laws, in fine, which find no body innocent where one may happen to be guilty, are made with a design to implant in the people a mutual distrust, and to make every man the inspector, witness, and judge, of his neighbour's conduct.

On the contrary, the people of India are mild[†], tender, and compassionate. Hence their legislators repose a great confidence in them. They have established^{*} very few punishments; these are not severe, nor are they rigorously executed. They have subjected nephews to their uncles and orphans to their guardians, as, in other countries, they are subjected to their fathers; they have regulated the succession by the acknowledged merit of the successor. They seem to think that every individual ought to place an intire confidence in the good-nature of his fellow-subjects.

They infranchise their slaves without difficulty; they marry them; they treat them as their children[†]. Happy climate, which gives birth to innocence, and produces a lenity in the laws!

Endnotes

[*] This appears even in the countenance: in cold weather people look thinner.

[†] We know it shortens iron.

[‡] Those for the succession to the Spanish monarchy.

[||] For instance, in Spain.

[*] One hundred European soldiers, says Tavernier, would, without any great difficulty, beat a thousand Indian soldiers.

[†] Even the Persians, who settle in the Indies, contract, in the third generation, the indolence and cowardice of the Indians. See Bernier, on the Mogul, tom. 1. p. 182.

[‡] We find, by a fragment of Nicolaus Damascenus, collected by Constantine Porphyrog. that it was an ancient custom, in the East, to send to strangle a governor who had given any displeasure; it was in the time of the Medes.

[||] Panamanack. See Kircher.

[§] *La Loubiere*. Relation of Siam, p. 446.

[¶] Foe endeavoured to reduce the heart to a mere vacuum: "We have eyes and ears, but perfection consists in neither seeing nor hearing; a mouth, hands, &c. but perfection requires that these members should be inactive." This is taken from the dialogue of a Chinese philosopher, quoted by father Du Halde, tom. 3.

[¶] Father Du Halde, History of China, tom. 1. pag. 72.

[*] Several of the kings of India do the same. Relation of the kingdom of Siam, by La Loubiere, p. 69.

[†] *Venty*, the third emperor of the third dynasty, tilled the lands himself, and made the empress and his wives employ their time in the silk-works in his palace. History of China.

[‡] Hyde, religion of the Persians.

[||] Monsieur Bernier, travelling from Lahor to Cachemir, wrote thus: *My body is a sieve: scarcely have I swallowed a pint of water, but I see it transude, like dew, out of all my limbs, even to my fingers ends. I drink ten pints a-day, and it does me no manner of harm.* Bernier's Travels, tom. ii. p. 261.

[§] In the blood, there are red globules, fibrous parts, white globules, and water, in which the whole swims.

[¶] Plato, book 2. of laws: Aristotle, of the care of domestic affairs: Eusebius's evangelical preparation, book 12. c. 17.

[*] This is seen in the Hottentots and the inhabitants of the most southern part of Chili.

[†] As Pittacus did, according to Aristotle, Polit. lib. 1. c. 3. He lived in a climate where drunkenness is not a national vice.

[‡] Book 2.

[§] Book 2. tit. 1. §. 3. & tit. 18. §. 1.

[§] Ricaut on the Ottoman empire, p. 284.

[*] It may be complicated with the scurvy, which, in some countries especially, renders a man whimsical and insupportable to himself. See Pirard's voyages, part 2. chap. 21.

[*] Here I take this word for the design of subverting the established power, and especially that of democracy; this is the signification in which it was understood by the Greeks and Romans.

[†] Chap. 58. §. 1. and 2.

[‡] Law of the Visigoths, book 3. tit. 4. §. 9.

[§] Ibid. book 3. tit. 4. §. 6.

[§] Ibid. book 3. tit. 4. §. 13.

[¶] See Bernier, tom. 2. p. 140.

[*] See, in the 14th collection of the *edifying letters*, p. 403. the principal laws or customs of the inhabitants of the peninsula on this side the Ganges.

[†] I had once thought that the lenity of slavery in India had made Diodorus say, that there was neither master nor slave in that country; but Diodorus has attributed to the whole continent of India what, according to Strabo, lib. 15. belonged only to a particular nation.

BOOK XV. IN WHAT MANNER THE LAWS OF CIVIL SLAVERY ARE RELATIVE TO THE NATURE OF THE CLIMATE.

CHAP. I.

Of civil Slavery.

SLAVERY, properly so called, is the establishment of a right which gives to one man such a power over another as renders him absolute master of his life and fortune. The state of slavery is, in its own nature, bad. It is neither useful to the master nor to the slave; not to the slave, because he can do nothing through a motive of virtue; nor to the master, because, by having an unlimited authority over his slaves, he insensibly accustoms himself to the want of all moral virtues, and from thence becomes fierce, hasty, severe, choleric, voluptuous, and cruel.

In despotic countries, where they are already in a state of political servitude, civil slavery is more tolerable than in other governments. Every one ought to be satisfied, in those countries, with necessaries and life. Hence the condition of a slave is hardly more burdensome than that of a subject.

But, in a monarchical government, where it is of the utmost importance that human nature should not be debased nor dispirited, there ought to be no slavery. In democracies, where they are all upon an equality, and in aristocracies, where the laws ought to use their utmost endeavours to procure as great an equality as the nature of the government will permit, slavery is contrary to the spirit of the constitution: it only contributes to give a power and luxury to the citizens which they ought not to have.

CHAP. II.

Origin of the Right of Slavery among the Roman Civilians.

ONE would never have imagined that slavery should owe its birth to pity, and that this should have been excited three different ways.[†]

The law of nations, to prevent prisoners from being put to death, has allowed them to be made slaves. The civil law of the Romans empowered debtors, who were subject to be ill used by their creditors, to sell themselves. And the law of nature requires, that children, whom a father, in the state of servitude, is no longer able to maintain, should be reduced to the same state as the father.

These reasons of the civilians are all false. It is false that killing in war is lawful, unless in a case of absolute necessity: but, when a man has made another his slave, he cannot be said to have been under a necessity of taking away his life, since he actually did not take it away. War gives no other right over prisoners than to disable them from doing any farther harm, by securing their persons. All nations^{*} concur in detesting the murdering of prisoners in cold blood.

Neither is it true that a freeman can sell himself. Sale implies a price: now, when a person sells himself, his whole substance immediately devolves to his master; the master, therefore, in that case, gives nothing, and the slave receives nothing. You will say he has a *peculium*. But this *peculium* goes along with his person. If it is not lawful for a man to kill himself, because he robs his country of his person, for the same reason he is not allowed to barter his freedom. The freedom of every citizen constitutes a part of the public liberty; and, in a democratical state, is even a part of the sovereignty. To sell one's freedom[‡] is so repugnant to all reason as can scarcely be supposed in any man. If liberty may be rated with respect to the buyer, it is beyond all price to the seller. The civil law, which authorizes a division of goods among men, cannot be thought to rank, among such goods, a part of the men who were to make this division. The same law annuls all iniquitous contracts: surely, then, it affords redress in a contract where the grievance is most enormous.

The third way is birth; which falls with the two former: for, if a man could not sell himself, much less could he sell an unborn infant. If a prisoner of war is not to be reduced to slavery, much less are his children.

The lawfulness of putting a malefactor to death arises from this circumstance; the law, by which he is punished, was made for his security. A murderer, for instance, has enjoyed the benefit of the very law which condemns him; it has been a continual protection to him; he cannot therefore object against it. But it is not so with the slave. The law of slavery can never be beneficial to him: it is in all cases against him, without ever being for his advantage: and therefore this law is contrary to the fundamental principle of all societies.

If it be pretended, that it has been beneficial to him, as his master has provided for his subsistence; slavery, at this rate, should be limited to those who are incapable of earning their livelihood. But who will take up with such slaves? As to infants, nature, who has supplied their mothers with milk, had provided for their sustenance; and the remainder of their childhood approaches so near the age in which they are most capable of being of service, that he who supports them cannot be said to give them an equivalent, which can entitle him to be their master.

Nor is slavery less opposite to the civil law than to that of nature. What civil law can restrain a slave from running away, since he is not a member of society, and consequently has no interest in any civil institutions? He can be retained only by a family law, that is, by the master's authority.

CHAP. III.

Another Origin of the Right of Slavery.

I would as soon say that the right of slavery proceeds from the contempt of one nation for another, founded on a difference in customs.

Lopez[¶] de Gamar relates, "that the Spaniards found, near St. Martha, several baskets full of crabs, snails, grasshoppers, and locusts, which proved to be the ordinary provision of the natives: this the conquerors turned to a heavy charge against the conquered." The author owns that this, with their smoking and trimming their beards in a different manner, gave rise to the law by which the Americans became slaves to the Spaniards.

Knowledge humanizes mankind, and reason inclines to mildness, but prejudices eradicate every tender disposition.

CHAP. IV.

Another Origin of the Right of Slavery.

I would as soon say that religion gives its professors a right to enslave those who dissent from it, in order to render its propagation more easy.

This was the notion that encouraged the ravagers of America in their iniquity^{*}. Under the influence of this idea, they founded their right of enslaving so many nations: for these robbers, who would absolutely be both robbers and Christians, were superlatively devout.

Lewis XIII.[†] was extremely uneasy at a law, by which all the Negroes of his colonies were to be made slaves; but, it being strongly urged to him as the readiest means for their conversion, he acquiesced without farther scruple.

CHAP. V.

Of the Slavery of the Negroes.

WERE I to vindicate our right to make slaves of the Negroes, these should be my arguments.

The Europeans, having extirpated the Americans, were obliged to make slaves of the Africans, for clearing such vast tracts of land.

Sugar would be too dear, if the plants which produce it were cultivated by any other than slaves.

These creatures are all over black, and with such a flat nose, that they can scarcely be pitied.

It is hardly to be believed that God, who is a wise being, should place a soul, especially a good soul, in such a black ugly body.

It is so natural to look upon colour as the criterion of human nature, that the Asiatics, among whom eunuchs are employed, always deprive the *blacks* of their resemblance to us by a more opprobrious distinction.

The colour of the skin may be determined by that of the hair, which, among the Egyptians, (the best philosophers in the world,) was of such importance, that they put to death all the red-haired men who fell into their hands.

The Negroes prefer a glass necklace to that gold which polite nations so highly value; can there be a greater proof of their wanting common-sense?

It is impossible for us to suppose these creatures to be men; because, allowing them to be men, a suspicion would follow, that we ourselves are not Christians.

Weak minds exaggerate too much the wrong done to the Africans. For, were the case as they state it, would the European powers, who make so many needless conventions among themselves, have failed to enter into a general one, in behalf of humanity and compassion?

CHAP. VI.

The true Origin of the Right of Slavery.

IT is time to enquire into the true origin of the right of slavery. It ought to be founded on the nature of things: let us see if there be any cases where it can be derived from thence.

In all despotic governments, people make no difficulty in selling themselves; the political slavery, in some measure, annihilates the civil liberty.

According to Mr. Perry^{*}, the Muscovites sell themselves very readily: their reason for it is evident; their liberty is not worth keeping.

At *Achim*, every one is for selling himself. Some of the chief lords[†] have not less than a thousand slaves, all principal merchants, who have a great number of slaves themselves, and these also are not without their slaves. Their masters are their heirs, and put them into trade. In those states, the freemen, being overpowered by the government, have no better resource than that of making themselves slaves to the tyrants in office.

This is the true and rational origin of that mild law of slavery which obtains in some countries: and mild it ought to be, as founded on the free choice a man makes of a master, for his own benefit; which forms a mutual convention betwixt the two parties.

CHAP. VII.

Another Origin of the Right of Slavery.

THERE is another origin of the right of slavery, and even of the most cruel slavery which is to be seen among men.

There are countries where the excess of heat enervates the body, and renders men so slothful and dispirited that nothing but the fear of chastisement can oblige them to perform any laborious duty: slavery is there more reconcileable to reason; and the master being as lazy, with respect to his sovereign, as his slave is, with regard to him, this adds a political to a civil slavery.

Aristotle[†] endeavours to prove, that there are natural slaves; but what he says is far from proving it. If there be any such, I believe they are those of whom I have been speaking.

But, as all men are born equal, slavery must be accounted unnatural, though, in some countries, it be founded on natural reason; and a wide difference ought to be made betwixt such countries and those in which even natural reason rejects it, as in Europe, where it has been so happily abolished.

Plutarch, in the life of Numa, says, that, in Saturn's time, there was neither slave nor master. Christianity has restored that age in our climates.

CHAP. VIII.

Inutility of Slavery among us.

NATURAL slavery, then, is to be limited to some particular parts of the world. In all other countries, even the most servile drudgeries may be performed by freemen.

Experience verifies my assertion. Before Christianity had abolished civil slavery in Europe, working in the mines was judged too toilsome for any but slaves or malefactors; at present, there are men employed in them who are known to live^{*} comfortably. The magistrates have, by some small privileges, encouraged this profession; to an increase of labour they have joined an increase of gain; and have gone so far as to make those people better pleased with their condition than with any other which they could have embraced.

No labour is so heavy but it may be brought to a level with the workman's strength, when regulated by equity and not by avarice. The violent fatigues which slaves are made to undergo, in other parts, may be supplied by a skilful use of ingenious machines. The Turkish mines, in the Bannat of Temeswear, though richer than those of Hungary, did not yield so much, because the working of them depended entirely on the strength of their slaves.

I know not whether this article be dictated by my understanding or by my heart. Possibly there is not that climate upon earth where the most laborious services might not, with proper encouragement, be performed by freemen. Bad laws having made lazy men, they have been reduced to slavery because of their laziness.

CHAP. IX.

Several Kinds of Slavery.

SLAVERY is of two kinds, real and personal. The real annexes the slave to the land, which Tacitus makes[†] the condition of slaves among the Germans. They were not employed in the family: a stated tribute of corn, cattle, or other moveables, paid to their master, was the whole of their servitude. And such a servitude still continues in Hungary, Bohemia, and several parts of Lower-Germany.

Personal slavery consists in domestic services, and relates more to the master's person.

The worst degree of slavery is, when it is at once both real and personal, as that of the Helotes among the Lacedæmonians. They underwent the fatigues of the field, and suffered all manner of insults at home. This Helotism is contrary to the nature of things.

Real slavery is to be found only among nations[‡] remarkable for their simplicity of life; all family-business being done by the wives and children. Personal slavery is peculiar to voluptuous nations; luxury requiring the service of slaves in the house. But Helotism joins, in the same person, the slavery established by voluptuous nations, and that of

the most simple.

CHAP. X.

Regulations necessary in Respect to Slavery.

BUT, of whatsoever kind the slavery be, the civil laws should endeavour, on the one hand, to abolish the abuses of it, and, on the other, to guard against its dangers.

CHAP. XI.

Abuses of Slavery.

IN Mahometan states[¶], not only the life and goods of female slaves, but also what is called their virtue or honour, are at their master's disposal. One of the misfortunes of those countries is, that the greatest part of the nation are born only to be subservient to the pleasures of the other. This servitude is alleviated only by the laziness in which such slaves spend their days; which is an additional disadvantage to the state.

It is this indolence which renders the[§] eastern seraglios so delightful to those very persons whom they were made to confine. People, who dread nothing but labour, may imagine themselves happy in those places of indolence and ease. But this shews how contrary they are to the very intent of the institution of slavery.

Reason requires that the master's power should not extend to what does not appertain to his service: slavery should be calculated for utility and not for pleasure. The laws of chastity arise from those of nature, and ought, in all nations, to be respected.

If a law, which preserves the chastity of slaves, be good in those states where an arbitrary power bears down all before it, how much more will it be so in monarchies, and how much more still in republics?

The law of the Lombards[¶] has a regulation which ought to be adopted by all governments. "If a master debauch his slave's wife, the slave and his wife shall be restored to their freedom." An admirable expedient, which, without severity, lays a powerful restraint on the incontinence of masters!

The Romans seem to have erred on this head. They allowed an unlimited scope to the master's lusts, and, in some measure, denied their slaves the privilege of marrying. It is true, they were the lowest part of the nation; yet there should have been some care

taken of their morals; especially, as, in prohibiting their marriage, they corrupted the morals of the citizens.

CHAP. XII.

Danger from the Multitude of Slaves.

THE multitude of slaves has different effects in different governments. It is no grievance in a despotic state, where the political servitude of the whole body takes away the sense of civil slavery. Those, who are called freemen, in reality, are little more so than they who do not come within that class; and, as the latter, in quality of eunuchs, freedmen, or slaves, have generally the management of all affairs, the condition of a freeman and that of a slave are very nearly allied. This makes it, therefore, almost a matter of indifference, whether, in such states, the slaves be few or numerous.

But, in moderate governments, it is a point of the highest importance that there should not be a great number of slaves. The political liberty of those states adds to the value of civil liberty; and he, who is deprived of the latter, is also bereft of the former. He sees the happiness of a society of which he is not so much as a member; he sees the security of others, fenced by laws, himself without any protection; he perceives that his master has a soul capable of enlarging itself, while his own labours under a continual depression. Nothing more assimilates a man to a beast than living among freemen, himself a slave. Such people as these are natural enemies of the society; and their number must be dangerous.

It is not, therefore, to be wondered at, that moderate governments have been so frequently disturbed by the revolts of slaves; and that this so seldom happens in^{*} despotic states.

CHAP. XIII.

Of armed Slaves.

THE danger of arming slaves is not so great in monarchies as in republics. In the former, a warlike people and a body of nobility are a sufficient check upon these armed slaves; whereas, the pacific members of a republic would have a hard task to quell a set of men, who, having offensive weapons in their hands, would find themselves a match for the citizens.

The Goths, who conquered Spain, spread themselves over the country, and soon became very weak. They made three important regulations: they abolished an ancient custom which prohibited intermarriages with the[†] Romans; they enacted that all the freedmen[‡], belonging to the fiscus, should serve in war, under penalty of being reduced to slavery; and they ordained that each Goth should arm, and bring into the field, the tenth part^{||} of his slaves. This was but a small proportion: besides, these slaves, thus carried to the field, did not form a separate body; they were in the army, and might be said to continue in the family.

CHAP. XIV.

The same Subject continued.

WHEN a whole nation is of a martial temper, the slaves in arms are less to be feared.

By a law of the Allemands, a slave, who had committed a clandestine theft[§], was liable to the same punishment as a freeman in the like case; but, if he was found guilty of an open robbery[¶], he was only bound to restore the things so taken. Among the Allemands, courage and intrepidity extenuated the guilt of an action. They employed their slaves in their wars. Most republics have been attentive to dispirit their slaves: but the Allemands, relying on themselves, and being always armed, were so far from fearing theirs, that they were rather for augmenting their courage; they were the instruments either of their depredations or of their glory.

CHAP. XV.

Precautions to be used in moderate Governments.

LENITY and humane treatment may prevent the dangers to be apprehended from the multitude of slaves in a moderate government. Men grow reconciled to every thing, and even to servitude, if not aggravated by the severity of the master. The Athenians treated their slaves with great lenity; and this secured that state from the commotions raised by the slaves among the austere Lacedæmonians.

It does not appear that the primitive Romans met with any trouble from their slaves. Those civil broils, which have been compared to the Punic wars, were the consequence of their having divested themselves of all humanity towards their slaves.^{*}

A frugal and laborious people generally treat their slaves more kindly than those who

are above labour. The primitive Romans used to live, work, and eat, with their slaves; in short, they behaved towards them with justice and humanity. The greatest punishment they made them suffer was to make them pass before their neighbours with a forked piece of wood on their backs. Their manners were sufficient to secure the fidelity of their slaves; so that there was no necessity for laws.

But, when the Romans aggrandized themselves, when their slaves were no longer the companions of their labour, but the instruments of their luxury and pride, as they then wanted morals, they had need of laws. It was even necessary for these laws to be of the most terrible kind, in order to establish the safety of those cruel masters who lived with their slaves as in the midst of enemies.

They made the Syllanian senatus-consultum, and other laws[†], which decreed, that, when a master was murdered, all the slaves under the same roof, or in any place so near the house as to be within the hearing of a man's voice, should, without distinction, be condemned to die. Those, who, in this case, sheltered a slave, in order to save him, were punished as murderers[‡]; he, whom his master[¶] ordered to kill him, and who obeyed, was reputed guilty; even he, who did not hinder him from killing himself, was liable to be punished[§]. If a master was murdered on a journey, they put to death[¶] those who were with him and those who fled. All these laws took place even against persons whose innocence was proved; the intent of them was to inspire their slaves with a prodigious respect for their master. They were not dependent on the civil government, but on a fault or imperfection of the civil government. They were not derived from the equity of civil laws, since they were contrary to the principle of those laws. They were properly founded on the principles of war, with this difference, that the enemies were in the bosom of the state. The Syllanian senatus-consultum was derived from the law of nations, which requires that a society, however imperfect, should be preserved.

It is a misfortune in government when the magistrates thus find themselves under a necessity of making cruel laws. Because they have rendered obedience difficult, they are obliged to increase the penalty of disobedience, or to suspect the slave's sidelity. A prudent legislator foresees the ill consequences of rendering the legislature terrible. The slaves amongst the Romans could have no confidence in the laws; and therefore the laws could have none in them.

CHAP. XVI.

Regulations between Masters and Slaves.

THE magistrate ought to take care that the slave has his food and raiment; and this

should be regulated by law.

The laws ought to provide that care be taken of them in sickness and old age. Claudius^{*} decreed, that the slaves, who, in sickness, had been abandoned by their masters, should, in case they recovered, be emancipated. This law insured their liberty; but should not there have been some care also taken to preserve their lives?

When the law permitted a master to take away the life of his slave, he was invested with a power which he ought to exercise as judge, and not as master; it was necessary, therefore, that the law should ordain those formalities, which remove the suspicion of an act of violence.

When fathers, at Rome, were no longer permitted to put their children to death, the magistrates ordained the[†] punishment which the father would have inflicted. A like custom, between the master and his slaves, would be highly reasonable, in a country where masters have the power of life and death.

The law of Moses was extremely severe. "If a man struck his servant so that he died under his hand, he was to be punished; but, if he survived a day or two, no punishment ensued, because he was his money[‡]." Strange, that a civil institution should thus relax the law of nature.

By a law of the Greeks[¶], a slave, too severely treated by his master, might insist upon being sold to another. In latter times, there was a law of the same nature[§] at Rome. A master, displeased with his slave, and a slave with his master, ought to be separated.

When a citizen uses the slave of another ill, the latter ought to have the liberty of complaining before the judge. The laws[¶] of Plato, and of most nations, took away from slaves the right of natural defence: it was necessary then that they should give them a civil defence.

At Sparta, slaves could have no justice against either insults or injuries. So excessive was their misery, that they were not only the slaves of a citizen, but also of the public; they belonged to all as well as to one. At Rome, when they considered the injury done to a slave, they had regard only to the interest^{*} of the master. In the breach of the Aquilian law, they confounded a wound given to a beast and that given to a slave; they regarded only the diminution of their value. At Athens[†], he who abused the slave of another was punished severely, and sometimes even with death. The law of Athens was very reasonable, in not adding the loss of security to that of liberty.

CHAP. XVII.

Of Infranchisements.

IT is easy to perceive, that many slaves, in a republican government, create a necessity of making many free. The evil is, if they have too great a number of slaves, they cannot keep them in due bounds; if they have too many freed-men, they cannot live, and must become a burthen to the republic: besides, it may be as much in danger from the multitude of freed-men as from that of slaves. It is necessary therefore that the law should have an eye to these two inconveniences.

The several laws and decrees of the senate, made at Rome both for and against slaves, sometimes to limit, and at other times to facilitate, their enfranchisement, plainly shew the embarrassment in which they found themselves in this respect. There were even times in which they durst not make laws. When, under Nero[†], they demanded of the senate a permission for the masters to reduce again to slavery the ungrateful freed-men, the emperor declared, that it was their duty to decide the affairs of individuals, and to make no general decree.

Much less can I determine what ought to be the regulations of a good republic in such an affair; this depends on too many circumstances. Let us however make some reflections.

A considerable number of freed-men ought not suddenly to be made by a general law.

We know, that, among the Volsinienses[‡], the freed-men, becoming masters of the suffrages, enacted an abominable law, which gave them the right of lying the first night with the young women married to the free-born.

There are several ways of insensibly introducing new citizens into a republic. The laws may favour the acquiring a *peculium*, and put slaves into a condition of buying their liberty: they may prescribe a term of servitude, like those of Moses, which limited that of the[§] Hebrew slaves to six years. It is easy to enfranchise, every year, a certain number of those slaves, who, by their age, health, or industry, are capable of getting a subsistence. The evil may be even cured in its root. As a great number of slaves are connected with the several employments which are given them, to divide amongst the free born a part of these employments, for example, commerce or navigation, is diminishing the number of slaves.

When there are many freed-men, it is necessary that the civil laws should determine what they owe to their patron, or that these duties should be fixed by the contract of enfranchisement.

It is certain, that their condition should be more favoured in the civil than in the political state; because, even in a popular government, the power ought not to fall into the hands of the vulgar.

At Rome, where they had so many freed-men, the political laws, with regard to them, were admirable. They gave them very little, and excluded them almost from nothing: they had even a share in the legislature; but the resolutions they were capable of taking were almost of no weight. They might bear a part in the public offices, and even in the dignity of the priesthood[¶]; but this privilege was in some sort rendered useless, by the disadvantages they had to encounter in the elections. They had a right to enter into the army; but they were to be registered in a certain class of the *census* before they could be soldiers. Nothing hindered the^{*} freedmen from being united by marriage with the families of the free-born; but they were not permitted to mix with those of the senators. In short, their children were free-born, though they were not so themselves.

CHAP. XVIII.

Of Freed-men and Eunuchs.

THUS, in a republican government, it is frequently of advantage, that the situation of the freed-men be but little below that of the free-born, and that the laws be calculated to remove a dislike of their condition. But, in a despotic government, where luxury and arbitrary power prevail, they have nothing to do in this respect; the freed-men generally find themselves above the free-born: they rule in the court of the prince, and in the palaces of the great; and, as they study the foibles, and not the virtues, of their master, they lead him intirely by the former, not by the latter. Such were the freedmen of Rome in the times of the emperors.

When the principal slaves are eunuchs, let never so many privileges be granted them, they can hardly be regarded as freed-men: for, as they are incapable of having a family of their own, they are naturally attached to that of another; and it is only by a kind of fiction that they are considered as citizens.

And yet there are countries where the magistracy is intirely in their hands. "In[†] Tonquin, says Dampier[‡], all the mandarins, civil and military, are eunuchs." They have no families, and, though they are naturally avaricious, the master or the prince benefits, in the end, by this very passion.

Dampier tells us, too, that, in this country, the eunuchs cannot live without women, and therefore marry. The law which permits their marriage may be founded partly on their respect for these eunuchs, and partly on their contempt of the fair-sex.

Thus they are trusted with the magistracy because they have no family, and permitted to marry because they are magistrates.

Then it is that the sense which remains would fain supply that which they have lost;

and the enterprises of despair become a kind of enjoyment. So, in Milton, that spirit, who has nothing left but desires, enraged at his degradation, would make use of his impotency itself.

We see, in the history of China, a great number of laws to deprive eunuchs of all civil and military employments; but they always returned to them again. It seems as if the eunuchs of the East were a necessary evil.

Endnotes

[†] Justinian's Institutes, book 1.

[*] Excepting a few Canibals.

[‡] I mean slavery in a strict sense, as formerly among the Romans, and at present in our colonies.

[¶] Biblioth. Ang. tom. 13. p. 2. art. 3.

[*] See Hist. of the Conquest of Mexico, by Solis, and that of Peru, by Garcilasso de la Vega.

[†] Labat's new voyage to the isles of America, vol. 4. p. 114. in 1752. 12mo.

[*] Present State of Russia.

[†] Dampier's voyages, vol. 3.

[‡] Polit. lib. 1. c. 1.

[*] As may be seen in the mines of Hartz, in Lower Saxony, and in those of Hungary.

[†] De moribus Germanorum.

[‡] Tacitus, *De morib. German.* says, the master is not to be distinguished from the slave, by any delicacy of living.

[||] Sir John Chardin's Travels to Persia.

[§] Sir John Chardin, vol. 2. in his description of the market of Izagour.

[¶] Lib. 1. tit. 32. §. 5.

[*] The revolt of the Mamelucs was a different case; this was a body of the militia who usurped the empire.

[†] Law of the Visigoths, lib. 3. tit. 1. §. 1.

[‡] Ibid. lib. 5. tit. 17. §. 20.

[‖] Ibid. lib. 9. tit. 2. §. 9.

[§] Law of the Allemands, c. 5. §. 3.

[¶] Law of the Allemands, c. 5. §. 5. *per virtutem*.

[*] Sicily, says Florus, suffered more in the servile than in the Punic war. Lib. 3.

[†] See the whole title of the *senat. cons. Syll.* in ff.

[‡] Leg. si quis, §. 12. ff. *de senat. consult. Syllan.*

[‖] When Antony commanded Eros to kill him, it was the same as commanding him to kill himself; because, if he had obeyed, he would have been punished as the murderer of his master.

[§] Leg. 1. §. 22. ff. *de senat. consult. Syllan.*

[¶] Leg. 1. §. 31. ff. *ibid.*

[*] Xiphilin. *in Claudio*.

[†] See law 3, in the code *de patriâ potestate*, by the emperor Alexander.

[‡] Lev. c. xxi. v. 20.

[‖] Plutarch on superstition.

[§] See the constitution of Antoninus Pius, *Institut. lib. 1. tit. 7.*

[¶] Lib. 9.

[*] This was frequently the spirit of the laws of those nations who came out of Germany, as may be seen by their codes.

[†] *Demosthenes Orat. contra Midiam*, p. 610. Edition of Frankfort, in 1604.

[‡] Annals of Tacitus, lib. 13.

[||] Freinshemius's supplement, 2d decad. lib. 5.

[§] Exodus xxi.

[¶] Annals of Tacitus, lib. 3.

[*] Augustus's speech, in Dio, l. 56.

[†] It was formerly the same in China. The two Mahometan Arabs, who travelled thither in the ninth century, use the word eunuch whenever they speak of the governor of a city.

[‡] Vol. 3.

BOOK XVI. HOW THE LAWS OF DOMESTIC SLAVERY HAVE A RELATION TO THE NATURE OF THE CLIMATE.

CHAP. I.

Of domestic Servitude.

SLAVES are established for the family, but they are not a part of it. Thus I distinguish their servitude from that which the women, in some countries, suffer, and which I shall properly call domestic servitude.

CHAP. II.

That, in the Countries of the South, there is a natural Inequality between the two Sexes.

WOMEN, in hot climates, are^{*} marriageable at eight, nine, or ten, years of age: thus, in those countries, infancy and marriage generally go together. They are old at twenty: their reason, therefore, never accompanies their beauty. When beauty demands the empire, the want of reason forbids the claim; when reason is obtained, beauty is no more. These women ought, then, to be in a state of dependence; for reason cannot procure, in old age, that empire which even youth and beauty could not give. It is therefore extremely natural, that, in these places, a man, when no law opposes it, should leave one wife to take another, and that polygamy should be introduced.

In temperate climates, where the charms of women are best preserved, where they arrive later at maturity, and have children at a more advanced season of life, the old

age of their husbands in some degree follows theirs; and, as they have more reason and knowledge at the time of marriage, if it be only on account of their having continued longer in life, it must naturally introduce a kind of equality between the two sexes, and, in consequence of this, the law of having only one wife.

In cold countries, the almost necessary custom of drinking strong liquors establishes intemperance amongst men. Women, who, in this respect, have a natural restraint, because they are always on the defensive, have therefore the advantage of reason over them.

Nature, which has distinguished men by their reason and bodily strength, has set no other bounds to their power than those of this strength and reason. It has given charms to women, and ordained that their ascendant over man shall end with these charms: but, in hot countries, these are found only at the beginning, and never in the progress, of life.

Thus the law, which permits only one wife, is physically conformable to the climate of Europe, and not to that of Asia. This is the reason why Mahometanism was so easily established in Asia, and with such difficulty extended in Europe; why Christianity is maintained in Europe and has been destroyed in Asia; and, in fine, why the Mahometans have made such progress in China and the Christians so little. Human reasons, however, are subordinate to that supreme Cause who does whatever he pleases, and renders every thing subservient to his will.

Some particular reasons induced Valentinian[†] to permit polygamy in the empire. That law, so improper for our climates, was abrogated[‡] by Theodosius, Arcadius, and Honorius.

CHAP. III.

That a Plurality of Wives greatly depends on the Means of supporting them.

THOUGH, in countries where polygamy is once established, the number of wives is principally determined by the opulence of the husband, yet it cannot be said that opulence established polygamy in those states, since poverty may produce the same effect, as I shall prove when I come to speak of the savages.

Polygamy, in powerful nations, is less a luxury in itself than the occasion of great luxury. In hot[¶] climates they have few wants, and it costs little to maintain a wife and children; they may, therefore, have a great number of wives.

CHAP. IV.

That the Law of Polygamy is an Affair that depends on Calculation.

ACCORDING to the calculations made in several parts of Europe, there are here born more boys than girls^s; on the contrary, by the accounts we have of Asia, there are there born more^{||} girls than boys. The law, which, in Europe, allows only one wife, and that, in Asia, which permits many, have, therefore, a certain relation to the climate.

In the cold climates of Asia, there are born, as in Europe, more males than females; and from hence, say the^{*} lamas, is derived the reason of that law, which, amongst them, permits a woman to have[±] many husbands.

But it is difficult for me to believe that there are many countries where the disproportion can be great enough for any exigency to justify the introducing either the law in favour of many wives, or that of many husbands. This would only imply, that a majority of women, or even a majority of men, is more conformable to nature in certain countries than in others.

I confess, that, if what history tells us be true, that, at Bantam[±], there are ten women to one man, this must be a case particularly favourable to polygamy.

In all this I only give their reasons, but do not justify their customs.

CHAP. V.

The Reason of a Law of Malabar.

IN the tribe of the Naires^{||}, on the coast of Malabar, the men can have only one wife, while a woman, on the contrary, may have many husbands. The origin of this custom is not, I believe, difficult to discover. The Naires are the tribe of nobles, who who are the soldiers of all those nations. In Europe, soldiers are forbid to marry; in Malabar, where the climate requires greater indulgence, they are satisfied with rendering marriage as little burthensome to them as possible: they give one wife amongst many men; which consequently diminishes the attachment to a family and the cares of house-keeping, and leaves them in the free possession of a military spirit.

CHAP. VI.

Of Polygamy considered in itself.

WITH regard to polygamy in general, independently of the circumstances which may render it tolerable, it is not of the least service to mankind, nor to either of the two sexes, whether it be that which abuses, or that which is abused. Neither is it of service to the children; for one of its greatest inconveniences is, that the father and mother cannot have the same affection for their offspring; a father cannot love twenty children with the same tenderness as a mother can love two. It is much worse when a wife has many husbands; for then paternal love is only held by this opinion, that a father may believe, if he will, or that others may believe, that certain children belong to him.

They say, that the emperor of Morocco has women of all colours, white, black, and tawny, in his seraglio. But the wretch has scarcely need of a single colour.

Besides, the possession of many wives does not always prevent their entertaining desires^S for those of others: it is with lust as with avarice, whose thirst increases by the acquisition of treasure.

In the reign of Justinian, many philosophers, displeased with the constraint of Christianity, retired into Persia. What struck them the most, says Agathias[¶], was, that polygamy was permitted amongst men who did not even abstain from adultery.

May I not say, that a plurality of wives leads to that passion which nature disallows? for one depravation always draws on another. I remember, that, in the revolution which happened at Constantinople, when sultan Achmet was deposed, history says, that, the people having plundered the kiaya's house, they found not a single woman: they tell us, that, at Algiers^{*}, in the greatest part of their seraglios, they have none at all.

CHAP. VII.

Of an Equality of Treatment in Case of many Wives.

FROM the law which permitted a plurality of wives followed that of an equal behaviour to each. Mahomet, who allowed of four, would have every thing, as provisions, dress, and conjugal duty, equally divided between them. This law is also in force in the Maldivian isles[†], where they are at liberty to marry three wives.

The law of Moses[‡] even declares, that, if any one has married his son to a slave, and this son should afterwards espouse a free woman, her food, her raiment, and her duty of marriage, shall he not diminish. They might give more to the new wife, but the first was not to have less than she had before.

CHAP. VIII.

Of the Separation of Women from Men.

THE prodigious number of wives, possessed by those who live in rich and voluptuous countries, is a consequence of the law of polygamy: their separation from men and their close confinement naturally follow from the greatness of this number. Domestic order renders this necessary: thus an insolvent debtor seeks to conceal himself from the pursuit of his creditors. There are climates where the impulses of nature have such force that morality has almost none. If a man be left with a woman, the temptation and the fall will be the same thing; the attack certain, the resistance none. In these countries, instead of precepts, they have recourse to bolts and bars.

One of the Chinese classic authors considers the man as a prodigy of virtue, who, finding a woman alone, in a distant apartment, can forbear making use of force. †

CHAP. IX.

Of the Connexion between domestic and political Government.

IN a republic, the condition of citizens is moderate, equal, mild, and agreeable; every thing partakes of the benefit of public liberty. An empire over the women cannot, amongst them, be so well exerted; and, where the climate demands this empire, it is most agreeable to a monarchical government. This is one of the reasons why it has ever been difficult to establish a popular government in the East.

On the contrary, the slavery of women is perfectly conformable to the genius of a despotic government, which delights in treating all with severity. Thus, at all times, have we seen, in Asia, domestic slavery and despotic government walk hand in hand with an equal pace.

In a government which requires, above all things, that a particular regard be paid to its tranquility, and where the extreme subordination calls for peace, it is absolutely necessary to shut up the women; for their intrigues would prove fatal to their husbands. A government, which has not time to examine into the conduct of its subjects, views them with a suspicious eye, only because they appear, and suffer themselves to be known.

Let us only suppose that the levity of mind, the indiscretions, the tastes, and caprices,

of our women, attended by their passions of a higher and a lower kind, with all their active fire, and in that full liberty with which they appear amongst us, were conveyed into an eastern government, where would be the father of a family who could enjoy a moment's repose? the men would be every where suspected, every where enemies; the state would be overturned, and the kingdom overflowed with rivers of blood.

CHAP. X.

The Principle on which the Morals of the East are founded.

IN the case of a multiplicity of wives, the more a family ceases to be united, the more ought the laws to re-unite its detached parts in a common center; and, the greater the diversity of interests, the more necessary it is for the laws to bring them back to a common interest.

This is more particularly done by confinement. The women should not only be separated from the men by the walls of the house, but they ought also to be separated, in the same inclosure, in such a manner, that each may have a distinct household in the same family. From hence each derives all that relates to the practice of morality, modesty, chastity, reserve, silence, peace, dependence, respect, and love; and, in short, a general direction of her thoughts to that which, in its own nature, is a thing of the greatest importance, a single and entire attachment to her family.

Women have naturally so many duties to fulfil, duties which are peculiarly theirs, that they cannot be sufficiently excluded from every thing capable of inspiring other ideas, from every thing that goes by the name of amusements, and from every thing which we call business.

We find the manners more pure, in the several parts of the East, in proportion as the confinement of women is more strictly observed. In great kingdoms, there are necessarily great lords: the greater their wealth, the more enlarged is their ability of keeping their wives in an exact confinement, and of preventing them from entering again into society. From hence it proceeds, that, in the empires of Turkey, Persia, of the Mogul, China, and Japan, the manners of their wives are admirable.

But the case is not the same in India, where a multitude of islands and the situation of the land have divided the country into an infinite number of petty states, which, from causes that we have not here room to mention, are rendered despotic.

There are none there but wretches, some pillaging and others pillaged. Their grandees have very moderate fortunes; and those whom they call rich have only a bare subsistence. The confinement of their women cannot therefore be very strict; nor can

they make use of any great precautions to keep them within due bounds: from hence it proceeds that the corruption of their manners is scarcely to be conceived.

We may there see to what an extreme the vices of a climate, indulged in the full liberty, will carry licentiousness. It is there that nature has a force, and modesty a weakness, which exceeds all comprehension. At Patan[†], the wanton desires^{*} of the women are so outrageous, that the men are obliged to make use of a certain apparel to shelter them from their designs. According to Mr. Smith[‡], things are not better conducted in the petty kingdoms of Guinea. In these countries, the two sexes lose even those laws which properly belong to each.

CHAP. XI.

Of domestic Slavery independently of Polygamy.

IT is not only a plurality of wives which, in certain places of the East, requires their confinement, but also the climate itself. Those, who consider the horrible crimes, the treachery, the dark villanies, the poisonings, the assassinations, which the liberty of women has occasioned at Goa, and in the Portuguese settlements in the Indies, where religion permits only one wife, and who compare them with the innocence and purity of manners of the women of Turkey, Persia, Indostan, China, and Japan, will clearly see that it is frequently as necessary to separate them from the men when they have but one, as when they have many.

These are things which ought to be decided by the climate. What purpose would it answer to shut up women in our northern countries, where their manners are naturally good, where all their passions are calm, and where love rules over the heart with so regular and gentle an empire, that the least degree of prudence is sufficient to conduct it?

It is a happiness to live in those climates which permit such a freedom of converse; where that sex which has most charms seems to embellish society, and where wives, reserving themselves for the pleasures of one, contribute to the amusement of all.

CHAP. XII.

Of natural Modesty.

ALL nations are equally agreed in fixing contempt and ignominy on the incontinence of

women. Nature has dictated this to all: she has established the attack, and she has established too the resistance; and, having implanted desires in both, she has given to the one boldness, and to the other shame. To individuals she has granted a long succession of years to attend to their preservation; but, to continue the species, she has granted only a moment.

It is, then, far from being true, that to be incontinent is to follow the laws of nature: on the contrary, it is a violation of these laws, which can be observed only by behaving with modesty and discretion.

Besides, it is natural for intelligent beings to feel their imperfections: nature has therefore fixed shame in our minds, a shame of our imperfections.

When, therefore, the physical power of certain climates violates the natural law of the two sexes, and that of intelligent beings, it belongs to the legislature to make civil laws, with a view of opposing the nature of the climate and re-establishing the primitive laws.

CHAP. XIII.

Of Jealousy.

WITH respect to nations, we ought to distinguish between the passion of jealousy, and a jealousy arising from customs, manners, and laws. The one is a hot raging fever; the other, cold, but sometimes terrible, may be joined with indifference and contempt.

The one, an abuse of love, derives its source from love itself: the other depends only on manners, on the customs of a nation, on the laws of the country, and sometimes even on religion.*

It is generally the effect of the physical power of the climate, and, at the same time, the remedy of this physical power.

CHAP. XIV.

Of the Eastern Manner of domestic Government.

WIVES are changed so often, in the East, that they cannot have the power of domestic government. This care is, therefore, committed to the eunuchs, whom they intrust with their keys and the management of their families. "In Persia, says sir John Chardin, married women are furnished with clothes as they want them, after the manner of

children." Thus, that care, which seems so well to become them, that care, which, every where else, is the first of their concern, does not at all regard them.

CHAP. XV.

Of Divorce and Repudiation.

THERE is this difference between a divorce and a repudiation; that the former is made by mutual consent, arising from a mutual antipathy, while the latter is formed by the will, and for the advantage, of one of the two parties, independently of the will and advantage of the other.

The necessity there is sometimes for women to repudiate, and the difficulty there always is in doing it, render that law very tyrannical which gives this right to men without granting it to women. A husband is the master of the house; he has a thousand ways of confining his wife to her duty, or of bringing her back to it; so that, in his hands, it seems as if repudiation could be only a fresh abuse of power. But a wife who repudiates only makes use of a dreadful kind of remedy. It is always a great misfortune for her to go in search of a second husband, when she has lost the most part of her attractions with another. One of the advantages, attending the charms of youth in the female sex, is, that, in an advanced age, the husband is led to complacency and love by the remembrance of past pleasures.

It is then a *general rule*, that, in all countries where the laws have given to men the power of repudiating, they ought also to grant it to women. Nay, in climates where women live in domestic slavery, one would think that the law ought to favour women with the right of repudiation, and husbands only with that of divorce.

When wives are confined in a seraglio, the husband ought not to repudiate on account of an opposition of manners; it is the husband's fault if their manners are incompatible.

Repudiation, on account of the barrenness of the woman, ought never to take place but where there is only one wife^{*}; when there are many, this is of no importance to the husband.

A law of the Maldivians[†] permitted them to take again a wife whom they had repudiated. A law of Mexico[‡] forbid their being re-united under pain of death. The law of Mexico was more rational than that of the Maldivians: at the time even of the dissolution, it attended to the perpetuity of marriage; instead of this, the law of the Maldivians seemed equally to sport with marriage and repudiation.

The law of Mexico admitted only of divorce. This was a particular reason for their not

permitting those, who were voluntarily separated, to be ever re-united. Repudiation seems chiefly to proceed from a hastiness of temper and from the dictates of passion, while divorce appears to be an affair of deliberation.

Divorces are frequently of great political use; but, as to the civil utility, they are established only for the advantage of the husband and wife, and are not always favourable to their children.

CHAP. XVI.

Of Repudiation and Divorce amongst the Romans.

ROMULUS permitted a husband to repudiate his wife, if she had committed adultery, prepared poison, or procured false keys. He did not grant to women the right of repudiating their husbands. Plutarch[¶] calls this, a law extremely severe.

As the Athenian law gave[§] the power of repudiation to the wife as well as to the husband, and as this right was obtained by the women amongst the primitive Romans, notwithstanding the law of Romulus, it is evident that this institution was one of those which the deputies of Rome brought from Athens, and which were inserted into the laws of the twelve tables.

Cicero[¶] says that the reasons of repudiation sprung from the law of the twelve tables. We cannot then doubt but that this law increased the number of the reasons for repudiation established by Romulus.

The power of divorce was also an appointment, or at least a consequence, of the law of the twelve tables. For, from the moment that the wife or the husband had separately the right of repudiation, there was a much stronger reason for their having the power of quitting each other by mutual consent.

The law did not require that they should lay open the^{*} causes of divorce. In the nature of the thing, the reasons for repudiation should be given, while those for a divorce are unnecessary; because, whatever causes the law may admit as sufficient to break a marriage, a mutual antipathy must be stronger than them all.

The following fact, mentioned by Dionysius Halicarnassensis[‡], Valerius Maximus[¶], and Aulus Gellius^{§§}, does not appear to me to have the least degree of probability. Though they had, at Rome, say they, the power of repudiating a wife, yet they had so much respect for the auspices that nobody, for the space of five hundred and twenty years, ever made[†] life of this right, till Carvilius Ruga repudiated his because of her sterility. We need only be sensible of the nature of the human mind, to perceive how very

extraordinary it must be for a law to grant such right to a whole nation and yet for nobody to make use of it. Coriolanus, setting out on his exile, advised his[¶] wife to marry a man more happy than himself. We have just been seeing that the law of the twelve tables and the manners of the Romans greatly extended the law of Romulus. But to what purpose were these extensions, if they never made use of a power to repudiate? Besides, if the citizens had such a respect for the auspices that they would never repudiate, how came the legislators of Rome to have less than they? and how came the laws incessantly to corrupt their manners?

All that is surprizing, in the fact in question, will soon disappear, only by comparing two passages in Plutarch. The regal law^{*} permitted a husband to repudiate in the three cases already mentioned, and "it enjoined, says Plutarch[§], that he, who repudiated in any other case, should be obliged to give the half of his substance to his wife, and that the other half should be consecrated to Ceres." They might then repudiate in all cases, if they were but willing to submit to the penalty. Nobody had done this before Carvilius Ruga[‡], who, as Plutarch says in another place[¶], "put away his wife for her sterility two hundred and thirty years after Romulus." That is, she was repudiated seventy one years before the law of the twelve tables, which extended both the power and causes of repudiation.

The authors I have cited say, that Carvilius Ruga loved his wife; but that the censors made him take an oath to put her away, because of her barrenness, to the end that he might give children to the republic; and that this rendered him odious to the people. We must know the genius and temper of the Romans before we can discover the true cause of the hatred they had conceived against Carvilius. He did not fall into disgrace with the people for repudiating his wife; this was an affair that did not at all concern them. But Carvilius had taken an oath to the censors, that, by reason of the sterility of his wife, he would repudiate her to give children to the republic. This was a yoke which the people saw the censors were going to put upon them. I shall discover, in the prosecution of this work[§], the repugnance which they always felt to regulations of the like kind. But whence can such a contradiction betwixt those authors arise? It is because Plutarch examined into a fact, and the others have recounted a prodigy.

Endnotes

[*] Mahomet married Cadhisja at five, and took her to his bed at eight, years old. In the hot countries of Arabia and the Indies, girls are marriageable at eight years of age, and are brought to bed the year after. *Prideaux, Life of Mahomet*. We see women, in the kingdom of Algiers, pregnant at nine, ten, and eleven, years of age. *Hist. of the Kingdom of Algiers, by Laugier de Tassis*, p. 61.

[†] See Jornandes *de regno et tempor. succes.* and the ecclesiastic historians.

[‡] See law 7. of the code *de Judæis & Cælicolis*, and Nov. 18. c. 5.

[‖] In Ceylon, a man may live on ten sols a month: they eat nothing there but rice and fish. *Collection of Voyages made to establish an India Company.*

[§] Dr. Arbuth not finds, that, in England, the number of boys exceeds that of girls: but people have been to blame to conclude that the case is the same in all climates.

[¶] See Kempfer, who relates, that, upon numbering the people of Meaco, there were found 182072 males, and 223573 females.

[*] Du Halde's Hist. of China, vol. iv.

[†] Albuzeir-el-hassen, one of the Mahometan Arabs, who, in the ninth century, went into India and China, thought this custom a prostitution. And, indeed, nothing could be more contrary to the ideas of a Mahometan.

[‡] *Collection of Voyages for the Establishment of an India Company*, vol. I.

[‖] See Francis Pirard, c. 27. *Edifying Letters*, 3d and 10th collection, on the Malleami, on the coast of Malabar. This is considered as an abuse of the military profession, as a woman, says Pirard, of the tribe of the Bramins, never would marry many husbands.

[§] This is the reason why women, in the East, are so carefully concealed.

[¶] *Life and actions of Justinian*, p. 403.

[*] *Hist. of Algiers*, by Logier de Tassis.

[†] See Pirard, c. 12.

[‡] Exod. xxi. 10. 11.

[‖] "It is an admirable touch-stone, to find by one's self a treasure, and to know the right owner; or to see a beautiful woman in a lonely apartment; or to hear the cries of an enemy, who must perish without our assistance." Translation of a Chinese piece of morality, which may be seen in Du Halde, vol. iii. p. 151.

[†] *Collection of Voyages for the Establishment of an India Company*, vol. ii. page 2.

[*] In the Maldivian isles, the fathers marry their daughters at ten and eleven years of age, because it is a great sin, say they, to suffer them to endure the want of a husband.

See Pirard, c. 12. At Bantam, as soon as a girl is twelve or thirteen years old, she must be married, if they would not have her lead a debauched life. *Collection of Voyages for the Establishment of an India Company*, p. 348.

[‡] Voyage to Guinea, part second. "When the women happen to meet with a man, they lay hold of him, and threaten to make a complaint to their husbands, if he slight their addresses. They steal into a man's bed and wake him, and, if he refuse to comply with their desires, they threaten to suffer themselves to be caught *in flagranti*."

[*] Mahomed desired his followers to watch their wives; a certain iman, when he was dying, said the same thing; and Confucius preached the same doctrine.

[*] It does not follow, from hence, that repudiation, on account of sterility, should be permitted amongst Christians.

[†] They took them again preferably to any other, because, in this case, there was less expence. *Pirard's Travels*.

[‡] Hist. of the Conquest of Mexico, by Solis, p. 499.

[||] Life of Romulus.

[§] This was a law of Solon.

[¶] *Mimam res suas sibi habere jussit, ex duodecim tabulis causam addidit, Philip. 2.*

[*] Justinian altered this, Nov. 117. c. 10.

[‡] Lib. 2.

[||] Lib. 2. c. 4.

[§§] Lib. 4. c. 3. 8.

[†] According to Dionys. Halic. and Valerius Maximus: and five hundred and twenty-three according to Aulus Gellius. Neither did they agree in placing this under the same consuls.

[¶] See the speech of Veturia, in Dionys. Halic. lib. 8.

[*] Plutarch's life of Romulus.

[§] Ibid.

[‡] Indeed, sterility is not a cause mentioned by the law of Romulus: but, to all

appearance, he was not subject to a confiscation of his effects, since he followed the orders of the censors.

[¶] In his comparison between Theseus and Romulus.

[§] Book 23. c. 3.

BOOK XVII. HOW THE LAWS OF POLITICAL SERVITUDE HAVE A RELATION TO THE NATURE OF THE CLIMATE.

CHAP. I.

Of political Servitude.

POLITICAL servitude does not less depend on the nature of the climate than on that which is civil and domestic; and this we shall now demonstrate.

CHAP. II.

The Difference between Nations in Point of Courage.

WE have already observed, that great heat enervates the strength and courage of men; and that, in cold climates, they have a certain vigour of body and mind which renders them patient and intrepid, and qualifies them for arduous enterprizes. This remark holds good not only between different nations, but even in the different parts of the same country. In the North of China[¶] people are more courageous than those in the South; and those in the South of Corea^{*} have less bravery than those in the North.

We ought not, then, to be astonished, that the effeminacy of the people in hot climates has almost always rendered them slaves, and that the bravery of those in cold climates has enabled them to maintain their liberties. This is an effect which springs from a natural cause.

This has also been found true in America; the despotic empires of Mexico and Peru were near the line; and almost all the little free nations were, and still are, near the poles.

CHAP. III.

Of the Climate of Asia.

THE relations of travellers[†] inform us, "that the vast continent of the North of Asia, which extends from forty degrees, or thereabouts, to the pole, and from the frontiers of Muscovy even to the eastern ocean, is in an extremely cold climate; that this immense tract of land is divided by a chain of mountains which runs from West to East, leaving Siberia on the North and Great-Tartary on the South: that the climate of Siberia is so cold, that, excepting a few places, it is unsusceptible of cultivation; and that, though the Russians have settlements all along the Irtis, they cultivate nothing; that this country produces only some little firs and shrubs; that the natives of the country are divided into wretched hords, or tribes, like those of Canada; that the reason of this cold proceeds, on the one hand, from the height of the land, and, on the other, from the mountains, which, in proportion as they run from South to North, are levelled in such a manner that the North wind every where blows without opposition; that this wind, which renders Nova Zembla uninhabitable, blowing in Siberia, makes it a barren waste: that, in Europe, on the contrary, the mountains of Norway and Lapland are admirable bulwarks, which cover the northern countries from the wind; so that at Stockholm, which is about fifty-nine degrees latitude, the earth produces plants, fruits, and corn; and that about Abo, which is sixty-one degrees, and even to sixty-three and sixty-four, there are mines of silver, and the land is fruitful enough."

We see also, in these relations, "that Great-Tartary, situated to the South of Siberia, is also exceeding cold; that the country will not admit of cultivation; that nothing can be found but pasturage for their flocks and herds; that trees will not grow there, but only brambles, as in Iceland; that there are, near China and India, some countries where there grows a kind of millet, but that neither corn nor rice will ripen; that there is scarcely a place in Chinese Tartary, at forty-three, forty-four, and forty-five, degrees, where it does not freeze seven or eight months in the year, so that it is as cold as Iceland, though it might be imagined, from its situation, to be as hot as the South of France: that there are no cities, except four or five towards the eastern ocean, and some which the Chinese, for political reasons, have built near China; that, in the rest of Great-Tartary, there are only a few, situated in Buchar, Turquestan, and Cathay; that the reason of this extreme cold proceeds from the nature of the nitrous earth, full of saltpetre and sand, and more particularly from the height of the land. Father Verbiest found, that a certain place, eighty leagues North of the great wall, towards the source of Kavamhuran, exceeded the height of the sea near Pekin three thousand geometrical paces; that this height^{*} is the cause that, though almost all the great rivers of Asia have their source in this country, there is, however, so great a want of water, that it can be inhabited only near the rivers and lakes."

These facts being laid down, I reason thus. Asia has properly no temperate zone; as the places situated in a very cold climate immediately touch upon those which are exceeding hot; that is, Turkey, Persia, India, China, Corea, and Japan.

In Europe, on the contrary, the temperate zone is very extensive, though situated in

climates widely different from each other; there being no affinity between the climates of Spain and Italy and those of Norway and Sweden. But as the climate grows insensibly cold, upon our advancing from South to North, nearly in proportion to the latitude of each country, it thence follows, that each resembles the country joining to it, that there is no very extraordinary difference between them, and that, as I have just said, the temperate zone is very extensive.

From hence it comes, that, in Asia, the strong nations are opposed to the weak; the warlike, brave, and active, people touch immediately on those who are indolent, effeminate, and timorous; the one must, therefore, conquer, and the other be conquered. In Europe, on the contrary, strong nations are opposed to the strong, and those who join to each other have nearly the same courage. This is the grand reason of the weakness of Asia and of the strength of Europe; of the liberty of Europe and of the slavery of Asia: a cause that I do not recollect ever to have seen remarked. From hence it proceeds that liberty, in Asia, never increases; whilst, in Europe, it is enlarged or diminished according to particular circumstances.

The Russian nobility have indeed been reduced to slavery by the ambition of one of their princes; but they have always discovered those marks of impatience and discontent which are never to be seen in the southern climates. Have they not been able, for a short time, to establish an aristocratical government? Another of the northern kingdoms has lost its laws; but we may trust to the climate that they are not lost in such a manner as never to be recovered.

CHAP. IV.

The Consequences resulting from this.

WHAT we have now said is perfectly conformable to history. Asia has been subdued thirteen times; eleven by the northern nations, and twice by those of the South. In the early ages, it was conquered three times by the Scythians; afterwards it was subdued once by the Medes and once by the Persians; again by the Greeks, the Arabs, the Moguls, the Turks, the Tartars, the Persians, and the Afghans. I mention only the Upper-Asia, and say nothing of the invasions made in the rest of the South of that part of the world, which has most frequently suffered prodigious revolutions.

In Europe, on the contrary, since the establishment of the Greek and Phœnician colonies, we know but of four great changes: the first caused by the conquest of the Romans; the second by the inundation of barbarians, who destroyed those very Romans; the third by the victories of Charlemagne; and the last by the invasions of the Normans. And, if this be rightly examined, we shall find, even in these changes, a

general strength diffused through all the parts of Europe. We know the difficulty which the Romans met with in conquering Europe, and the ease and facility with which they invaded Asia. We are sensible of the difficulties the northern nations had to encounter in overturning the Roman empire; of the wars and labours of Charlemagne; and of the several enterprizes of the Normans. The destroyers were incessantly destroyed.

CHAP. V.

That, when the People in the North of Asia and those of the North of Europe made Conquests, the Effects of the Conquest were not the same.

THE nations in the North of Europe conquered as freemen; the people in the North of Asia conquered as slaves, and subdued others only to gratify the ambition of a master.

The reason is, that the people of Tartary, the natural conquerors of Asia, are themselves enslaved. They are incessantly making conquests in the South of Asia, where they form empires; but that part of the nation which continues in the country find that they are subject to a great master, who, being despotic in the South, will likewise be so in the North, and, exercising an arbitrary power over the vanquished subjects, pretends to the same over the conquerors. This is at present most conspicuous in that vast country called Chinese Tartary, which is governed by the emperor with a power almost as despotic as that of China itself, and which he every day extends by his conquests.

We may likewise see, in the history of China, that the emperors^{*} sent Chinese colonies into Tartary. These Chinese are become Tartars, and the mortal enemies of China; but this does not prevent their carrying into Tartary the spirit of the Chinese government.

A part of the Tartars, who were conquerors, have very often been themselves expelled, when they have carried into their deserts that servile spirit which they had acquired in the climate of slavery. The history of China furnishes us with strong proofs of this assertion, as does also our ancient[†] history.

From hence it proceeds that the genius of the Getic or Tartarian nation has always resembled that of the empires of Asia. The people in these are governed by the cudgel; the inhabitants of Tartary by whips. The spirit of Europe has ever been contrary to these manners; and, in all ages, what the people of Asia have called punishment, those of Europe have deemed the most outrageous abuse.[‡]

The Tartars, who destroyed the Grecian empire, established in the conquered countries

slavery and despotic power; the Goths, after subduing the Roman empire, founded monarchy and liberty.

I do not know whether the famous Rudbeck, who, in his *Atlantica*, has bestowed such praises on Scandinavia, has made mention of that great prerogative which ought to set this people above all the nations upon earth; namely, this country's having been the source of the liberties of Europe, that is, of almost all the freedom which at present subsists among mankind.

Jornadez the Goth called the North of Europe the forge^{||} of the human race. I should rather call it the forge where those weapons were framed which broke the chains of southern nations. In the North were formed those valiant people who sallied forth and deserted their countries to destroy tyrants and slaves, and to teach men, that, nature having made them equal, reason could not render them dependent, except where it was necessary to their happiness.

CHAP. VI.

A new physical Cause of the Slavery of Asia and of the Liberty of Europe.

IN Asia they have always had great empires; in Europe these could never subsist. Asia has larger plains; it is cut out into much more extensive divisions by mountains and seas; and, as it lies more to the South, its springs are more easily dried up; the mountains are less covered with snow; and the rivers, being not^S so large, form more contracted barriers.

Power in Asia ought, then, to be always despotic: for, if their slavery were not severe, they would soon make a division inconsistent with the nature of the country.

In Europe, the natural division forms many nations of a moderate extent, in which the ruling by laws is not incompatible with the maintenance of the state: on the contrary, it is so favourable to it, that, without this, the state would fall into decay, and become a prey to its neighbours.

It is this which has formed a genius for liberty, that renders every part extremely difficult to be subdued and subjected to a foreign power, otherwise than by the laws and the advantage of commerce.

On the contrary, there reigns in Asia a servile spirit, which they have never been able to shake off; and it is impossible to find, in all the histories of that country, a single

passage which discovers a freedom of spirit: we shall never see any thing there but the excess of slavery.

CHAP. VII.

Of Africa and America.

THIS is what I had to say of Asia and Europe. Africa is in a climate like that of the South of Asia, and is in the same servitude. America[¶], being lately destroyed, and re-peopled by the nations of Europe and Africa, can now scarcely display its genuine spirit; but what we know of its ancient history is very conformable to our principles.

CHAP. VIII.

Of the Capital of the Empire.

ONE of the consequences of what we have been mentioning is, that it is of the utmost importance to a great prince to make a proper choice of the seat of his empire. He who places it to the southward will be in danger of losing the North; but he who fixes it on the North may easily preserve the South. I do not speak of particular cases. In mechanics, there are frictions by which the effects of the theory are frequently changed or retarded; and policy hath also its frictions.

Endnotes

[¶] Du Halde, vol. i. p. 112.

[*] The Chinese books make mention of this. *Ibid.*

[†] See Travels to the North, vol viii. the Hist. of the Tartars: and Du Halde, vol. iv.

[*] Tartary is, then, a kind of a flat mountain.

[*] As Vouty V. emperor of the fifth dynasty.

[†] The Scythians thrice conquered Asia, and thrice were driven from thence. Justin, l. 2.

[‡] This is no way contrary to what I shall say, in the 28th book, chap. 20. concerning the manner of thinking among the German nations in respect to the cudgel; let the instrument be what it will, the power or action of beating was always considered by them as an affront.

[||] Humani generis officinam.

[§] The waters lose themselves, or evaporate before or after their streams are united.

[¶] The petty barbarous nations of America are called by the Spaniards *Indios bravos*, and are much more difficult to subdue than the great empires of Mexico and Peru.

BOOK XVIII. OF LAWS IN THE RELATION THEY BEAR TO THE NATURE OF THE SOIL.

CHAP. I.

How the Nature of the Soil has an Influence on the Laws.

THE goodness of the land, in any country, naturally establishes subjection and dependence. The husbandmen, who compose the principal part of the people, are not very jealous of their liberty; they are too busy and too intent on their own private affairs. A country which overflows with wealth is afraid of pillage, afraid of an army.

“Who is there that forms this goodly party? said Cicero to Atticus^{*}; are they the men of commerce and husbandry? Let us not imagine that these are averse to monarchy, these, to whom all governments are equal, as soon as they bestow tranquility.”

Thus monarchy is more frequently found in fruitful countries, and a republican government in those which are not so; and this is sometimes a sufficient compensation for the inconveniences they suffer by the sterility of the land.

The barrenness of the Attic soil established there a democracy; and the fertility of that of Lacedæmonia an aristocratical constitution. For, in those times, Greece was averse to the government of a single person; and aristocracy had the nearest resemblance to that government.

Plutarch says[†], that, the Cilonian sedition having been appeased at Athens, the city fell into its ancient dissensions, and was divided into as many parties as there were kinds of land in Attica. The men who inhabited the eminences would, by all means, have a popular government; those of the flat open country demanded a government composed of the chiefs; and they who were near the sea desired a mixture of both.

CHAP. II.

The same Subject continued.

THESE fertile provinces are always of a level surface, where the inhabitants are unable to dispute against a stronger power: they are then obliged to submit; and, when they have once submitted, the spirit of liberty cannot return; the wealth of the country is a pledge of their fidelity. But, in mountainous districts, as they have but little, they may preserve what they have. The liberty they enjoy, or, in other words, the government they are under, is the only blessing worthy of their defence. It reigns, therefore, more, in mountainous and rugged countries, than in those which nature seems to have most favoured.

The mountaineers preserve a more moderate government, because they are not so liable to be conquered. They defend themselves easily, and are attacked with difficulty; ammunition and provisions are collected and carried against them with great expence, for the country furnishes none. It is, then, a more arduous, a more dangerous, enterprize, to make war against them; and all the laws that can be enacted for the safety of the people are there of least use.

CHAP. III.

What Countries are best cultivated.

COUNTRIES are not cultivated in proportion to their fertility, but to their liberty; and, if we make an imaginary division of the earth, we shall be astonished to see, in most ages, desarts in the most fruitful parts, and great nations in those where nature seems to refuse every thing.

It is natural for a people to leave a bad soil to seek a better; and not to leave a good soil to go in search of a worse. Most invasions have, therefore, been made in countries which nature seems to have formed for happiness; and, as nothing is more nearly allied than desolation and invasion, the best provinces are most frequently depopulated; while the frightful countries of the North continue always inhabited, from their being almost uninhabitable.

We find, by what historians tell us of the passage of the people of Scandinavia along the banks of the Danube, that this was not a conquest, but only a migration into desert countries.

These happy climates must, therefore, have been depopulated by other migrations,

though we know not the tragical scenes that happened.

“It appears, by many monuments of antiquity, says Aristotle[±], that the Sardinians were a Grecian colony. They were formerly very rich; and Aristeus, so famed for his love of agriculture, was their law-giver. But they are since fallen to decay; for the Carthaginians, becoming their masters, destroyed every thing proper for the nourishment of man, and forbade the cultivation of the lands on pain of death.” Sardinia was not recovered in the time of Aristotle, nor is it to this day.

The most temperate parts of Persia, Turkey, Muscovy, and Poland, have not been able to recover perfectly from the devastations of the Tartars.

CHAP. IV.

New Effects of the Barrenness and Fertility of Countries.

THE barrenness of the earth renders men industrious, sober, inured to hardship, courageous, and fit for war: they are obliged to procure by labour what the earth refuses to bestow spontaneously. The fertility of a country gives ease, effeminacy, and a certain fondness for the preservation of life. It has been remarked, that the German troops, raised in those places where the peasants are rich, as, for instance, in Saxony, are not so good as the others. Military laws may provide against this inconvenience by a more severe discipline.

CHAP. V.

Of the Inhabitants of Islands.

THE inhabitants of islands have a higher relish for liberty than those of the continent.

Islands are commonly of a small^{||} extent; one part of the people cannot be so easily employed to oppress the other; the sea separates them from great empires; tyranny cannot so well support itself within a small compass; conquerors are stopped by the sea; and the islanders, being without the reach of their arms, more easily preserve their own laws.

CHAP. VI.

Of Countries raised by the Industry of Man.

THOSE countries which the industry of man has rendered habitable, and which stand in need of the same industry to provide for their subsistence, require a mild and moderate government. There are principally three of this species; the two fine provinces of Kiangnan and Tcekiang in China, Egypt, and Holland.

The ancient emperors of China were not conquerors. The first thing they did to aggrandize themselves was what gave the highest proof of their wisdom. They raised from beneath the waters two of the finest provinces of the empire; these owe their existence to the labour of man: and it is the inexpressible fertility of these two provinces which has given Europe such ideas of the felicity of that vast country. But a continual and necessary care, to preserve from destruction so considerable a part of the empire, demanded rather the manners of a wise, than of a voluptuous, nation; rather the lawful authority of a monarch, than the tyrannic sway of a despotic prince. Power was, therefore, necessarily moderated in that country, as it was formerly in Egypt, and as it is now in Holland, which nature has made to attend to herself, and not to be abandoned to negligence or caprice.

Thus, in spite of the climate of China, where they are naturally led to a servile obedience, in spite of the apprehensions which follow too great an extent of empire, the first legislators of this country were obliged to make excellent laws, and the government was frequently obliged to follow them.

CHAP. VII.

Of human Industry.

MANKIND, by their industry, and by the influence of good laws, have rendered the earth more proper for their abode. We see rivers flow where there have been lakes and marshes: this is a benefit which nature has not bestowed; but it is a benefit maintained and supplied by nature. When the Persians^S were masters of Asia, they permitted those, who conveyed a spring to any place which had not been watered before, to enjoy the benefit for five generations; and, as a number of rivulets flowed from mount Taurus, they spared no expence in directing the course of their streams. At this day, without knowing how they came thither, they are found in the fields and gardens.

Thus, as destructive nations produce evils more durable than themselves, the actions of an industrious people are the source of blessings which last when they are no more.

CHAP. VIII.

The general Relation of Laws.

THE laws have a very great relation to the manner in which the several nations procure their subsistence. There should be a code of laws of a much larger extent for a nation attached to trade and navigation than for people who are content with cultivating the earth. There should be a much greater for the latter than for those who subsist by their flocks and herds. There must be a still greater for these than for such as live by hunting.

CHAP. IX.

Of the Soil of America.

THE cause of there being such a number of savage nations in America is, the fertility of the earth, which spontaneously produces many fruits capable of affording them nourishment. If the women cultivate a spot of land round their cottages, the maiz grows up presently; and hunting and fishing put the men in a state of complete abundance. Besides, black cattle, as cows, buffaloes, &c. thrive there better than carnivorous beasts. The latter have always reigned in Africa.

We should not, I believe, have all these advantages in Europe, if the land were left uncultivated; it would scarcely produce any thing besides forests of oaks and other barren trees.

CHAP. X.

Of Population, in the Relation it bears to the Manner of procuring Subsistence.

LET us see in what proportion countries are peopled where the inhabitants do not cultivate the earth. As the produce of uncultivated land is to that of land improved by culture, so the number of savages in one country is to that of husbandmen in another: and, when the people who cultivate the land cultivate also the arts, this is also in such proportions as would require a minute detail.

They can scarcely form a great nation. If they are herdsmen and shepherds, they have need of an extensive country to furnish subsistence for a small number; if they live by

hunting, their number must be still less, and, in order to find the means of life, they must constitute a very small nation.

Their country commonly abounds with forests; which, as the inhabitants have not the art of draining off the waters, are filled with bogs; here each troop canton themselves, and form a petty nation.

CHAP. XI.

Of savage and barbarous Nations.

THERE is this difference between savage and barbarous nations; the former are dispersed in clans, which, for some particular reason, cannot be joined in a body; and the latter are commonly small nations, capable of being united. The savages are generally hunters; the barbarians are herdsmen and shepherds.

This appears plain in the North of Asia. The people of Siberia cannot live in bodies, because they are unable to find subsistence; the Tartars may live in bodies for some time, because their herds and flocks may, for a time, be re-assembled. All the clans may then be re-united; and this is effected when one chief has subdued many others; after which they may do two things, either separate, or set out with a design to make a great conquest in some southern empire.

CHAP. XII.

Of the Law of Nations among People who do not cultivate the Earth.

AS these people do not live in circumscribed territories, many causes of strife arise between them; they quarrel about waste land as we about inheritances. Thus they find frequent occasions for war, in disputes relative either to their hunting, their fishing, the pasture for their cattle, or the violent seizing of their slaves; and, as they are not possessed of landed property, they have many things to regulate by the law of nations, and but few to decide by the civil law.

CHAP. XIII.

Of the civil Law of those Nations who do not cultivate the Earth.

THE division of lands is what principally increases the civil code. Amongst nations where they have not made this division there are very few civil laws.

The institutions of these people may be called *manners* rather than *laws*.

Amongst such nations as these, the old men, who remember things past, have great authority: they cannot there be distinguished by wealth, but by wisdom and valour.

These people wander and disperse themselves in pasture grounds or in forests. Marriage cannot there have the security which it has amongst us, where it is fixed by the habitation, and where the wife continues in one house: they may, then, more easily change their wives, possess many, and sometimes mix indifferently, like brutes.

Nations of herdsmen and shepherds cannot leave their cattle, which are their subsistence; neither can they separate themselves from their wives, who look after them. All this ought, then, to go together; especially, as, living generally in a flat open country, where there are few places of considerable strength, their wives, their children, their flocks, may become the prey of their enemies.

Their laws regulate the division of plunder, and have, like our Salique laws, a particular attention to theft.

CHAP. XIV.

Of the political State of the People who do not cultivate the Land.

THESE people enjoy great liberty. For, as they do not cultivate the earth, they are not fixed, they are wanderers and vagabonds; and, if a chief should deprive them of their liberty, they would immediately go and seek it under another, or retire into the woods, and there live with their families. The liberty of the man is so great, among these people, that it necessarily draws after it that of the citizen.

CHAP. XV.

Of People who know the Use of Money.

ARISTIPPUS, being cast away, swam and got safe to the next shore; where, beholding geometrical figures traced in the sand, he was seized with a transport of joy, judging that he was amongst Greeks, and not in a nation of barbarians.

Should you ever happen to be cast, by some adventure, amongst unknown people, upon seeing a piece of money, you may be assured that you are arrived in a civilized country.

The culture of lands requires the use of money. This culture supposes many inventions and many degrees of knowledge; and we always see ingenuity, the arts, and a sense of want, making their progress with an equal pace. All this conduces to the establishment of a sign of value.

Torrents and eruptions[¶] have made the discovery that metals are contained in the bowels of the earth. When once they have been separated, they have easily been applied to their proper use.

CHAP. XVI.

Of civil Laws among People who know not the Use of Money.

WHEN a people have not the use of money, they are seldom acquainted with any other injustice than that which arises from violence; and the weak, by uniting, defend themselves from its effects. They have nothing there but political regulations. But, where money is established, they are subject to that injustice which proceeds from craft; an injustice that may be exercised a thousand ways. Hence they are forced to have good civil laws, which spring up with the new practices of iniquity.

In countries where they have no specie the robber takes only bare moveables, which have no mutual resemblance. But, where they make use of money, the robber takes the signs, and these always resemble each other. In the former, nothing can be concealed, because the robber takes along with him the proofs of his conviction; but, in the latter, it is quite the contrary.

CHAP. XVII.

Of political Laws amongst Nations who have not the Use of Money.

THE greatest security of the liberties of a people, who do not cultivate the earth, is, their not knowing the use of money. What is gained by hunting, fishing, or keeping herds of cattle, cannot be assembled in such great quantity, nor be sufficiently preserved, for one man to find himself in a condition to corrupt many others: but when, instead of this, a man has a sign of riches, he may obtain a large quantity of these

signs, and distribute them as he pleases.

The people who have no money have but few wants; and these are supplied with ease, and in an equal manner. Equality is then unavoidable; and from hence it proceeds that their chiefs are not despotic.

CHAP. XVIII.

Of the Power of Superstition.

IF what travellers tell us be true, the constitution of a nation of Louisiana, called the Natches, is an exception to this. Their^{*} chief disposes of the goods of all his subjects, and obliges them to work and toil according to his pleasure. He has a power like that of the Grand Signior, and they cannot even refuse him their heads. When the presumptive heir enters into the world, they devote all the sucking children to his service during life. One would imagine that this is the great Sesostris. He is treated in his cottage with as much ceremony as an emperor of Japan or China.

The prejudices of superstition are superior to all others, and have the strongest influence on the human mind. Thus, though the savage nations have naturally no knowledge of despotic tyranny, still they feel the weight of it. They adore the sun; and, if their chief had not imagined that he was the brother of this glorious luminary, they would have thought him a wretch like themselves.

CHAP. XIX.

Of the Liberty of the Arabs and the Servitude of the Tartars.

THE Arabs and Tartars are nations of herdsmen and shepherds. The Arabs find themselves in that situation of which we have been speaking, and are therefore free; whilst the Tartars (the most singular people on earth) are involved in a[†] political slavery. I have already given reasons[‡] for this, and shall now assign some others.

They have no towns, no forests, and but few marshes; their rivers are generally frozen, and they dwell in a level country of an immense extent. They have pasture for their herds and slocks, and consequently property; but they have no kind of retreat or place of safety. A khan is no sooner overcome than they cut off his^{||} head; his children are treated in the same manner, and all his subjects belong to the conqueror. These are not condemned to a civil slavery; for, in that case, they would be a burthen to a simple

people, who have no lands to cultivate and no need of any domestic service. They therefore add to the bulk of the nation; but, instead of civil servitude, a political slavery must naturally be introduced amongst them.

It is apparent, that, in a country where the several clans make continual war, and are perpetually conquering each other; in a country, where, by the death of the chief, the body politic of the vanquished clan is always destroyed; the nation in general can enjoy but little freedom; for there is not a single party that must not have been often subdued.

A conquered people may preserve some degree of liberty, when, by the strength of their situation, they are in a state that will admit of capitulating after their defeat. But the Tartars, always defenceless, being once overcome, can never be able to obtain conditions.

I have said, in chap. II. that the inhabitants of cultivated plains are seldom free. Circumstances have occurred to put the Tartars, who dwell in uncultivated plains, in the same situation.

CHAP. XX.

Of the Law of Nations as practised by the Tartars.

THE Tartars appear to be mild and humane amongst themselves, and yet they are most cruel conquerors: when they take cities, they put the inhabitants to the sword, and imagine that they act humanely, if they only sell the people or distribute them amongst their soldiers. They have destroyed Asia, from India even to the Mediterranean; and all the country, which forms the East of Persia, they have rendered a desert.

This law of nations is owing, I think, to the following cause. These people having no towns, all their wars are carried on with eagerness and impetuosity: they fight whenever they hope to conquer; and, when they have no such hope, they join the stronger army. With such customs, it is contrary to the law of nations that a city, incapable of repelling their attack, should stop their progress. They regard not cities as an association of inhabitants, but as places made to bid defiance to their power. They besiege them without military skill, and expose themselves greatly in the attack; and therefore revenge themselves on all those who have spilt their blood.

CHAP. XXI.

The civil Law of the Tartars.

FATHER Du Halde says, that, amongst the Tartars, the youngest of the males is always the heir, by reason, that, as soon as the elder brothers are capable of leading a pastoral life, they leave the house, with a certain number of cattle given them by their father, and build a new habitation. The last of the males, who continues at home with the father, is then his natural heir.

I have heard that a like custom was also observed in some small districts of England: and we find it still in Brittany, in the dutchy of Rohan, where it obtains with regard to ignoble tenures. This is doubtless a pastoral law, conveyed thither by some of the people of Britain, or established by some German nation. By Cæsar and Tacitus we are informed that the latter cultivated but little land.

CHAP. XXII.

Of a civil Law of the German Nations.

I shall here explain how that particular passage of the Salique law, which is commonly distinguished by the term, *The Salique Law*, relates to the institutions of a people who do not cultivate the earth, or, at least who cultivate it but very little.

The Salique[§] law ordains, that, when a man has left children behind him, the males shall succeed to the Salique land in prejudice to the females.

To understand the nature of those Salique lands, there needs no more than to search into the usages or customs of the Franks, with regard to lands, before they left Germany.

Mr. Echard has very plainly proved that the word *Salic* is derived from *Sala*, which signifies a house; and, therefore, that the Salique land was the land belonging to the house. I shall proceed farther, and examine into the nature of the house, and of the land belonging to the house, among the Germans.

“They dwell not in towns, says[¶] Tacitus, nor can they bear to have their habitations contiguous to those of others; every one leaves a space or small piece of ground about his house, which is inclosed.” Tacitus is very exact in this account; for many laws of the^{*} barbarian codes have different decrees against those who threw down this inclosure, as well as against such as broke into the house.

We learn, from Tacitus and Cæsar, that the lands cultivated by the Germans were given

them only for the space of a year; after which they again became public. They had no other patrimony but the house, and a piece of land within the[†] inclosure that surrounded it. It was this particular patrimony which belonged to the males. And, indeed, how could it belong to the daughters? they were to pass into another habitation.

The Salique land was, then, within that inclosure which belonged to a German house; this was the only property they had. The Franks, after their conquests, acquired new possessions, and continued to call them Salique lands.

When the Franks lived in Germany, their wealth consisted of slaves, flocks, horses, arms, &c. The habitation and the small portion of land adjoining to it were naturally given to the male children who were to dwell there. But afterwards, when the Franks had, by conquest, acquired large tracts of land, they thought it hard that the daughters and their children should be incapable of enjoying any part of them. Hence it was that they introduced a custom of permitting the father to settle the estate, after his death, upon his daughter and her children. They silenced the law; and it appears that these settlements were frequent, since they were entered in the formularies.[‡]

Amongst these formularies I find one^{||} of a singular nature. A grandfather ordained by will that his grandchildren should share his inheritance with his sons and daughters. What, then, became of the Salique law? In those times, either it could not be observed, or the continual use of nominating the daughters to an inheritance had made them consider their ability to succeed as a case authorized by custom.

The Salique law had not in view a preference of one sex to the other; much less had it a regard to the perpetuity of a family, a name, or the transmission of land: these things did not enter into the heads of the Germans; it was purely an œconomical law, which gave the house, and the land dependent thereon, to the males who should dwell in it, and to whom it consequently was of most service.

We need here only transcribe the title of the *allodial lands* of the Salique law, that famous text, of which so many have talked, and which so few have read.

"If a man dies without issue, his father or mother shall succeed him. 2. If he has neither father nor mother, his brother or sister shall succeed him. 3. If he has neither brother nor sister, the sister of his mother shall succeed him. 4. If his mother has no sister, the sister of his father shall succeed him. 5. If his father has no sister, the nearest relation by the male side shall succeed. 6. Not^S any part of the Salique land shall pass to the females; but it shall belong to the males; that is, the male children shall succeed their father."

It is plain that the first five articles relate to the inheritance of a man who dies without issue; and the sixth to the succession of him who has children.

When a man dies without children, the law ordains that neither of the two sexes shall have the preference to the other, except in certain cases. In the two first degrees of succession, the advantages of the males and females were the same; in the third and fourth, the females had the preference; and the males in the fifth.

Tacitus points out the source of these extravagances: "The sister's[¶] children, says he, are as dear to their uncle as to their own father. There are men who regard this degree of kindred as more strict, and even more holy. They prefer it when they receive hostages." From hence it proceeds that our earliest historians^{*} speak in such strong terms of the love of the kings of the Franks for their sisters and their sisters children. And, indeed, if the children of the sister were considered, in her brother's house, as his own children, it was natural for these to regard their aunt as their mother.

The sister of the mother was preferred to the father's sister; this is explained by other texts of the Salique law. When a[†] woman became a widow, she fell under the guardianship of her husband's relations; the law preferred to this guardianship the relations by the females before those by the males. Indeed, a woman, who entered into a family, joining herself with those of her own sex, became more united to her relations by the female than by the male. Moreover, when[‡] a man killed another, and had not wherewithal to pay the pecuniary penalty, the law permitted him to deliver up his substance, and his relations were to supply the deficiency. After the father, mother, and brother, the sister of the mother was to pay, as if this tie had something in it most tender. Now, the degree of kindred which imposes the burthens ought also to confer the advantages.

The Salique law enjoins, that, after the father's sister, the succession should be held by the nearest relation male; but, if this relation was beyond the fifth degree, he should not inherit. Thus a female of the fifth degree might inherit to the prejudice of a male of the sixth: and this may be seen in the^{¶¶} law of the Ripurian Franks, (a faithful interpreter of the Salique law,) under the title of *allodial lands*, where it closely adheres to the Salique law on the same subject.

If the father left issue, the Salique law would have the daughters excluded from the inheritance of the Salique land, and determined that it should belong to the male children.

It would be easy for me to prove that the Salique law did not absolutely exclude the daughters from the possession of the Salique land, but only in the case where they were debarred by their brothers. This appears from the letter of the Salique law; which, after having said that the women shall possess none of the Salique land, but only the males, interprets and restrains itself, by adding, "that is, the son shall succeed to the inheritance of the father."

2. The text of the Salique law is cleared up by the law of the Ripurian Franks, which has also a title[§] on allodial lands very conformable to that of the Salique law.

3. The laws of these barbarous nations, who all sprung from Germany, interpret each other, more particularly as they all have nearly the same spirit. The Saxon[¶] law enjoined the father and mother to leave their inheritance to their son, and not to their daughter; but, if there were none but daughters, they were to have the whole inheritance.

4. We have two ancient formularies^{*} that state the case in which, according to the Salique law, the daughters were excluded by the males; that is, when they stood in competition with their brother.

5. Another formulary[†] proves that the daughter succeeded to the prejudice of the grandson; she was therefore excluded only by the son.

6. If daughters had been generally debarred, by the Salique law, from the inheritance of land, it would be impossible to explain the histories, formularies, and charters, which are continually mentioning the lands and possessions of the females under the first race.

People[‡] have been wrong in asserting that the Salique lands were fiefs. 1. This head is distinguished by the title of allodial lands. 2. Fiefs at first were not hereditary. 3. If the Salique lands had been fiefs, how could Marculfus treat that custom as impious, which excluded the women from inheriting, when the males themselves did not succeed to fiefs? 4. The charters which have been cited, to prove that the Salique lands were fiefs, only shew that they were freeholds. 5. Fiefs were not established till after the conquest, and the Salique customs existed long before the Franks left Germany. 6. It was not the Salique law that formed the establishment of fiefs, by setting bounds to the succession of females, but it was the establishment of fiefs that prescribed limits to the succession of females and to the regulations of the Salique law.

After what has been said, one would not imagine that the perpetual succession of males to the crown of France should have taken its rise from the Salique law. And yet this is a point indubitably certain. I prove it from the several codes of the barbarous nations.

The Salique law[¶] and the law of the Burgundians[§] debarred the daughters from the right of succeeding to the land in conjunction with their brothers; neither did they succeed to the crown. The law of the[¶] Visigoths, on the contrary^{*}, permitted the daughters to inherit the land with their brothers; and the women were[‡] capable of inheriting the crown. Amongst these people, the regulations of the civil law had an effect on the political.

This was not the only case in which the political law of the Franks gave way to the civil. By the Salique law, all the brothers succeeded equally to the land; and this was also

decreed by a law of the Burgundians. Thus, in the kingdom of the Franks, and in that of the Burgundians, all the brothers succeeded to the crown, if we except a few murders and usurpations, which took place amongst the Burgundians.

CHAP. XXIII.

Of the regal Ornaments among the Franks.

A people who do not cultivate the land have no idea of luxury. We may see, in Tacitus, the admirable simplicity of the German nations: they had no artificial elegancies of dress; their ornaments were derived from nature. If the family of their chief was to be distinguished by any sign, it was no other than that which nature bestowed. The kings of the Franks, of the Burgundians, and the Visigoths, wore their long hair for a diadem.

CHAP. XXIV.

Of the Marriages of the Kings of the Franks.

I have already mentioned, that, with people who do not cultivate the earth, marriages are less fixed than with others, and that they generally take many wives. "Of[†] all the barbarous nations the Germans were almost the only people who were satisfied with one wife, if we except[‡], says Tacitus, some persons, who, not from a dissoluteness of manners, but because of their nobility, had many."

This explains the reason why the kings of the first race had so great a number of wives. These marriages were less a proof of incontinence than a consequence of dignity; and it would have wounded them in a tender point to have deprived them of such a prerogative[§]. This also explains the reason why the example of the kings was not followed by the subjects.

CHAP. XXV.

CHILDERIC.

"THE laws of matrimony, amongst the Germans, says Tacitus, are strictly observed.[¶] Vice is not there a subject of ridicule. To corrupt or be corrupted is not called fashion, or the custom of the age. There are few^{*} examples. in this populous nation. of the

violation of conjugal faith."

This was the reason of the expulsion of Childeric: he shocked their rigid virtue, which conquest had not had time to corrupt.

CHAP. XXVI.

Of the Time when the Kings of the Franks became of Age.

BARBARIANS, who do not cultivate the earth, have, strictly speaking, no jurisdiction; and are, as we have already remembered, rather governed by the law of nations than by civil institutions. They are, therefore, always armed. Thus Tacitus tells us, "that the Germans^{††} undertook no affairs, either of a public or private nature, unarmed." They gave their[†] vote by the sound of their arms[‡]. As soon as they could carry them, they were presented to the assembly; they put a javelin[¶] into their hands, and from that moment they[§] were out of their minority: they had been a part of the family, now they became a part of the republic.

"The eagles, said[¶] the king of the Ostrogoths, cease to feed their young ones as soon as their wings and talons are formed; the latter have no need of their assistance when they are able themselves to seize their prey: it would be a disgrace, if the young people in our armies were thought to be of an age unfit for managing their estates or regulating the conduct of their lives. It is virtue that constitutes full age among the Goths."

Childebert II. was^{*} fifteen years old when Gontram, his uncle, declared that he was of age, and capable of governing by himself. We find, in the Ripuarian laws, that the age of fifteen, the ability of bearing arms, and majority, went together. It is there said,[†] "that, if a Ripuarian dies or is killed, and leaves a son behind him, that son can neither prosecute nor be prosecuted till he has completely attained the age of fifteen; and then he may either answer for himself or choose a champion." It was necessary that his mind should be sufficiently formed to be able to defend himself in court, and that his body should have all the strength that was proper for his defence in single combat.

Amongst the Burgundians[‡], who also made use of this combat in their judiciary proceedings, they were of age at fifteen.

Agathias tells us that the arms of the Franks were light: they might, therefore, be of age at fifteen. In succeeding times, the arms they made use of were heavy, and they were already greatly so in the time of Charlemagne, as appears by our capitularies and romances. Those who had[¶] fiefs, and were consequently obliged to do military service, were not then of age till they were twenty-one years old.[§]

CHAP. XXVII.

The same Subject continued.

WE have seen that the Germans did not appear in their assemblies before they were of age; they were a part of the family but not of the republic. This was the reason that the children of Clodomir, king of Orleans, and conqueror of Burgundy, were not proclaimed kings, because they were of too tender an age to be present at the assembly. They were not yet kings, but they had a right to the regal dignity as soon as they were able to bear arms; and, in the mean time, Clotildis, their grandmother, governed the state.^{*} But their uncles, Clotarius and Childebert, assassinated them, and divided their kingdom. This was the cause that, in the following ages, princes in their minority were proclaimed kings immediately after the death of their fathers. Thus duke Gondoald saved Childebert II. from the cruelty of Chilperic, and caused him to be proclaimed king[†] when he was only five years old.

But even in this change they followed the original spirit of the nation; for the public acts did not pass in the name of the young monarch. So that the Franks had a double administration; the one which concerned the person of the infant king, and the other which regarded the kingdom; and in the fiefs there was a difference between the guardianship and the civil administration.

CHAP. XXVIII.

Of Adoption among the Germans.

AS the Germans became of age by the wielding of arms, so they were adopted by the same sign. Thus Gontram, willing to declare his nephew, Childebert, of age, and to adopt him for his son, made use of these words. "I have put[†] this javelin into thy hands as a token that I have given thee all my kingdom." Then, turning toward the assembly, he added, "You see that my son Childebert is grown a man; obey him." Theodoric, king of the Ostrogoths, intending to adopt the king of the Heruli, wrote to him thus[‡]: "It is a noble custom of ours to be adopted by arms; for men of courage alone deserve to be our children. Such is the efficacy of this act, that whoever is the object of it had rather die than submit to any thing ignominious. Therefore, in compliance with the national usage, and because you are a man of courage, we adopt you for our son by these bucklers, these swords, these horses, which we send you as a present."

CHAP. XXIX.**Of the sanguinary Temper of the Kings of the Franks.**

CLOVIS was not the only prince amongst the Franks who had invaded Gaul. Many of his relations had penetrated into this country with particular tribes; but, as he had met with much greater success, and could grant considerable settlements to such as followed him, the Franks flocked to him from all parts, so that the other chiefs found themselves too weak to resist him. He formed a design of exterminating his whole race, and he succeeded[§]. He feared, says Gregory of Tours[¶], lest the Franks should choose another chief. His children and successors followed this practice to the utmost of their power. Thus the brother, the uncle, the nephew, and, what is still worse, the father, or the son, were perpetually conspiring against their whole family. The law continually divided the monarchy, while fear, ambition, and cruelty, wanted to re-unite it.

CHAP. XXX.**Of the national Assemblies of the Franks.**

IT has been remarked, above, that nations who do not cultivate the land enjoy great liberty.

This was the case of the Germans. Tacitus says, that they gave their kings, or chiefs, a very moderate degree of power^{*}; and Cæsar adds, farther[†], that, in times of peace, they had no common magistrates, but their princes administered justice in each village.

Thus, as Gregory of Tours[‡] sufficiently proves, the Franks in Germany had no king.

“The princes, says Tacitus[¶], deliberate on matters of no great concern, while affairs of importance are submitted to the whole nation; but, in such a manner, that these very affairs, which are under the cognizance of the people, are at the same time laid before the princes.” This custom was observed by them after their conquests, as may be seen[§] in all their records.

Tacitus says[¶], that capital crimes might be carried before the assembly. It was the same after the conquest, when the great vassals were tried before that body.

CHAP. XXXI.**Of the Authority of the Clergy under the first Race.**

THE priests of barbarous nations are commonly invested with power, because they have both that authority which is due to them from their religious character, and that influence which, amongst such a people, is the offspring of superstition. Thus we see, in Tacitus, that priests were held in great veneration by the Germans, and that they presided^{*} in the assemblies of the people. They alone were permitted[†] to chastise, to bind, to smite; which they did, not by order of the prince or as his ministers of justice, but as by an inspiration of that Deity ever supposed to be present with those who made war.

We ought not, therefore, to be astonished, when, from the very beginning of the first race, we meet with bishops the dispensers of[‡] justice; when we see them appear in the assemblies of the nation; when they have such a prodigious influence on the minds of sovereigns; and when they acquire so large a share of property.

Endnotes

[*] Lib. 17.

[†] Life of Solon.

[‡] Or he who wrote the book *De mirabilibus*.

[||] Japan is an exception to this, by its great extent as well as by its slavery.

[§] Polybius, I. 10.

[¶] It is thus that Diodorus tells us the shepherds found gold in the Pyrenean mountains.

[*] Edifying Letters, 20th collection.

[†] When a khan is proclaimed, all the people cry, That his word shall be as a sword.

[‡] Book XVII. c. 5.

[||] We ought not, therefore, to be astonished at Mahomet, the son of Miriveis, who, upon taking Ispahan, put all the princes of the blood to the sword.

[§] Tit. 62.

[¶] *Nullas Germanorum populis urbes babitari satis notum est, ne pati quidem inter se junctas sedes; colunt discreti, ut nemus placuit. Vicos locant, non in nostrum morem*

connexis et cobærentibus æaifictis; suam quisque domum spatio circumdat. De moribus Germanorum.

[*] The law of the Allemands, c. 10. and the law of the Bavarians, tit. 10. §. 1. and 2.

[†] This inclosure is called *cortis*, in the charters.

[‡] See Marculfus, l. 2. form. 10. & 12. Append. to Marculf. form. 49. and the ancient formularies of *Sirmondus*, form 22.

[‖] Form. 55. in Lindembroek's collection.

[§] *De terrâ verò Salicâ in mulierem nulla portio hereditatis transis, sed hoc virilis sexus acquirit; hoc est, filii in ipsâ hereditate succedunt.* Tit. 62. §. 6.

[¶] *Sororum filiis idem apud avunculum quam apud patrem honor. Quidam sanctiorem arctioremque hunc nexum sanguinis orbitantur, & in accipiendis obsidibus inagis exigunt, tanquam ii & animum firmiùs & domum latiùs teneant.* De moribus Germanorum.

[*] See, in Gregory of Tours, lib. 8. c. 18. and 20. and lib. 9. c. 16. and 20. the rage of Gontram at Leovigild's ill treatment of Ingunda his niece, which Childebert her brother took up arms to revenge.

[†] Salique law, tit. 47.

[‡] Ibid. tit. 61. §. 1.

[‖] *Et deinceps usque ad quintum genuculum qui proximus fuerit in bereditatem succedat.* Tit. 56. §. 3.

[§] Tit. 56.

[¶] Tit. 7. §. 1. *Pater aut mater defuncti, filio non filiæ bereditatem relinquunt; §. 4. qui defuntius, non filios, sed filias, reliquerit, ad eas omnis bereditas pertineat.*

[*] In Marculfus, l. 2. form. 12. and in the Appendix to Marculfus, form. 49.

[†] Lindembroek's collection, form. 55.

[‡] Ducange, Pithou, &c.

[‖] Tit. 62.

[§] Tit. 1. §. 3. tit. 14. §. 1. & tit. 51.

[¶] Lib. 4. tit. 2. §. 1.

[*] Amongst the Ostrogoths, the crown twice devolved to the males by means of females; the first time to Athalaricus, through Amalasantha, and the second to Theodat, through Amalafreda. Not but that the females of that nation might have held the crown in their own right; for Amalasantha reigned after the death of Athalaricus; nay, even after the election of Theodat, and in conjunction with that prince. See Amalasantha's and Theodat's letters, in Cassiodorus, lib. 10.

[†] The German nations, says Tacitus, had common customs, as well as those which were peculiar to each.

[‡] *Prope soli barbarorum singulis uxoribus contenti sunt.* De morib. German.

[¶] *Exceptis admodum paucis, qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur.* Ibid.

[§] See Fredegarius's chronicle of the year 628.

[¶] *Severa matrimonia ——— nemo illic vitia ridet, nec corrumpere & corrumpi sæculum vocatur.* De moribus Germanorum.

[*] *Paucissima in tam numerosa gente adulteria.* Ibid.

[‡‡] *Nibil, neque publicæ neque privatæ rei, nisi armati, agunt.* De mor. Germ.

[†] *Si displicuit sententia, fremitu aspernantur; sin placuit, frameas concutiunt.* Ibid.

[‡] *Sed arma sumere non ante cuiquam moris quam civitas suffecturum probaverit.*

[¶] *Tum in ipso concilio vel principum aliquis, vel pater, vel propinquus, scuto frameaque juvenem ornant.*

[§] *Hæc apud illos toga, hic primus juventutæ honos; ante hoc domûs pars videntur, mox reipublicæ.*

[¶] Theodoric, in Cassiod. lib. 1. ep. 38.

[*] He was scarcely five years old, says Gregory of Tours, 1. 5. c. 1. when he succeeded to his father, in the year 575. Gontram declared him of age in the year 585; he was, therefore, at that time, no more than fifteen.

[†] Tit. 81.

[‡] Tit. 87.

[||] There was no change in the time with regard to the common people.

[§] St. Lewis was not of age till twenty-one; this was altered by an edict of Charles V. in the year 1374.

[*] It appears, from Gregory of Tours, l. 3. that she chose two natives of Burgundy, which had been conquered by Clodomir, to raise them to the see of Tours, which also belonged to Clodomir.

[†] Gregory of Tours, l. 5. c. 1. *Vix lustrò ætatis uno jam peracto, qui die Dominicæ natalis regnare cœpit.*

[‡] See Gregory of Tours, book 7. c. 23.

[||] In Cassiod. lib. 4. ep. 2.

[§] Gregory of Tours, l. z.

[¶] Ibid.

[*] *Nec regibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincere, neque verberare, &c.* De morib. German.

[†] *In pace nullus est communis magistratus, sed principes regionum atque pagorum inter suos jus dicunt.* De bello Gall. lib. 6.

[‡] Lib. 2.

[||] *De minoribus principes consultant, de majoribus omnes; ita tamen ut ea, quorum penes plebem arbitrium est, apud principes pertractentur.* De morib. Germ.

[§] *Lex consensu populi fit & constitutione regis.* Capitularies of Charles the Bald, anno 864, art. 6.

[¶] *Licet apud concilium accusare & discrimen capitis intendere.* De morib. Germ.

[*] *Silentium per sacerdotes, quibus & coercendi jus est, imperatur.* De mor. Germ.

[†] *Nec legibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincere, neque verberare, nisi sacerdotibus est permissum, non quasi in pœnam, nec ducis jussu, sed velut Deo imperante, quem adesse bellatoribus credunt.* De morib. Germ.

[‡] See the constitutions of Clotarius, in the year 560, art. 6.

BOOK XIX. OF LAWS, IN RELATION TO THE PRINCIPLES WHICH FORM THE GENERAL SPIRIT, THE MORALS, AND CUSTOMS, OF A NATION.

CHAP. I.

Of the Subject of this Book.

THIS subject is very extensive. In that croud of ideas, which present themselves to my mind, I shall be more attentive to the order of things than to the things themselves. I shall be obliged to wander to the right and to the left, that I may investigate and discover the truth.

CHAP. II.

That it is necessary People's Minds should be prepared for the Reception of the best Laws.

NOTHING could appear more insupportable to the Germans[¶] than the tribunal of Varus. That which Justinian[§] erected amongst the Lazi, to proceed against the murderers of their king, appeared to them as an affair the most horrid and barbarous.

Mithridates[¶], haranguing against the Romans, reproached them more particularly for their^{*} law proceedings. The Parthians could not bear with one of their kings, who, having been educated at Rome, rendered himself affable and[‡] easy of access to all. Liberty itself has appeared intolerable to those nations who have not been accustomed to enjoy it. Thus a pure air is sometimes disagreeable to such as have lived in a fenny country.

Balbi, a Venetian, being at[‡] Pegu, was introduced to the king. When the monarch was informed that they had no king at Venice, he burst into such a fit of laughter that he was seized with a cough, and with difficulty could speak to his courtiers. What legislator could propose a popular government to a people like this?

CHAP. III.

Of Tyranny.

THERE are two sorts of tyranny; one real, which arises from oppression; the other is seated in opinion, and is sure to be felt whenever those who govern establish things shocking to the present ideas of a nation.

Dio tells us that Augustus was desirous of being called Romulus; but, having been informed that the people feared that he would cause himself to be crowned king, he changed his design. The old Romans were averse to a king because they could not suffer any man to enjoy such power; these would not have a king because they could not bear his manners. For, though Cæsar, the triumvirs, and Augustus, were really invested with regal power, they had preserved all the outward appearance of equality, while their private lives were a kind of contrast to the pomp and luxury of foreign monarchs; so that, when the Romans were resolved to have no king, this only signified that they would preserve their customs, and not imitate those of the African and Eastern nations.

The same writer informs us, that the Romans were exasperated against Augustus for making certain laws which were too severe; but, as soon as he had recalled Pylades, the comedian, whom the jarring of different factions had driven out of the city, the discontent ceased. A people of this stamp have a more lively sense of tyranny when a player is banished than when they are deprived of their laws.

CHAP. IV.

Of the general Spirit of Mankind.

MANKIND are influenced by various causes; by the climate, by the religion, by the laws, by the maxims of government, by precedents, morals, and customs; from whence is formed a general spirit of nations.

In proportion as, in every country, any one of these causes acts with more force, the others, in the same degree, are weakened. Nature and the climate rule almost alone over the savages; customs govern the Chinese; the laws tyrannize in Japan; morals had formerly all their influence at Sparta; maxims of government and the ancient simplicity of manners once prevailed at Rome.

CHAP. V.

How far we should be attentive lest the general Spirit of a Nation be changed.

SHOULD there happen to be a country whose inhabitants were of a social temper, open-hearted, cheerful, endowed with taste, and a facility of communicating their thoughts; who were sprightly and agreeable; sometimes imprudent, often indiscreet; and, besides, had courage, generosity, frankness, and a certain notion of honour; no one ought to endeavour to restrain their manners by laws, unless he would lay a restraint on their virtues. If, in general, the character be good, the little foibles that may be found in it are of small importance.

They might lay a restraint upon women, enact laws to reform their manners, and to reduce their luxury: but who knows but that, by these means, they might lose that peculiar taste which would be the source of the wealth of the nation, and that politeness which would render the country frequented by strangers?

It is the business of the legislature to follow the spirit of the nation when it is not contrary to the principles of government; for we do nothing so well as when we act with freedom, and follow the bent of our natural genius.

If an air of pedantry be given to a nation that is naturally gay, the state will gain no advantage from it, either at home or abroad. Leave it to do frivolous things in the most serious manner, and with gaiety the things most serious.

CHAP. VI.

That every Thing ought not to be corrected.

LET them but leave us as we are, said a gentleman of a nation which had a very great resemblance to that we have been describing, and nature will repair whatever is amiss. She has given us a vivacity capable of offending and hurrying us beyond the bounds of respect: this same vivacity is corrected by the politeness it procures, inspiring us with a taste of the world, and, above all, for the conversation of the fair-sex.

Let them leave us as we are: our indiscretions, joined to our good-nature, would make the laws which should constrain our sociability not at all proper for us.

CHAP. VII.

Of the Athenians and Lacedæmonians.

THE Athenians, this gentleman adds, were a nation that had some relation to ours. They mingled gaiety with business; a stroke of raillery was as agreeable in the senate as in

the theatre. This vivacity, which discovered itself in their councils, went along with them in the execution of their resolves. The characteristic of the Spartans was gravity, seriousness, severity, and silence. It would have been as difficult to bring over an Athenian by teasing as it would a Spartan by diverting him.

CHAP. VIII.

Effects of a sociable Temper.

THE more communicative a people are, the more easily they change their habits, because each is, in a greater degree, a spectacle to the other, and the singularities of individuals are better observed. The climate, which influences one nation to take a pleasure in being communicative, makes it also delight in change; and that, which makes it delight in change, forms its taste.

The society of the fair-sex spoils the manners and forms the taste; the desire of giving greater pleasure than others establishes the embellishments of dress; and the desire of pleasing others more than ourselves gives rise to fashions. This mode is a subject of importance; by giving a trifling turn of mind, it continually increases the branches of its commerce. †

CHAP. IX.

Of the Vanity and Pride of Nations.

VANITY is as advantageous to a government as pride is dangerous. To be convinced of this, we need only represent, on the one hand, the numberless benefits which result from vanity, as industry, the arts, fashions, politeness, and taste; on the other, the infinite evils which spring from the pride of certain nations, as laziness, poverty, a total neglect of every thing; in fine, the destruction of the nations which have happened to fall under their government as well as of their own. Laziness^S is the effect of pride; labour a consequence of vanity: the pride of a Spaniard leads him to decline labour; the vanity of a Frenchman to work better than others.

All lazy nations are grave: for those who do not labour regard themselves as the sovereigns of those who do.

If we search amongst all nations, we shall find, that, for the most part, gravity, pride, and indolence, go hand in hand.

The people of Achim[¶] are proud and lazy; those who have no slaves hire one, if it be only to carry a quart of rice a hundred paces; they would be dishonoured if they carried it themselves.

In many places, people let their nails grow, that all may see they do not work.

Women, in the Indies^{*}, believe it shameful for them to learn to read: this is, they say, the business of their slaves, who sing their spiritual songs in the temples of their pagods. In one tribe they do not spin; in another they make nothing but baskets and mats; they are not even to pound rice; and in others they must not go to fetch water. These rules are established by pride; and the same passion makes them followed. There is no necessity for mentioning that the moral qualities, according as they are blended with others, are productive of different effects: thus pride, joined to a vast ambition and notions of grandeur, produced such effects among the Romans as are known to all the world.

CHAP. X.

Of the Character of the Spaniards and Chinese.

THE characters of the several nations are formed of virtues and vices, of good and bad qualities. From the happy mixture of these great advantages result, and frequently where it would be least expected; there are others from whence great evils arise, evils which one would not suspect.

The Spaniards have been, in all ages, famous for their honesty. Justin[†] mentions their fidelity in keeping whatever was entrusted to their care; they have frequently suffered death rather than reveal a secret. They have still the same fidelity for which they were formerly distinguished. All the nations who trade to Cadiz trust their fortunes to the Spaniards, and have never yet repented it. But this admirable quality, joined to their indolence, forms a mixture from whence such effects result as to them are most pernicious. The rest of the European nations carry on, in their very sight, all the commerce of their monarchy.

The character of the Chinese is formed of another mixture, directly opposite to that of the Spaniards: the precariousness of their subsistence[‡] inspires them with a prodigious activity, and such an excessive desire of gain, that no trading nation can confide in them[¶]. This acknowledged infidelity has secured them the possession of the trade to Japan. No European merchant has ever dared to undertake it in their name, how easy soever it might be for them to do it from their maritime provinces in the North.

CHAP. XI.

A Reflection.

I have said nothing here with a view to lessen that infinite distance which must ever be between virtue and vice. God forbid that I should be guilty of such an attempt. I would only make my readers comprehend, that all political are not moral vices; and that all moral are not political vices; and that those, who make laws which shock the general spirit of a nation, ought not to be ignorant of this.

CHAP. XII.

Of Custom and Manners in a despotic State.

IT is a capital maxim, that the manners and customs of a despotic empire ought never to be changed; for nothing would more speedily produce a revolution. The reason is, that, in these states, there are no laws; that is, none that can be properly called so; there are only manners and customs; and, if you overturn these, you overturn all.

Laws are established, manners are inspired; these proceed from a general spirit, those from a particular institution: now, it is as dangerous, nay, more so, to subvert the general spirit as to change a particular institution.

There is less communication in a country where each, either as superior or inferior, exercises, or is oppressed by, arbitrary power, than there is in those where liberty reigns in every station. They do not, therefore, so often change their manners and behaviour. Fixed and established customs have a near resemblance to laws. Thus it is here necessary that a prince or a legislator should less oppose the manners and customs of the people than in any other country upon earth.

Their women are commonly confined, and have no influence in society. In other countries, where they have an intercourse with men, their desire of pleasing, and the desire men also have of giving them pleasure, produce a continual change of customs. The two sexes spoil each other; they both lose their distinctive and essential quality; what was naturally fixt becomes quite unsettled, and their customs and behaviour alter every day.

CHAP. XIII.

Of the Behaviour of the Chinese.

BUT China is the place where the customs of the country can never be changed. Besides, their women being absolutely separated from the men, their customs, like their morals, are taught in the schools. A man of ^s letters may be known by his easy address. These things, being once taught by precept and inculcated by grave doctors, become fixed, like the principles of morality, and are never changed.

CHAP. XIV.

What are the natural Means of changing the Manners and Customs of a Nation.

WE have said that the laws were the particular and precise institutions of a legislator, and manners and customs the institutions of a nation in general. From hence it follows, that, when these manners and customs are to be changed, it ought not to be done by laws; this would have too much the air of tyranny: it would be better to change them by introducing other manners and other customs.

Thus, when a prince would make great alterations in his kingdom, he should reform by law what is established by law, and change by custom what is settled by custom; for it is very bad policy to change by law what ought to be changed by custom.

The law which obliged the Muscovites to cut off their beards and to shorten their cloaths, and the rigour with which Peter I. made them crop, even to their knees, the long cloaks of those who entered into the cities, were instances of tyranny. There are means that may be made use of to prevent crimes; these are punishments: there are those for changing our customs, these are examples.

The facility and ease with which that nation has been polished plainly shew that this prince had a worse opinion of his people than they deserved; and that they were not brutes, though he was pleased to call them so. The violent measures which he employed were needless; he would have attained his end as well by milder methods.

He himself experienced the facility of bringing about these alterations. The women were shut up, and in some measure slaves; he called them to court; he sent them silks and fine stuffs, and made them dress like the German ladies. This sex immediately relished a manner of life which so greatly flattered their taste, their vanity, and their passions; and, by their means, it was relished by the men.

What rendered the change the more easy was, that their manners, at that time, were

foreign to the climate, and had been introduced amongst them by conquest and by a mixture of nations. Peter I. in giving the manners and customs of Europe to an European nation, found a facility which he did not himself expect. The empire of the climate is the first, the most powerful, of all empires. He had, then, no occasion for laws to change the manners and customs of his country; it would have been sufficient to have introduced other manners and other customs.

Nations are, in general, very tenacious of their customs; to take them away by violence is to render them unhappy: we should not, therefore, change them, but engage the people to make the change themselves.

All punishment which is not derived from necessity is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province.

CHAP. XV.

The Influence of domestic Government on the political.

THIS alteration in the manners of women will doubtless have a great influence on the government of Muscovy. One naturally follows the other: the despotic power of the prince is connected with the servitude of women; the liberty of women with the spirit of monarchy.

CHAP. XVI.

How some Legislators have confounded the Principles which govern Mankind.

MANNERS and customs are those habits which are not established by legislators, either because they were not able, or were not willing, to establish them.

There is this difference between laws and manners, that the laws are most adapted to regulate the actions of the subject, and manners to regulate the actions of the man. There is this difference between manners and customs, that the former principally relate to the interior conduct, the latter to the exterior.

These things[¶] have been sometimes confounded. Lycurgus made the same code for the laws, manners, and customs; and the legislators of China have done the same.

We ought not to be surprized that the legislators of China and Sparta should confound the laws, manners, and customs: the reason is, their manners represent their laws, and their customs their manners.

The principal object, which the legislators of China had in view, was, to make their subjects live in peace and tranquility. They would have people filled with a veneration for one another, that each should be every moment sensible of his dependence on society, and of the obligations he owed to his fellow-citizens. They therefore gave rules of the most extensive civility.

Thus the inhabitants of the^{*} villages of China practise amongst themselves the same ceremonies as those observed by persons of an exalted station: a very proper method of inspiring mild and gentle dispositions, of maintaining peace and good order, and of banishing all the vices which spring from an asperity of temper. In effect, would not the freeing them from the rules of civility be to search out a method for them to indulge their own humours?

Civility is, in this respect, of more value than politeness. Politeness flatters the vices of others, and civility prevents ours from being brought to light. It is a barrier which men have placed within themselves to prevent the corruption of each other.

Lycurgus, whose institutions were severe, had no regard to civility in forming the external behaviour; he had a view to that warlike spirit with which he would fain inspire his people. A people, who were in a continual state of discipline and instruction, and who were endued with equal simplicity and rigour, atoned by their virtues for their want of complaisance.

CHAP. XVII.

Of the peculiar Quality of the Chinese Government.

THE legislators of China went farther.[†] They confounded together their religion, laws, manners, and customs; all these were morality, all these were virtue. The precepts relating to these four points were what they called rites; and it was in the exact observance of these that the Chinese government triumphed. They spent their whole youth in learning them, their whole life in the practice. They were taught by their men of letters, they were inculcated by the magistrates; and, as they included all the ordinary actions of life, when they found the means of making them strictly observed, China was well governed.

Two things have contributed to the ease with which these rites are engraved in the hearts and minds of the Chinese; one, the difficulty of writing, which, during the

greatest part of their lives, wholly employs their attention[†], because it is necessary to prepare them to read and understand the books in which they are comprized; the other, that the ritual precepts, having nothing in them that is spiritual, but being merely rules of common practice, are more adapted to convince and strike the mind than things merely intellectual.

Those princes, who, instead of ruling by these rites, governed by the force of punishments, wanted to accomplish that by punishments which it is not in their power to produce, that is, to give habits of morality. By punishments, a subject is very justly cut off from society, who, having lost the purity of his manners, violates the laws: but, if all the world were to lose their moral habits, would these re-establish them? Punishments may be justly inflicted to put a stop to many of the consequences of the general evil, but they will not remove the evil itself. Thus, when the principles of the Chinese government were discarded and morality was banished, the state fell into anarchy, and revolutions succeeded.

CHAP. XVIII.

A Consequence drawn from the preceding Chapter.

FROM hence it follows that the laws of China are not destroyed by conquest. Their customs, manners, laws, and religion, being the same thing, they cannot change all these at once; and, as it will happen that either the conqueror or the conquered must change, in China it has always been the conqueror. For, the manners of the conquering nation not being their customs, nor their customs their laws, nor their laws their religion, it has been more easy for them to conform, by degrees, to the vanquished people, than the latter to them.

There still follows from hence a very unhappy consequence, which is, that it is almost impossible for Christianity[‡] ever to be established in China. The vows of virginity, the assembling of women in churches, their necessary communication with the ministers of religion, their participation in the sacraments, auricular confession, extreme unction, the marriage of only one wife, all these overturn the manners and customs of the country, and, with the same blow, strike at their religion and laws.

The Christian religion, by the establishment of charity, by a public worship, by a participation of the same sacraments, seems to demand that all should be united; while the rites of China seem to ordain that all should be separated.

And, as we have seen that this separation[§] depends, in general, on the spirit of despotism, this will shew us the reason why monarchies, and indeed all moderate

governments, are more consistent¹ with the Christian religion.

CHAP. XIX.

How this Union of Religion, Laws, Manners, and Customs, among the Chinese, was effected.

THE principal object of government, which the Chinese legislators had in view, was the peace and tranquility of the empire: and subordination appeared to them as the most proper means to maintain it. Filled with this idea, they believed it their duty to inspire a respect for parents, and therefore exerted all their power to effect it. They established an infinite number of rites and ceremonies to do them honour when living, and after their death. It was impossible for them to pay such honours to deceased parents without being led to reverence the living. The ceremonies at the death of a father were more nearly related to religion; those for a living parent had a greater relation to the laws, manners, and customs: however, these were only parts of the same code; but this code was very extensive.

A veneration for their parents was necessarily connected with a suitable respect for all who represented them, such as old men, masters, magistrates, and the sovereign. This respect for parents supposed a return of love towards children, and consequently the same return from old men to the young, from magistrates to those who were under their jurisdiction, and from the emperor to his subjects. This formed the rites, and these rites the general spirit of the nation.

We shall now shew the relation which things, in appearance the most indifferent, may have to the fundamental constitution of China. This empire is formed on the plan of a government of a family. If you diminish the paternal authority, or even if you retrench the ceremonies which express your respect for it, you weaken the reverence due to magistrates, who are considered as fathers; nor would the magistrates have the same care of the people, whom they ought to look upon as their children; and that tender relation, which subsists between the prince and his subjects, would insensibly be lost. Retrench but one of these habits, and you overturn the state. It is a thing in itself very indifferent, whether the daughter-in-law rises every morning to pay such and such duties to her mother-in-law; but, if we consider that these exterior habits incessantly revive an idea necessary to be imprinted on all minds, an idea that forms the ruling spirit of the empire, we shall see that it is necessary that such or such a particular action be performed.

CHAP. XX.

Explication of a Paradox relating to the Chinese.

IT is very remarkable, that the Chinese, whose lives are guided by rites, are nevertheless the greatest cheats upon earth. This appears chiefly in their trade, which, in spite of its natural tendency, has never been able to make them honest. He who buys of them ought to carry with him his own^{*} weights, every merchant having three sorts; the one heavy, for buying; another light, for selling; and another of the true standard, for those who are upon their guard. It is possible, I believe, to explain this contradiction.

The legislators of China had two objects in view; they were desirous that the people should be submissive and peaceful, and that they should also be laborious and industrious. By the nature of the soil and climate, their subsistence is very precarious; nor can it be any other way secured than by industry and labour.

When every one obeys and every one is employed the state is in a happy situation. It is necessity, and perhaps the nature of the climate, that has given to the Chinese an inconceivable greediness for gain, and laws have never been made to restrain it. Every thing has been forbidden when acquired by acts of violence; every thing permitted when obtained by artifice or labour. Let us not, then, compare the morals of China with those of Europe. Every one, in China, is obliged to be attentive to what will be for his advantage; if the cheat has been watchful over his own interest, he who is the dupe ought to be attentive to his. At Sparta they were permitted to steal; in China they are suffered to deceive.

CHAP. XXI.

How the Laws ought to have a Relation to Manners and Customs.

IT is only singular institutions which thus confound laws, manners, and customs, things naturally distinct and separate: but, though they are in themselves different, there is nevertheless a great relation between them.

Solon being asked if the laws he had given to the Athenians were the best, he replied, "I have given them the best they were able to bear." A fine expression, that ought to be perfectly understood by all legislators! When divine Wisdom said to the Jews, "I have given you precepts which are not good," this signified that they had only a relative goodness; which is the sponge that wipes out all the difficulties in the law of Moses.

CHAP. XXII.

The same Subject continued.

WHEN a people have pure and regular manners, their laws become simple and natural.

Plato[†] says that Rhadamanthus, who governed a nation extremely religious, finished every process with extraordinary dispatch, administering only the oath on each

accusation. But, says the same Plato[‡], when a people are not religious, we should never have recourse to an oath, except he who swears is intirely disinterested, as in the case of a judge and a witness.

CHAP. XXIII.

How the Laws are founded on the Manners of a People.

AT the time when the manners of the Romans were pure, they had no particular law against the embezzlement of the public money. When this crime began to appear, it was thought so infamous, that, to be condemned to restore[¶] what they had taken, was considered as a sufficient disgrace: for a proof of this, see the sentence of L. Scipio.[§]

CHAP. XXIV.

The same Subject continued.

THE laws, which gave the right of tutelage to the mother, were most attentive to the preservation of the infant's person; those, which granted it to the next heir, were most attentive to the preservation of the state. When the manners of a people are corrupted, it is much better to give the tutelage to the mother. Amongst those, whose laws confide in the manners of the subjects, the guardianship is granted either to the next heir, or to the mother, and sometimes to both.

If we reflect on the Roman laws, we shall find that the spirit of these was conformable to what I have advanced. At the time when the laws of the twelve tables were made, the manners of the Romans were most admirable. The guardianship was given to the nearest relation of the infant, from a consideration that he ought to have the trouble of the tutelage who might enjoy the advantage of possessing the inheritance. They did not imagine the life of the heir in danger, though it was put into a person's hands who

would reap a benefit by his death. But, when the manners of Rome were changed, her legislators altered their conduct. If, in the pupillary substitution, say Caius[¶] and Justinian^{*}, the testator is afraid that the substitute will lay any snares for the pupil, he may leave the vulgar[‡] substitution open, and put the pupillary into a part of the testament which cannot be opened till after a certain time. These fears and precautions were unknown to the primitive Romans.

CHAP. XXV.

The same Subject continued.

THE Roman law gave the liberty of making presents before marriage; after marriage they were not allowed. This was founded on the manners of the Romans, who were led to marriage only by frugality, simplicity, and modesty, but might suffer themselves to be seduced by domestic cares, by complacency, and the constant tenour of conjugal felicity.

A law of the[‡] Visigoths forbade the man giving more to the woman he was to marry than the tenth part of his substance, and his giving her any thing during the first year of their marriage. This also took its rise from the manners of the country. The legislators were willing to put a stop to that Spanish ostentation which only led them to display an excessive liberality in acts of magnificence.

The Romans, by their laws, put a stop to some of the inconveniences which arose from the most durable empire in the world, that of virtue; the Spaniards, by theirs, would prevent the bad effects of a tyranny the most frail and transitory, that of beauty.

CHAP. XXVI.

The same Subject continued.

THE law[¶] of Theodosius and Valentinian drew the causes of repudiation from the ancient manners[§] and customs of the Romans. It placed in the number of these causes the behaviour of the husband[¶] who beat his wife in a manner that disgraced the character of a freeborn woman. This cause was omitted in the following laws^{*}; for their manners, in this respect, had undergone a change; the eastern customs having banished those of Europe. The first eunuch of the empress, wife to Justinian II. threatened her, says the historian, to chastise her in the same manner as children are punished at school. Nothing but established manners, or those which they were seeking to establish, could

raise even an idea of this kind.

We have seen how the laws follow the manners of a people; let us now observe how the manners follow the laws.

CHAP. XXVII.

How the Laws contribute to form the Manners, Customs, and Character, of a Nation.

THE customs of an enslaved people are a part of their servitude; those of a free people are a part of their liberty.

I have spoken, in the eleventh book^I, of a free people, and have given the principles of their constitution: let us now see the effects which follow from this liberty, the character it is capable of forming, and the customs which naturally result from it.

I do not deny that the climate may have produced great part of the laws, manners, and customs, of this nation; but I maintain that its manners and customs have a close connection with its laws.

As there are, in this state, two visible powers, the legislative and executive, and as every citizen has a will of his own, and may at pleasure assert his independence, most men have a greater fondness for one of these powers than for the other, and the multitude have commonly neither equity nor sense enough to shew an equal affection to both.

And, as the executive power, by disposing of all employments, may give great hopes and no fears, every man, who obtains any favour from it, is ready to espouse its cause; while it is liable to be attacked by those who have nothing to hope from it.

All the passions being unrestrained, hatred, envy, jealousy, and an ambitious desire of riches and honours, appear in their full extent: were it otherwise, the state would be in the condition of a man weakened by sickness, who is without passions because he is without strength.

The hatred which arises between the two parties will always subsist, because it will always be impotent.

These parties being composed of freemen, if the one becomes too powerful for the other, as a consequence of liberty, this other is depressed; while the citizens take the weaker side, with the same readiness as the hands lend their assistance to remove the

infirmities and disorders of the body.

Every individual is independent; and, being commonly led by caprice and humour, frequently changes parties: he abandons one, where he left all his friends, to unite himself to another, in which he finds all his enemies: so that, in this nation, it frequently happens that the people forget the laws of friendship as well as those of hatred.

The sovereign is here in the same case with a private person; and, against the ordinary maxims of prudence, is frequently obliged to give his confidence to those who have most offended him, and to disgrace the men who have best served him: he does that by necessity which other princes do by choice.

As we are afraid of being deprived of the blessing we already enjoy, and which may be disguised and misrepresented to us; and as fear always enlarges objects; the people are uneasy under such a situation, and believe themselves in danger even in those moments when they are most secure.

As those, who, with the greatest warmth, oppose the executive power, dare not avow the self-interested motives of their opposition, so much the more do they increase the terrors of the people, who can never be certain whether they are in danger or not. But even this contributes to make them avoid the real dangers to which they may, in the end, be exposed.

But the legislative body, having the confidence of the people, and being more enlightened than they, may calm their uneasiness, and make them recover from the bad impressions they have entertained.

This is the great advantage which this government has over the ancient democracies, in which the people had an immediate power; for, when they were moved and agitated by the orators, these agitations always produced their effect.

But, when an impression of terror has no certain object, it produces only clamour and abuse: it has, however, this good effect, that it puts all the springs of government into motion, and fixes the attention of every citizen: but, if it arises from a violation of the fundamental laws, it is sullen, cruel, and produces the most dreadful catastrophes.

Soon we should see a frightful calm, during which every one would unite against that power which had violated the laws.

If, when the uneasiness proceeds from no certain object, some foreign power should threaten the state, or put its prosperity or its glory in danger, the little interests of party would then yield to the more strong and binding, and there would be a perfect coalition in favour of the executive power.

But, if the disputes were occasioned by a violation of the fundamental laws, and a foreign power should appear, there would be a revolution that would neither alter the constitution nor the form of government. For a revolution formed by liberty becomes a confirmation of liberty.

A free nation may have a deliverer; a nation enslaved can have only another oppressor.

For, whoever is able to dethrone an absolute prince, has a power sufficient to become absolute himself.

As the enjoyment of liberty, and even its support and preservation, consists in every man's being allowed to speak his thoughts and to lay open his sentiments; a citizen, in this state, will say or write whatever the laws do not expressly forbid to be said or written.

A people like this, being always in a ferment, are more easily conducted by their passions than by reason, which never produces any great effect in the mind of man: it is therefore easy for those who govern to make them undertake enterprizes contrary to their true interest.

This nation is passionately fond of liberty, because this liberty is real; and it is possible for it, in its defence, to sacrifice its wealth, its ease, its interest, and to support the burthen of the most heavy taxes, even such as a despotic prince durst not lay upon his subjects.

But, as the people have a certain knowledge of the necessity of submitting to those taxes, they pay them from the well-founded hope of their discontinuance; their burthens are heavy, but they do not feel their weight; while, in other states, the uneasiness is infinitely greater than the evil.

This nation must, therefore, have a fixed and certain credit, because it borrows of itself and pays itself. It is possible for it to undertake things above its natural strength, and employ against its enemies immense sums of fictitious riches, which the credit and nature of the government may render real.

To preserve its liberty, it borrows of its subjects; and the subjects, seeing that its credit would be lost if ever it were conquered, have a new motive to make fresh efforts in defence of its liberty.

This nation, inhabiting an island, is not fond of conquering, because it would be weakened by distant conquests; especially as the soil of the island is good; for it has then no need of enriching itself by war; and, as no citizen is subject to another, each sets a greater value on his own liberty than on the glory of one or any number of citizens.

Military men are there regarded as belonging to a profession which may be useful, but is often dangerous; and as men whose very services are burthensome to the nation: civil qualifications are therefore more esteemed than the military.

This nation, which liberty and the laws render easy, on being freed from pernicious prejudices, is become a trading people; and, as it has some of those primitive materials of trade, out of which are manufactured such things as, from the artist's hand, receive a considerable value, it has made settlements proper to procure the enjoyment of this gift of heaven in its fullest extent.

As this nation is situated towards the North, and has many superfluous commodities, it must want also a great number of merchandizes which its climate will not produce: it has therefore entered into a great and necessary intercourse with the southern nations; and, making choice of those states whom it is willing to favour with an advantageous commerce, it enters into such treaties with the nation it has chosen as are reciprocally useful to both.

In a state, where, on the one hand, the opulence is extreme, and, on the other, the taxes are excessive, they are hardly able to live on a small fortune without industry: many, therefore, under a pretence of travelling or of health, retire from amongst them, and go in search of plenty even to the countries of slavery.

A trading nation has a prodigious number of little particular interests; it may, then, injure or be injured an infinite number of ways. Thus it becomes immoderately jealous, and is more afflicted at the prosperity of others than it rejoices at its own.

And its laws, otherwise mild and easy, may be so rigid, with respect to the trade and navigation carried on with it, that it may seem to trade only with enemies.

If this nation sends colonies abroad, it must rather be to extend its commerce than its dominion.

As men are fond of introducing into other places what they have established amongst themselves, they have given the people of the colonies their own form of government; and, this government carrying prosperity along with it, they have raised great nations in the forests they were sent to inhabit.

Having formerly subdued a neighbouring nation, which, by its situation, the goodness of its ports, and the nature of its products, inspires it with jealousy, though it has given this nation its own laws, yet it holds it in great dependence: the subjects there are free, and the state itself in slavery.

The conquered state has an excellent civil government, but is oppressed by the law of nations: laws are imposed by one country on the other, and these are such as render its

prosperity precarious, and dependent on the will of a master.

The ruling nation, inhabiting a large island, and being in possession of a great trade, hath, with extraordinary ease, grown powerful at sea; and, as the preservation of its liberties requires that it should have neither strong holds, nor fortresses, nor land forces, it has occasion for a formidable navy to defend it against invasions; a navy which must be superior to that of all other powers, who, employing their treasures in wars at land, have not sufficient for those at sea.

The empire of the sea has always given those who have enjoyed it a natural pride; because, thinking themselves capable of extending their insults wherever they please, they imagine that their power is as boundless as the ocean.

This nation has a great influence in the affairs of its neighbours; for, as its power is not employed in conquests, its friendship is more courted, and its resentment more dreaded, than could naturally be expected from the inconstancy of its government and its domestic divisions.

Thus it is the fate of the executive power to be almost always disturbed at home and respected abroad.

Should this nation, on some occasions, become the center of the negotiations of Europe, probity and good faith would be carried to a greater height than in other places; because the ministers, being frequently obliged to justify their conduct before a popular council, their negotiations could not be secret, and they would be forced to be, in this respect, a little more honest.

Besides, as they would in some sort be answerable for the events which an irregular conduct might produce, the surest, the safest, way for them would be take the straightest path.

If the nobles were formerly possessed of an immoderate power, and the monarch had found the means of abasing them by raising the people, the point of extreme servitude must have been that between humbling the nobility and that in which the people began to feel their power.

Thus this nation, having been formerly subject to an arbitrary power, on many occasions, preserves the stile of it, in such a manner, as to let us frequently see, upon the foundation of a free government, the form of an absolute monarchy.

With regard to religion, as, in this state, every subject has a free will, and must consequently be either conducted by the light of his own mind or by the caprice of fancy, it necessarily follows, that every one must either look upon all religion with indifference, by which means they are led to embrace the established religion, or they

must be zealous for religion in general, by which means the number of sects is increased.

It is not impossible but that, in this nation, there may be men of no religion, who would not, however, bear to be obliged to change that which they would choose, if they cared to choose any; for they would immediately perceive that their lives and fortunes are not more particularly theirs than their manner of thinking, and that whoever would deprive them of the one might, even with better reason, take away the other.

If, amongst the different religions, there is one that has been attempted to be established by methods of slavery, it must there be odious; because, as we judge of things by the appendages we join with them, it could never present itself to the mind in conjunction with the idea of liberty.

The laws against those who profess this religion could not however be of the sanguinary kind; for liberty can never inflict such punishments: but they may be so rigorous as to do all the mischief that can be done in cold blood.

It is possible that a thousand circumstances might concur to give the clergy so little credit that other citizens may have more. Therefore, instead of a separation, they have chosen rather to support the same burthens as the laity, and in this respect to make only one body with them: but, as they always seek to conciliate the respect of the people, they distinguish themselves by a more retired life, a conduct more reserved, and a greater purity of manners.

The clergy, not being able to protect religion, nor to be protected by it, only seek to persuade: their pens, therefore, furnish us with excellent works in proof of a revelation, and of the providence of the supreme Being.

Yet the state prevents the sitting of their assemblies, and does not suffer them to correct their own abuses; it chooses thus, through a caprice of liberty, rather to leave their reformation imperfect, than to suffer the clergy to be the reformers.

Those dignities which make a fundamental part of the constitution are more fixed than elsewhere; but, on the other hand, the great, in this country of liberty, are nearer upon a level with the people; their ranks are more separated, and their persons more confounded.

As those who govern have a power which, in some measure, has need of fresh vigour every day, they have a greater regard for such as are useful to them than for those who only contribute to their amusement: we see, therefore, fewer courtiers, flatterers, and parasites; in short, fewer of all those who make their own advantage of the folly of the great.

Men are less esteemed for frivolous talents and attainments than for essential qualities; and of this kind there are but two, riches, and personal merit.

They enjoy a solid luxury, founded not on the refinements of vanity, but on that of real wants: they ask nothing of nature but what nature can bestow.

The rich enjoy a great superfluity of fortune, and yet have no relish for frivolous amusements: thus many, having more wealth than opportunities of expence, employ it in a fantastical manner: in this nation, they have more judgement than taste.

As they are always employed about their own interest, they have not that politeness which is founded on indolence; and they really have not leisure to attain it.

The æra of Roman politeness is the same as that of the establishment of arbitrary power. An absolute government produces indolence, and this gives birth to politeness.

The more people there are in a nation, who require a circumspect behaviour and a care not to displease, the more there is of politeness. But it is rather the politeness of morals, than that of manners, which ought to distinguish us from barbarous nations.

In a country where every man has, in some sort, a share in the administration of the government, the women ought scarcely to live with the men. They are therefore modest, that is, timid; and this timidity constitutes their virtue: whilst the men, without a taste for gallantry, plunge themselves into a debauchery which leaves them at leisure, and in the enjoyment of their full liberty.

Their laws not being made for one individual more than another, each considers himself as a monarch; and, indeed, the men of this nation are rather confederates than fellow-subjects.

As the climate has given many persons a restless spirit and extended views, in a country where the constitution gives every man a share in its government and political interests, conversation generally turns upon politics: and we see men spend their lives in the calculation of events, which, considering the nature of things and the caprices of fortune, or, rather, of men, can scarcely be thought subject to the rules of calculation.

In a free nation, it is very often a matter of indifference whether individuals reason well or ill; it is sufficient that they do reason: from hence springs that liberty which is a security from the effects of these reasonings.

But, in a despotic government, it is equally pernicious whether they reason well or ill; their reasoning is alone sufficient to shock the principle of that government.

Many people, who have no desire of pleasing, abandon themselves to their own

particular humour; and most of those who have wit and ingenuity are ingenious in tormenting themselves: filled with a contempt or disgust for all things, they are unhappy amidst all the blessings that can possibly contribute to promote their felicity.

As no subject fears another, the whole nation is proud; for the pride of kings is founded only on their independence.

Free nations are haughty; others may more properly be called vain.

But, as these men, who are naturally so proud, live much by themselves, they are commonly bashful when they appear among strangers; and we frequently see them behave, for a considerable time, with an odd mixture of pride and ill-placed shame.

The character of the nation is more particularly discovered in their literary performances, in which we find the men of thought and deep meditation.

As society gives us a sense of the ridicules of mankind, retirement renders us more fit to reflect on the folly of vice. Their satirical writings are sharp and severe; and we find amongst them many Juvenals without discovering one Horace.

In monarchies extremely absolute, historians betray the truth, because they are not at liberty to speak it; in states remarkably free, they betray the truth, because of their liberty itself, which always produces divisions, every one becoming as great a slave to the prejudices of his faction as he could be in a despotic state.

Their poets have more frequently an original rudeness of invention, than that particular kind of delicacy which springs from taste: we there find something which approaches nearer to the bold strength of a Michael Angelo than to the softer graces of a Raphael.

Endnotes

[1] They cut out the tongues of the advocates, and cried, Viper, don't hiss. Tacitus.

[§] Agathias. lib. 4.

[¶] Justin, l. 38.

[*] *Calumnias litium*. Ibid.

[†] *Prompti aditus, nova comitas, ignotæ Parthis virtutes, nova vitia*. Tacitus.

[‡] He has described this interview, which happened, in the Collection of Voyages for

the Establishment of an India Company, vol. iii. part i. p. 33.

[||] Fable of the Bees.

[§] The people who follow the khan of Malacamber, those of Carnacata, and Coromandel, are proud and indolent; they consume little, because they are miserably poor; while the subjects of the Mogul and the people of Indostan employ themselves, and enjoy the conveniences of life like the Europeans. *Collection of Voyages for the Establishment of an India Company*, vol. i. p. 54.

[¶] See Dampier, vol. iii.

[*] Edifying Letters, 12th collect. p. 80.

[†] Lib. 43.

[‡] By the nature of the soil and climate.

[||] Du Halde, vol. ii.

[§] Du Halde.

[¶] Moses made the same code for laws and religion. The old Romans confounded the ancient customs with the laws.

[*] See Du Halde.

[†] See the classic books from which father Du Halde gives us some excellent extracts.

[‡] It is this which has established emulation, which has banished laziness, and cultivated a love of learning.

[||] See the reasons given by the Chinese magistrates, in their decrees, for proscribing the Christian religion. *Edifying Letters*, 17th collect.

[§] See book 4. c. 3. and book 9. c. 12.

[¶] See book 24. c. 3.

[*] Lange's Journal in 1721 and 1722, in *Voyages to the North*, vol. 8. p. 363.

[†] Of laws, lib. 12.

[‡] Of laws, lib. 12.

[||] In simplum.

[§] Livy, l. 38.

[¶] Institut. lib. tit. 2. 6. §. 2. Ozel's compilation, at Leyden, in 1658.

[*] Institut. l. 2. *de pupil. substit.* § 3.

[†] The form of the vulgar substitution ran thus: If such an one is unwilling to take the inheritance, I substitute, in his stead, &c. The pupillary substitution: If such an one dies before he arrives at the age of puberty, I substitute, &c.

[‡] Lib. 3. tit. 5. §. 5.

[||] Leg. 8. cod. *de repudiis.*

[§] And the law of the 12 tables. See Cicero's 2d Philippic.

[¶] Si verberibus, quæ ingenuis aliena sunt, afficientens probaverit.

[*] In Nov. 117. c. 14.

[†] Chap. 6.

THE END OF THE FIRST VOLUME.

THE SPIRIT OF LAWS.

BOOK XX. OF LAWS IN RELATION TO COMMERCE, CONSIDERED IN ITS NATURE AND DISTINCTIONS.

CHAP. I.

Of Commerce.

THE following subjects deserve to be treated in a more extensive manner than the nature of this work will permit. Fain would I glide down a gentle river; but I am carried away by a torrent.

Commerce is a cure for the most destructive prejudices; for it is almost a general rule, that wherever we find agreeable manners, there commerce flourishes; and that wherever there is commerce, there we meet with agreeable manners.

Let us not be astonished, then, if our manners are now less savage than formerly. Commerce has every where diffused a knowledge of the manners of all nations; these are compared one with another, and from this comparison arise the greatest advantages.

Commercial laws, it may be said, improve manners, for the same reason as they destroy them. They corrupt the purest morals^{*}; this was the subject of Plato's complaints: and we every day see, that they polish and refine the most barbarous.

CHAP. II.

Of the Spirit of Commerce.

PEACE is the natural effect of trade. Two nations who traffic with each other become reciprocally dependent; for if one has an interest in buying, the other has an interest in selling; and thus their union is founded on their mutual necessities.

But if the spirit of commerce unites nations, it does not in the same manner unite individuals. We see, that in[†] countries where the people move only by the spirit of commerce, they make a traffic of all the humane, all the moral virtues: the most trifling things, those which humanity would demand, are there done, or there given, only for money.

The spirit of trade produces in the mind of man a certain sense of exact justice, opposite on the one hand to robbery, and on the other to those moral virtues which forbid our always adhering rigidly to the rules of private interest, and suffer us to neglect this for the advantage of others.

The total privation of trade, on the contrary, produces robbery, which Aristotle ranks in the number of means of acquiring: yet it is not at all inconsistent with certain moral virtues Hospitality, for instance, is most rare in trading countries, while it is found in the most admirable perfection among nations of vagabonds.

It is a sacrilege, says Tacitus, for a German to shut his door against any man whomsoever, whether known or unknown. He who has^{*} behaved with hospitality to a stranger, goes to shew him another house where this hospitality is also practised; and he is there received with the same humanity. But when the Germans had founded kingdoms, hospitality was become burthensome. This appears by two laws of the[†] code of the Burgundians; one of which inslicted a penalty on every barbarian, who presumed to shew a stranger the house of a Roman; and the other decreed, that whoever received a stranger should be indemnified by the inhabitants, every one being obliged to pay his proper proportion.

CHAP. III.

Of the Poverty of the People.

THERE are two sorts of poor; those who are rendered such by the severity of the government; these are indeed incapable of performing almost any great action, because their indigence is a consequence of their slavery. Others are poor, only because they either despise, or know not the conveniencies of life; and these are capable of accomplishing great things, because their poverty constitutes a part of their liberty.

CHAP. IV.

Of Commerce in different Governments.

TRADE has some relation to forms of government. In a monarchy it is generally founded on luxury; and though it be also founded on real wants, yet the principal view with which it is carried on, is to procure every thing that can contribute to the pride, the pleasure, and the capricious whimsies of the nation. In republics, it is commonly founded on œconomy. Their merchants having an eye to all the nations of the earth, bring from one what is wanted by another. It is thus that the republics of Tyre, Carthage, Athens, Marseilles, Florence, Venice, and Holland, engaged in commerce.

This kind of traffic has a natural relation to a republican government; to monarchies it is only occasional. For as it is founded on the practice of gaining little, and even less than other nations, and of remedying this by gaining incessantly; it can hardly be carried on by a people swallowed up in luxury; who spend much, and see nothing but objects of grandeur.

Cicero was of this opinion, when he so justly said^{*}, "that he did not like that the same people should be at once both the lords and factors of the whole earth." For this would indeed be to suppose, that every individual in the state, and the whole state collectively, had their heads constantly filled with grand views, and at the same time with small ones; which is a contradiction.

Not but that the most noble enterprises are compleated also in those states which subsist by œconomical commerce: they have even an intrepidity not to be found in monarchies. And the reason is this:

One branch of commerce leads to another; the small to the moderate, the moderate to

the great; thus he who has gratified his desire of gaining a little, raises himself to a situation in which he is not less desirous of gaining a great deal.

Besides, the grand enterprises of merchants are always necessarily connected with the affairs of the public. But in monarchies, these public affairs give as much distrust to the merchants, as in free states they appear to give safety. Great enterprises therefore, in commerce, are not for monarchical, but for republican governments.

In short, an opinion of greater certainty, as to the possession of property in these states, makes them undertake every thing. They flatter themselves with the hopes of receiving great advantages from the smiles of fortune, and thinking themselves sure of what they have already acquired, they boldly expose it, in order to acquire more; risking nothing but as the means of obtaining.

I do not pretend to say that any monarchy is entirely excluded from an œconomical commerce; but of its own nature it has less tendency towards it: neither do I mean that the republics, with which we are acquainted, are absolutely deprived of the commerce of luxury; but it is less connected with their constitution.

With regard to a despotic state, there is no occasion to mention it. A general Rule: A nation in slavery labours more to preserve than to acquire; a free nation, more to acquire than to preserve.

CHAP. V.

Of Nations that have entered into an œconomical Commerce.

MARSEILLES, a necessary retreat in the midst of a tempestuous sea; Marseilles, a harbour which all the winds, the shelves of the sea, the disposition of the coasts, point out for a landing-place, became frequented by mariners! while the sterility^{*} of the adjacent country determined the citizens to an œconomical commerce. It was necessary that they should be laborious, to supply what nature had refused; that they should be just, in order to live among barbarous nations, from whom they were to derive their prosperity; that they should be moderate, to the end that they might always taste the sweets of a tranquil government; in fine, that they should be frugal in their manners, to enable them to subsist by trade, a trade the more certain, as it was less advantageous.

We every where see violence and oppression give birth to a commerce founded on œconomy, while men are constrained to take refuge in marshes, in isles, in the shallows of the sea, and even on rocks themselves. Thus it was, that Tyre, Venice, and the cities of Holland, were founded. Fugitives found there a place of safety. It was necessary that they should subsist; they drew therefore their subsistence from all parts of the world.

CHAP. VI.

Some Effects of an extensive Navigation.

IT sometimes happens that a nation, when engaged in an œconomical commerce, having need of the merchandizes of one country, which serve as a capital or stock for procuring the commodities of another, is satisfied with making very little profits, and frequently none at all, in trading with the former, in expectation of gaining greatly by the latter. Thus, when the Dutch were almost the only nation that carried on the trade from the South to the North of Europe; the French wines, which they imported to the North, were in some measure only a capital or stock for conducting their commerce in that part of the world.

It is a known fact, that there are some kinds of merchandize in Holland, which, though imported from afar, sell for very little more than they cost upon the spot. They account for it thus: a captain who has occasion to ballast his ship, will load it with marble; if he wants wood for stowage, he will buy it; and provided he loses nothing by the bargain, he will think himself a gainer. Thus it is that Holland has its quarries and its forests.

Further, it may happen so, that not only a commerce which brings in nothing, shall be useful; but even a losing trade shall be beneficial. I have heard it affirmed in Holland, that the whale-fishery in general does not answer the expence: but it must be observed, that the persons employed in building the ships, as also those who furnish the rigging and provisions, are jointly concerned in the fishery. Should they happen to lose in the voyage, they have had a profit in fitting out the vessel. This commerce, in short, is a kind of lottery, and every one is allured with the hopes of a prize. Mankind are generally fond of gaming; and even the most prudent have no aversion to it, when the disagreeable circumstances attending it, such as dissipation, anxiety, passion, loss of time, and even of life and fortune, are concealed from their view.

CHAP. VII.

The Spirit of England, with respect to Commerce.

THE tariff, or customs of England, are very unsettled, with respect to other nations; they are changed, in some measure, with every parliament, either by taking off particular duties, or by imposing new ones. They endeavour by these means still to preserve their independence. Supremely jealous with respect to trade, they bind themselves but little by treaties, and depend only on their own laws.

Other nations have made the interests of commerce yield to those of politics; the English, on the contrary, have ever made their political interests give way to those of commerce.

They know better than any other people upon earth, how to value at the same time these three great advantages, religion, commerce and liberty.

CHAP. VIII.

In what manner the œconomical Commerce has been sometimes restrained.

IN several kingdoms laws have been made, extremely proper to humble the states that have entered into the œconomical commerce. They have forbid their importing any merchandises, except the product of their respective countries; and have permitted them to traffic only in vessels built in the kingdom to which they brought their commodities.

It is necessary that the kingdom which imposes these laws should itself be able easily to engage in commerce; otherwise it will, at least, be an equal sufferer. It is much more advantageous to trade with a commercial nation, whose profits are moderate, and who are rendered in some sort dependent by the affairs of commerce; with a nation, whose larger views, and whose extended trade enables them to dispose of their superfluous merchandises; with a wealthy nation, who can take off many of their commodities, and make them a quicker return in specie; with a nation under a kind of necessity to be faithful, pacific from principle, and that seeks to gain, and not to conquer; it is much better, I say, to trade with such a nation, than with others, their constant rivals, who will never grant such great advantages.

CHAP. IX.

Of the Prohibition of Commerce.

IT is a true maxim, that one nation should never exclude another from trading with it, except for very great reasons. The Japanese trade only with two nations, the Chinese and the Dutch. The ^{*}Chinese gain a thousand *per cent.* upon sugars, and sometimes as much by the goods they take in exchange. The Dutch make nearly the same profits. Every nation that acts upon Japanese principles must necessarily be deceived; for it is competition which sets a just value on merchandises, and establishes the relation

between them.

Much less ought a state to lay itself under an obligation of selling its manufactures only to a single nation, under a pretence of their taking all at a certain price. The Poles, in this manner, dispose of their corn to the city of Dantzic; and several Indian princes have made a like contract for their spices with the Dutch[†]. These agreements are proper only for a poor nation, whose inhabitants are satisfied to forego the hopes of enriching themselves provided they can be secure of a certain subsistence; or for nations, whose slavery consists either in renouncing the use of those things which nature has given them, or in being obliged to submit to a disadvantageous commerce.

CHAP. X.

An Institution adapted to œconomical Commerce.

IN states that carry on an œconomical commerce, they have luckily established banks, which by their credit have formed a new species of wealth; but it would be quite wrong to introduce them into governments, whose commerce is founded only in luxury. The erecting of banks in countries governed by an absolute monarch, supposes money on the one side, and on the other power; that is, on the one hand, the means of procuring every thing without any power, and on the other the power, without any means of procuring at all. In a government of this kind, none but the prince ever had, or can have a treasure; and wherever there is one, it no sooner becomes great, than it becomes the treasure of the prince.

For the same reason, all associations of merchants, in order to carry on a particular commerce, are seldom proper in absolute governments. The design of these companies is to give to the wealth of private persons the weight of public riches. But, in those governments, this weight can be found only in the prince. Nay, they are not even always proper in states engaged in œconomical commerce; for, if the trade be not so great as to surpass the management of particular persons, it is much better to leave it open, than by exclusive privileges, to restrain the liberty of commerce.

CHAP. XI.

The same Subject continued.

A FREE port may be established in the dominions of states whose commerce is œconomical. That œconomy in the government, which always attends the frugality of

individuals, is, if I may so express myself, the soul of its œconomical commerce. The loss it sustains with respect to customs, it can repair by drawing from the wealth and industry of the republic. But in a monarchy, a step of this kind must be opposite to reason; for it could have no other effect, than to ease luxury of the weight of taxes. This would be depriving itself of the only advantage that luxury can procure, and of the only curb which, in a constitution like this, it is capable of receiving.

CHAP. XII.

Of the Freedom of Commerce.

THE freedom of commerce is not a power granted to the merchants to do what they please: This would be more properly its slavery. The constraint of the merchant is not the constraint of commerce. It is in the freest countries that the merchant finds innumerable obstacles; and he is never less crossed by laws, than in a country of slaves.

England prohibits the exportation of her wool; coals must be brought by sea to the capital; no horses, except geldings, are allowed to be exported; and the vessels^{*} of her colonies, trading to Europe, must take in water in England. The English constrain the merchant, but it is in favour of commerce.

CHAP. XIII.

What it is that destroys this Liberty.

WHEREVER commerce subsists, customs are established. Commerce is the exportation and importation of merchandises, with a view to the advantage of the state: Customs are a certain right over this same exportation and importation, founded also on the advantage of the state. From hence it becomes necessary, that the state should be neuter between its customs and its commerce, that neither of these two interfere with each other; and then the inhabitants enjoy a free commerce.

The farming of the customs destroys commerce by its injustice and vexations, as well as by the excess of the imposts; but, independent of this, it destroys it even more by the difficulties that arise from it, and by the formalities it exacts. In England, where the customs are managed by the king's officers, business is negotiated with a singular dexterity: one word of writing accomplishes the greatest affairs. The merchant need not lose an infinite deal of time; he has no occasion for a particular commissioner, either to

obviate all the difficulties of the farmers, or to submit to them.

CHAP. XIV.

The Laws of Commerce concerning the Confiscation of Merchandises.

THE Magna Charta of England forbids the seizing and confiscating, in case of war, the effects of foreign merchants, except by way of reprisals. It is an honour to the English nation, they have made this one of the articles of their liberty.

In the late war between Spain and England, the former made a ^{*}law, which punished with death those who brought English merchandises into the dominions of Spain; and the same penalty on those who carried Spanish merchandises into England. An ordinance like this cannot, I believe, find a precedent in any laws but those of Japan. It equally shocks humanity, the spirit of commerce, and the harmony which ought to subsist in the proportion of penalties; it confounds all our ideas, making that a crime against the state, which is only a violation of civil polity.

CHAP. XV.

Of seizing the Persons of Merchants.

SOLON [†]made a law, that the Athenians should no longer seize the body for civil debts. This law he [‡]received from Egypt. It had been made by Boccoris, and renewed by Sesostris.

This law is extremely good, with respect to the generality of civil [§]affairs; but there is sufficient reason for its not being observed in those of commerce. For, as merchants are obliged to entrust large sums, frequently for a very short time, and to pay money as well as to receive it, there is a necessity, that the debtor should constantly fulfil his engagements at the time prefixed; and hence it becomes necessary to lay a constraint on his person.

In affairs relating to common civil contracts, the law ought not to permit the seizure of the person; because the liberty of one citizen is of greater importance to the public, than the ease or prosperity of another. But in conventions derived from commerce, the law ought to consider the public prosperity as of greater importance than the liberty of a citizen; which, however, does not hinder the restrictions and limitations that humanity and good policy demand.

CHAP. XVI.

An excellent Law.

ADMIRABLE is that law of Geneva, which excludes from the magistracy, and even from the admittance into the great council, the children of those who have lived or died insolvent, except they have discharged their father's debts. It has this effect; it gives a confidence in the merchants, in the magistrates, and in the city itself. There the credit of the individual has still all the weight of public credit.

CHAP. XVII.

A Law of Rhodes.

THE inhabitants of Rhodes went further. Sextus Empiricus^{*} observes, that among those people, a son could not be excused from paying his father's debts, by renouncing the succession. This law of Rhodes was calculated for a republic, founded on commerce. Now I am inclined to think, that reasons drawn from commerce itself should make this limitation, that the debts contracted by the father, since the son's entering into commerce, should not affect the estate or property acquired by the latter. A merchant ought always to know his obligations, and to square his conduct by his circumstances and present fortune.

CHAP. XVIII.

Of the Judges of Commerce.

XENOPHON, in his book of revenues, would have rewards given to those overseers of commerce, who dispatched the causes brought before them with the greatest expedition. He was sensible of the need of our modern jurisdiction of a consul.

The affairs of commerce are but little susceptible of formalities. They are the actions of a day, and are every day followed by others of the same nature. Hence it becomes necessary, that every day they should be decided. It is otherwise with those actions of life which have a principal influence on futurity, but rarely happen. We seldom marry more than once; deeds and wills are not the work of every day: we are but once of age.

Plato^{*} says, that in a city where there is no maritime commerce, there ought not to be above half the number of civil laws: This is very true. Commerce brings into the same country different kinds of people; it introduces also a great number of contracts, and of species of wealth, with various ways of acquiring it.

Thus in a trading city, there are fewer judges, and more laws.

CHAP. XIX.

That a Prince ought not to engage himself in Commerce.

THEOPHILUS[†] seeing a vessel laden with merchandises for his wife Theodora, ordered it to be burnt. "I am Emperor," said he, "and you make me the master of a galley: By what means shall these poor men gain a livelihood, if we take their trade out of their hands?" He might have added, Who shall set bounds to us, if we monopolize all to ourselves? Who shall oblige us to fulfil our engagements? Our courtiers will follow our example; they will be more greedy, and more unjust than we: The people have some confidence in our justice; they will have none in our opulence: All these numerous duties, which are the cause of their wants, are certain proofs of ours.

CHAP. XX.

The same Subject continued.

WHEN the Portuguese and Castilians bore sway in the East Indies, commerce had such opulent branches, that their princes did not fail to seize them. This ruined their settlements in those parts of the world.

The viceroy of Goa granted exclusive privileges to particular persons. The people had no confidence in these men, and the commerce declined, by the perpetual change of those to whom it was entrusted; nobody took care to improve it, or to leave it entire to his successor. In short, the profit centered in a few hands, and was not sufficiently extended.

CHAP. XXI.

Of the Commerce of the Nobility in a Monarchy.

IN a monarchical government, it is contrary to the spirit of commerce, that any of the nobility should be merchants. "This," said the Emperors^{*} Honorius and Theodosius, "would be pernicious to cities; and would remove the facility of buying and selling between the merchants and the plebeians."

It is contrary to the spirit of monarchy, to admit the nobility into commerce. The custom of suffering the nobility of England to trade, is one of those things which has there mostly contributed to weaken the monarchical government.

CHAP. XXII.

A singular Reflection.

PERSONS, struck with the practice of some states, imagine, that in France they ought to make laws to engage the nobility to enter into commerce. But these laws would be the means of destroying the nobility, without being of any advantage to trade. The practice of this country is extremely wise; merchants are not nobles, though they may become so: they have the hopes of obtaining a degree of nobility, unattended with its actual inconveniencies. There is no surer way of being advanced above their profession, than to manage it well, or with success; the consequence of which is generally an affluent fortune.

Laws which oblige every one to continue in his profession, and to devolve it to his children, neither are nor can be of use in any but^{*} despotic kingdoms, where no body either can, or ought to have, emulation.

Let none say, that every one will succeed better in his profession, when he cannot change it for another. I say, that a person will succeed best, when those who have excelled hope to arise to another.

The possibility of purchasing honour with gold, encourages many merchants to put themselves in circumstances by which they may attain it. I do not take upon me to examine the justice of thus bartering for money the price of virtue. There are governments where this may be very useful.

In France, the dignity of the long robe, which places those who wear it between the great nobility and the people, and without having such shining honours as the former, has all their privileges; a dignity which, while this body, the depository of the laws, is encircled with glory, leaves the private members in a mediocrity of fortune; a dignity, in which there are no other means of distinction, but by a superior capacity and virtue, yet which still leaves in view one much more illustrious: The warlike nobility likewise, who conceive that, whatever degree of wealth they are possessed of, they may still increase

their fortunes; who are ashamed of augmenting, if they begin not with dissipating their estates; who always serve their prince with their whole capital stock, and, when that is sunk, make room for others who follow their example; who take the field that they may never be reproached with not having been there; who, when they can no longer hope for riches, live in expectation of honours, and, when they have not obtained the latter, enjoy the consolation of having acquired glory: all these things together have necessarily contributed to augment the grandeur of this kingdom; and, if for two or three centuries it has been incessantly increasing in power, this must be attributed not to fortune, who was never famed for constancy, but to the goodness of its laws.

CHAP. XXIII.

To what Nations Commerce is prejudicial.

RICHES consist either in lands, or in moveable effects. The soil of every country is commonly possessed by the natives. The laws of most states render foreigners unwilling to purchase their lands; and nothing but the presence of the owner improves them: this kind of riches therefore belongs to every state in particular. But moveable effects, as money, notes, bills of exchange, stocks in companies, vessels, and in fine all merchandises, belong to the whole world in general; in this respect it is composed of but one single state, of which all the societies upon earth are members. The people who possess more of these moveable effects than any other on the globe, are the most opulent. Some states have an immense quantity, acquired by their commodities, by the labour of their mechanics, by their industry, by their discoveries, and even by chance. The avarice of nations makes them quarrel for the moveables of the whole universe. If we could find a state so unhappy, as to be deprived of the effects of other countries, and at the same time of almost all its own, the proprietors of the lands would be only planters to foreigners. This state, wanting all, could acquire nothing; therefore it would be much better for the inhabitants not to have the least commerce with any nation upon earth; for commerce, in these circumstances, must necessarily lead them to poverty.

A country, that constantly exports fewer manufactures or commodities than it receives, will soon find the balance sinking; it will receive less and less, until, falling into extreme poverty, it will receive nothing at all.

In trading countries, the specie which suddenly vanishes quickly returns, because those nations that have received it are its debtors; but it never returns into those states of which we have just been speaking, because those who have received it owe them nothing.

Poland will serve us for an example. It has scarcely any of those things which we call the moveable effects of the universe, except corn, the produce of its lands. Some of the lords possess entire provinces; they oppress the husbandmen, in order to have greater quantities of corn, which they send to strangers, to procure the superfluous demands of luxury. If Poland had no foreign trade, its inhabitants would be more happy. The grandees, who would have only their corn, would give it to their peasants for subsistence; as their too extensive estates would become burthensome, they would divide them amongst their peasants; every one would find skins or wool in their herds or flocks, so that they would no longer be at an immense expence in providing cloaths; the great, who are ever fond of luxury, not being able to find it but in their own country, would encourage the labour of the poor. This nation, I affirm, would then become more flourishing, at least, if it did not become barbarous; and this the laws might easily prevent.

Let us next consider Japan. The vast quantity of what they receive, is the cause of the vast quantity of merchandises they send abroad. Things are thus in as nice an equilibrium, as if the importation and exportation were but small. Besides, this kind of exuberance in the state is productive of a thousand advantages: there is a greater consumption, a greater quantity of those things on which the arts are exercised; more men employed, and more numerous means of acquiring power: exigencies may also happen, that require a speedy assistance, which so opulent a state can better afford than any other. It is difficult for a country to avoid having superfluities: but it is the nature of commerce to render the superfluous useful, and the useful necessary. The state will be therefore able to afford necessaries to a much greater number of subjects.

Let us say then, that it is not those nations who have need of nothing, that must lose by trade; it is those who have need of every thing. It is not such people as have a sufficiency within themselves, but those who are most in want, that will find an advantage in putting a stop to all commercial intercourse.

Endnotes

[*] Cæsar said of the Gauls, that they were spoiled by the neighbourhood and the commerce of Marseilles; insomuch that they who formerly always conquered the Germans, were now become inferior to them. *War of the Gauls, lib. 6.*

[†] Holland.

[*] Et qui modo hospes fuerat, monstrator hospitii. *De morib. Germ.* Vid. Cæsar, de bello Gal. lib. 6.

[†] Tit. 38.

[*] Nolo eundem populum imperatorem & portitorem effe terrarum.

[*] Justin, l. 43, c. 3.

[*] Du Halde, vol. 2. p. 70.

[†] This was first established by the Portuguese. *Fr. Pirard's voyages, chap. 15. part 2.*

[*] Act of navigation, 1660. It is only in the time of war, that the merchants of Boston and Philadelphia send their vessels directly to the Mediterranean.

[*] Published at Cadiz, in March 1740.

[†] Plutarch, in his treatise against lending upon usury.

[‡] Diodorus, book i. part 2. chap. 3.

[§] The Greek legislators were to blame in preventing the arms and plough of any man from being taken in pledge, and yet permitting the taking of the man himself. *Diodorus, book i. part 2. chap. 3.*

[*] Hypotiposes, book 1. chap. 14.

[*] On Laws, book 8.

[†] Zonaras.

[*] Leg. nobiliores cod. de comm. et leg. ult. de rescind. vendit.

[*] This is actually very often the case in such governments.

BOOK XXI. OF LAWS RELATIVE TO COMMERCE, CONSIDERED IN THE REVOLUTIONS IT HAS MET WITH IN THE WORLD.

CHAP. I.

Some general Considerations.

THOUGH commerce be subject to great revolutions, yet it is possible that certain physical causes, as the quality of the soil or the climate, may fix its nature for ever.

We at present carry on the trade of the Indies merely by means of the silver which we send thither. The^{*} Romans carried annually thither about fifty millions of sesterces; and this silver, as ours is at present, was exchanged for merchandises which were brought

to the west. Every nation, that ever traded to the Indies, has constantly carried bullion, and brought merchandises in return.

It is Nature itself that produces this effect. The Indians have their arts adapted to their manner of living. Our luxury cannot be theirs, nor theirs our wants Their climate neither demands nor permits hardly any thing which comes from us. They go in a great measure naked: such cloaths as they have the country itself furnishes; and their religion, which is deeply rooted, gives them an aversion for those things that serve for our nourishment. They want, therefore, nothing but our bullion, to serve as the medium of value, and for this they give us merchandises in return, with which the frugality of the people, and the nature of the country, furnishes them in great abundance. Those ancient ^{*}—authors, who have mentioned the Indies, describe them just as we now find them, as to their policy, customs, and manners. The Indies have ever been the same Indies they are at present; and, in every period of time, those who traded to that country must carry specie thither, and brought none in return.

CHAP. II.

Of the People of Africa.

THE greatest part of the people on the coast of Africa are savages and barbarians. The principal reason, I believe, of this is, because the small countries capable of being inhabited, are separated from each other by large and almost uninhabitable tracts of land. They are without industry or arts. They have gold in abundance, which they receive immediately from the hand of nature. Every civilized state is therefore in a condition to traffic with them to advantage, by raising their esteem for things of no value, and receiving a very high price in return.

CHAP. III.

That the wants of the People in the South are different from those of the North.

In Europe, there is a kind of balance between the southern and northern nations. The first have every convenience of life, and few of its wants: the last have many wants, and few conveniencies. To one, nature has given much, and demands but little; to the other, she has given but little, and demands a great deal. The equilibrium is maintained by the laziness of the southern nations, and by the industry and activity which she has given to those in the north. The latter are obliged to undergo excessive labour, without

which, they would want every thing, and degenerate into barbarians. This has naturalized slavery to the people of the south: as they can easily dispense with riches, they can more easily dispense with liberty. But the people of the north have need of liberty, for this can best procure them the means of satisfying all those wants which they have received from nature. The people of the north, then, are in a forced state, if they are not either free or barbarians. Almost all the people of the south are, in some measure, in a state of violence, if they are not slaves.

CHAP. IV.

The principal Difference between the Commerce of the Ancients and the Moderns.

The world has found itself, from time to time, in different situations; by which the face of commerce has been altered. The trade of Europe is, at present, carried on principally from the north to the south; and the difference of climate is the cause that the several nations have great occasion for the merchandizes of each other. For example, the liquors of the south, which are carried to the north, form a commerce little known to the ancients. Thus the burthen of vessels, which was formerly computed by measures of corn, is at present determined by tons of liquor.

The ancient commerce, so far as it is known to us, was carried on from one port in the Mediterranean to another: and was almost wholly confined to the south. Now the people of the same climate, having nearly the same things of their own, have not the same need of trading amongst themselves as with those of a different climate. The commerce of Europe was therefore formerly less extended than at present.

This does not at all contradict what I have said of our commerce to the Indies: for here the prodigious difference of climate destroys all relation between their wants and ours.

CHAP. V.

Other Differences.

COMMERCE is sometimes destroyed by conquerors, sometimes cramped by monarchs; it traverses the earth, flies from the places where it is oppressed, and stays where it has liberty to breathe: it reigns at present where nothing was formerly to be seen but desarts, seas, and rocks; and where it once reigned, there are only desarts.

To see Colchis in its present situation, which is no more than a vast forest, where the people are every day decreasing, and only defend their liberty to sell themselves by piece-meal to the Turks and Persians; one could never imagine, that this country had ever, in the time of the Romans, been full of cities, where commerce convened all the nations of the world. We find no monument of these sacts in the country itself; there are no traces of them, except in^{*} Pliny and †Strabo.

The history of commerce, is that of the communication of people. Their numerous defeats, and the flux and reflux of populations and devastations, here form the most extraordinary events.

CHAP. VI.

Of the Commerce of the Ancients.

THE immense treasures of Semiramis, † which could not be acquired in a day, give us reason to believe, that the Assyrians themselves had pillaged other rich nations, as other nations afterwards pillaged them.

The effect of commerce is riches; the consequence of riches, luxury; and that of luxury, the perfection of arts. We find that the arts were carried to great perfection in the time of Semiramis † which is a sufficient indication, that a considerable commerce was then established.

In the empires of Asia, there was a great commerce of luxury. The history of luxury would make a fine part of that of commerce. The luxury of the Persians was that of the Medes, as the luxury of the Medes was that of the Assyrians.

Great revolutions have happened in Asia. The north east parts of Persia, viz. Hyrcania, Margiana, Bactria, &c. were formerly full of flourishing § cities which are now no more; and the north of this †† empire, that is, the isthmus which separates the Caspian and the Euxine seas, was covered with cities and nations, which are now destroyed.

Eratosthenes † and Aristobulus learnt from Patroclus^{*}, that the merchandizes of India passed by the Oxus into the sea of Pontus. Marcus Varro † tells us, that the time when Pompey commanded against Mithridates, they were informed, that people went in seven days from India to the country of the Bactrians, and to the river Icarus, which falls into the Oxus; that by this method, they were able to bring the merchandizes of India across the Caspian sea, and to enter the mouth of Cyrus; from whence it was only five days passage to the Phasis, a river that discharges itself into the Euxine sea. There is no doubt but it was by the nations inhabiting these several countries, that the great empires of the Assyrians, Medes, and Persians, had a communication, with the most

distant parts of the east and west.

An entire stop is now put to this communication. All these countries have been laid waste by the [§]Tartars, and are still infested by this destructive nation. The Oxus no longer runs into the Caspian sea; the Tartars, for some private^{**} reasons, have changed its course, and it now loses itself in the barren sands.

The Jaxartes, which was formerly a barrier between the polite and barbarous nations, has had its course turned ^{††}in the same manner by the Tartars, and it no longer empties itself into the sea.

Seleucus Nicator formed[†] the project of joining the Euxine to the Caspian sea. This project, which would have greatly facilitated the commerce of those days, vanished at his[‡] death. We are not certain it could have been executed in the isthmus which separates the two seas. This country is at present very little known; it is depopulated, and full of forests: however, water is not wanting, for an infinite number of rivers roll into it from mount Caucasus; but, as this mountain forms the north of the isthmus, and extends like two arms^{‡‡} towards the south, it would have been a grand obstacle to such an enterprise, especially in those times when they had not the art of making sluices.

It may be imagined, that Seleucus would have joined the two seas in the very place where Peter I. has since joined them, that is, in that neck of land where the Tanais approaches the Volga; but the north of the Caspian sea was not then discovered.

While the empires of Asia enjoyed the commerce of luxury, the Tyrians had the commerce of œconomy, which they extended throughout the world. Bochart has employed the first book of his Canaan, in enumerating the colonies which they sent into all the countries bordering upon the sea: they passed the Pillars of Hercules, and made establishments^{*} on the coast of the ocean.

In those times their pilots were obliged to follow the coasts, which were, if I may so express myself, their compass. Voyages were long and painful. The laborious voyage of Ulysses has been the fruitful subject of the finest poem in the world, next to that which alone has the preference.

The little knowledge, which the greatest part of the world had of those who were far distant from them, favoured the nations engaged in the œconomical commerce. They managed trade with as much obscurity as they pleased: they had all the advantages which the most intelligent nations could take over the most ignorant.

The Egyptians, a people who by their religion and their manners were averse to all communication with strangers, had scarcely at that time any foreign trade. They enjoyed a fruitful soil, and great plenty. Their country was the Japan of those times; it possessed every thing within itself.

So little jealous were those people of commerce, that they left that of the Red Sea to all the petty nations that had any harbours in it. Here they suffered the Idumeans, the Syrians, and the Jews to have fleets. Solomon[†] employed in this navigation the Tyrians, who knew those seas.

Josephus[†] says, that his nation, being entirely employed in agriculture, knew little of navigation: the Jews therefore traded only occasionally in the Red Sea. They took from the Idumeans, Elath and Eziongeber, from whom they received this commerce; they lost these two cities, and with them lost this commerce.

It was not so with the Phœnicians; theirs was not a commerce of luxury; nor was their trade owing to conquest: their frugality, their abilities, their industry, their perils, and the hardships they suffered, rendered them necessary to all the nations of the world.

Before Alexander, the people bordering on the Red Sea traded only in this sea, and in that of Africa. The astonishment, which filled the globe at the discovery of the Indian Sea under that conqueror, is of this a sufficient proof. I have observed,^{*} that bullion was always carried to the Indies, and never any brought from thence; now the Jewish fleets, which brought gold and silver by the way of the Red Sea, returned from Africa, and not from the Indies.[†]

Besides, this navigation was made on the eastern coast of Africa; for the state of navigation at that time is a convincing proof, that they did not sail to a very distant shore. I am not ignorant, that the fleet of Solomon and Jehosaphat returned only every three years; but I do not see that the time taken up in the voyage is any proof of the greatness of the distance.

Pliny and Strabo inform us, that the junks of India and the Red Sea were twenty days in performing a voyage, which a Greek or Roman vessel would accomplish[†] in seven, In this proportion, a voyage of one year, made by the fleets of Greece or Rome, would take very near three, when performed by those of Solomon.

Two ships of unequal swiftness do not perform their voyage in a time proportionate to their swiftness. Slowness is frequently the cause of much greater slowness. When it becomes necessary to follow the coasts, and to be incessantly in a different position, when they must wait for a fair wind to get out of a gulph, and for another to proceed; a good sailor takes the advantage of every favourable moment, while the other still continues in a difficult situation, and waits many days for another change.

This slowness of the Indian vessels, which in an equal time could make but one third of the way of those of the Greeks and Romans, may be explained by what we every day see in our modern navigation. The Indian vessels, which were built with a kind of sea-rushes, drew less water than those of Greece and Rome, which were of wood and joined with iron.

We may compare these Indian vessels to those at present made use of in ports of little depth of water. Such are those of Venice, and even of all ^{*}Italy in general, of the Baltic, and of the province of [†]Holland. Their ships, which ought to be able to go in and out of port, are built round and broad at the bottom; while those of other nations, who have good harbours, are formed to sink deep into the water. This mechanism renders these last mentioned vessels able to sail much nearer to the wind; while the first can hardly sail, except the wind be nearly in the poop. A ship that sinks deep into the water, sails towards the same side with almost every wind: this proceeds from the resistance which the vessel, whilst driven by the wind, meets with from the water, from which it receives a strong support; and from the length of the vessel, which presents its side to the wind, while from the form of the helm the prow is turned to the point proposed; so that she can sail very near to the wind, or, in other words, very near the point from whence the wind blows. But when the hull is round and broad at the bottom, and consequently draws little water, it no longer finds this steady support; the wind drives the vessel, which is incapable of resistance, and can run then but with a small variation from the point opposite to the wind. From whence it follows, that broad-bottomed vessels are longer in performing voyages.

1. They lose much time in waiting for the wind, especially if they are obliged frequently to change their course. 2. They sail much slower, because, not having a proper support from a depth of water, they cannot carry so much sail. If this be the case at a time when the arts are every where known, at a time when art corrects the defects of nature, and even of art itself; if at this time, I say, we find this difference, how great must that have been, in the navigation of the antients?

I cannot yet leave this subject. The Indian vessels were small, and those of the Greeks and Romans, if we except their machines built for ostentation, much less than ours. Now, the smaller the vessel, the greater the danger it encounters from foul weather. A tempest that would swallow up a small vessel, would only make a large one roll. The more one body is surpassed by another in bigness, the more its surface is relatively small. From whence it follows, that in a small ship, there is a less proportion, that is, a greater difference, as to the surface of the vessel, and the weight or lading she can carry, than in a large one. We know that it is a pretty general practice, to make the weight of the lading equal to that of half the water the vessel is able to contain. Suppose a vessel will contain eight hundred tons, her lading then must be four hundred; and that of a vessel, which would hold but four hundred tons of water, would be two hundred tons. Thus the largeness of the first ship will be to the weight she carries, as 8 to 4; and that of the second as 4 to 2. Let us suppose then, that the surface of the greater is to the surface of the smaller, as 8 to 6: the surface ^{*} of this will be to her weight as 6 to 2, while the surface of the former will be to her weight only, as 8 to 4. Therefore, as the winds and waves act only upon the surface, the large vessel will, by her weight, resist their impetuosity much more than the small.

CHAP. VII.

Of the Commerce of the Greeks.

THE first Greeks were all pirates. Minos, who enjoyed the empire of the sea, was only more successful, perhaps, than others in piracy; for his maritime dominion extended no farther than round his own isle. But when the Greeks became a great people, the Athenians obtained the real dominion of the sea; because this trading and victorious nation gave laws to the most potent monarch^{*} of that time; and humbled the maritime powers of Syria, of the isle of Cyprus, and Phœnicia.

But this Athenian lordship of the sea deserves to be more particularly mentioned.

"Athens, says Xenophon,[†] rules the sea; but as the country of Attica is joined to the continent, it is ravaged by enemies, while the Athenians are engaged in distant expeditions. Their leaders suffer their lands to be destroyed; and secure their wealth, by sending it to some island. The populace, who are not possessed of lands, have no uneasiness. But if the Athenians inhabited an island, and, besides this, enjoyed the empire of the sea, they would, so long as they were possessed of these advantages, be able to annoy others, and at the same time to be out of all danger of being annoyed." One would imagine, that Xenophon was speaking of England.

The Athenians, a people whose heads were filled with ambitious projects; the Athenians, who augmented their jealousy, instead of increasing their influence; who were more attentive to extend their maritime empire than to enjoy it; whose political government was such, that the common people distributed the public revenues amongst themselves, while the rich were in a state of oppression; the Athenians, I say, did not carry on so extensive a commerce as might be expected from the produce of their mines, from the multitude of their slaves, from the number of their seamen, from their influence over the cities of Greece; and, above all, from the excellent institutions of Solon. Their trade was almost wholly confined to Greece, and to the Euxine sea; from whence they drew their subsistence.

Corinth was admirably situated; it separated two seas, and opened and shut the Peloponnesus: it was the key of Greece, and a city of the greatest importance, at a time when the people of Greece were a world, and the cities of Greece, nations. Its trade was more extensive than that of Athens, having a port to receive the merchandizes of Asia; and another those of Italy: for the great difficulties which attended the doubling cape Malea, where the^{*} meeting of opposite winds causes shipwrecks, induced every one to go to Corinth, and they could even convey their vessels over land from one sea to the other. Never was there a city, in which the works of art were carried to so high a degree of perfection. But here religion finished the corruption, which their opulence

began. They erected a temple to Venus, in which more than a thousand courtesans were consecrated to that deity; from this seminary came the greatest part of those celebrated beauties, whose history Athenæus has presumed to commit to writing.

It seems, that in Homer's time, the opulence of Greece centered in Rhodes, Corinth, and Orchomenus: "Jupiter, he says,^{*} loved the Rhodians, and made them a very wealthy nation." On Corinth[†] he bestows the epithet of rich. In like manner, when he speaks of cities that have plenty of gold, he mentions Orchomenus, to which he joins Thebes in Egypt. Rhodes and Corinth preserved their power; but Orchomenus lost hers. The situation of Orchomenus in the neighbourhood of the Hellespont, the Propontis, and the Euxine sea, makes us naturally imagine, that she was indebted for her opulence to a trade along that maritime coast, which had given rise to the fable of the golden fleece: and indeed, the name of *Minyeios* has been given to Orchomenus,[‡] as well as to the Argonauts. But these seas becoming afterwards more frequented, the Greeks planted along the coasts a greater number of colonies, which traded with the barbarous nations, and at the same time preserved an intercourse with their mother country: in consequence of this, Orchomenus began to decline, till at length it was lost in the croud of the other cities of Greece.

Before Homer's time, the Greeks had scarce any trade but among themselves, and with a few barbarous nations; in proportion, however, as they formed new colonies, they extended their dominion. Greece was a large peninsula, the capes of which seemed to have kept off the seas, while its gulphs opened on all sides to receive them. If we cast an eye on Greece, we shall find, in a pretty compact country, a considerable extent of sea-coast. Her innumerable colonies formed an immense circle round her; and there she beheld, in some measure, the whole civilized world. Did she penetrate into Sicily and Italy? she formed new nations. Did she navigate towards the sea of Pontus, the coast of Asia Minor, or that of Africa? she acted in the same manner. Her cities increased in prosperity, in proportion as they happened to have new people in their neighbourhood. And what was extremely beautiful, she was surrounded on every side with a prodigious number of islands, drawn, as it were, in a line of circumvallation.

What a source of prosperity must Greece have found in those games, with which she entertained, in some measure, the whole globe; in those temples, to which all the kings of the earth sent their offerings; in those festivals, at which such a concourse of people used to assemble from all parts; in those oracles, to which the attention of all mankind was directed; and, in short, in that exquisite taste for the polite arts, which she carried to such a height, that to expect ever to surpass her, would be only betraying our ignorance.

CHAP. VIII.

Of Alexander. His Conquest.

FOUR great events happened in the reign of Alexander, which entirely changed the face of commerce: the taking of Tyre, the conquest of Egypt, that likewise of the Indies, and the discovery of the sea which lies south of that country.

The empire of Persia extended to the Indus.^{*} Darius, long before Alexander, had sent[†] some vessels, which sailed down this river, and passed even into the Red sea. How then were the Greeks the first who traded to the Indies by the south? Had not the Persians done this before? Did they make no advantage of seas which were so near them; of the very seas that washed their coasts? Alexander, it is true, conquered the Indies; but was it necessary for him to conquer a country, in order to trade with it? This is what I shall now examine.

Ariana,^{*} which extended from the Persian gulph as far as the Indus, and from the South Sea to the mountains of Paropamisus, depended indeed in some measure on the empire of Persia; but in the southern part it was barren, scorched, rude, and uncultivated.

Tradition[†] relates, that the armies of Semiramis and Cyrus perished in these desarts; and Alexander, who caused his fleet to follow him, could not avoid losing in this place a great part of his army. The Persians left the whole coast to the Ichthyophagi,[‡] the Oritæ, and other barbarous nations. Besides, the Persians were no[§] great sailors, and their very religion debarred them from entertaining any such notion as that of a maritime commerce. The voyage undertaken by Darius's direction upon the Indus, and the Indian sea, proceeded rather from the capriciousness of a prince vainly ambitious of shewing his power, than from any settled regular project. It was attended with no consequence, either to the advantage of commerce, or of navigation. They emerged from their ignorance, only to plunge into it again.

Besides, it was a received opinion,^{*} before the expedition of Alexander, that the southern parts of India were uninhabitable.[†] This proceeded from a tradition that Semiramis had brought back from thence only twenty men, and Cyrus but seven.

Alexander entered by the north. His design was to march towards the east; but having found a part of the south full of great nations, cities, and rivers, he attempted to conquer it, and succeeded.

He then formed the design of uniting the Indies to the western nations by a maritime commerce, as he had already united them by the colonies he had established by land.

He ordered a fleet to be built on the Hydaspes, then fell down that river, entered the Indus, and sailed even to its mouth. He left his army and his fleet at Patala, went himself with a few vessels to view the sea, and marked the places where he would have ports to be opened, and arsenals erected. Upon his return from Patala, he separated the

fleet, and took the route by land, for the mutual support of fleet and army. The fleet followed the coast from the Indus along the banks of the country of the Oritæ, of the Ichthyophagi, of Carmania and Persia. He caused wells to be dug, built cities, and would not suffer the Ichthyophagi^S to live on fish, being desirous of having the borders of the sea inhabited by civilized nations. Nearchus and Onesecritus wrote a journal of this voyage, which was performed in ten months. They arrived at Susa, where they found Alexander, who gave an entertainment to his whole army.

This prince had founded Alexandria, with a view of securing his conquest of Egypt; this was a key to open it, in the very place where the kings his^{*} predecessors had a key to shut it; and he had not the least thought of a commerce, of which the discovery of the Indian sea could alone give him the idea.

It even seems, that after this discovery, he had no new design, in regard to Alexandria. He had, indeed, a general scheme of opening a trade between the East Indies and the western parts of his empire; but as for the project of conducting this commerce through Egypt, his knowledge was too imperfect to be able to form any such design. It is true, he had seen the Indus, he had seen the Nile, but he knew nothing of the Arabian seas between the two rivers. Scarce was he returned from India, when he fitted out new fleets, and navigated on the Euleus,[†] the Tigris, the Euphrates, and the ocean: he removed the cataracts, with which the Persians had encumbered those rivers; and he discovered that the Persian gulph was a branch of the main sea. But as he went to view this sea,[‡] in the same manner as he had done in regard to that of India; as he caused a port to be opened for a thousand ships, and arsenals to be erected at Babylon; as he sent five hundred talents into Phœnicia and Syria, to draw mariners into this service, whom he intended to distribute in the colonies along the coast; in fine, as he caused immense works to be erected on the Euphrates, and the other rivers of Assyria, there could be no doubt but he designed to carry on the commerce of India by the way of Babylon and the Persic gulph.

There are some who pretend that Alexander wanted to subdue Arabia,^{*} and had formed a design to make it the seat of his empire: but how could he have pitched upon a place, with which he was entirely unacquainted.[†] Besides, of all countries, this would have been the most inconvenient to him; for it would have separated him from the rest of his empire. The Caliphs, who made distant conquests, soon withdrew from Arabia, to reside elsewhere.

CHAP. IX.

Of the Commerce of the Grecian Kings after the Death of Alexander.

AT the time when Alexander made the conquest of Egypt, they had but a very imperfect idea of the Red sea, and none at all of the ocean, which joining to this sea, on one side washes the coast of Africa, and on the other, that of Arabia; nay, they thought it impossible to sail round the peninsula of Arabia. They who attempted it on each side, had relinquished their design. "How is it possible, said they, † to navigate to the southern coast of Arabia, when Cambyses's army, which traversed it on the north side, almost entirely perished; and the forces which Ptolemy, the son of Lagus, sent to the assistance of Seleucus Nicator at Babylon, underwent incredible hardships, and, upon account of the heats, could march only in the night?"

The Persians were entire-strangers to navigation. When they had subdued Egypt, they introduced the same spirit into that country as prevailed in Persia: hence so great was the supineness of the Persians, in this respect, that the Grecian kings found them quite strangers, not only to the commerce of the Tyrians, Idumeans, and the Jews, on the ocean, but even to the navigation of the Red sea. I am apt to think, that the destruction of the first Tyre by Nebuchadnezzar, together with the subversion of several petty nations and towns bordering on the Red sea, had obliterated all their former knowledge of commerce.

Egypt, at the time of the Persian monarchy, did not front the Red sea; it* contained only that long narrow neck of land which the Nile covers with its inundations, and is enclosed on both sides by a chain of mountains. They were, therefore, under the necessity of making a second discovery of the ocean and the Red sea; and this discovery engaged the curiosity of the Grecian monarchs.

They ascended the Nile, and hunted after elephants in the countries situated between that river and the sea; by this progression they traced the sea-coast; and as the discoveries were made by the Greeks, the names are all Grecian, and the temples are consecrated to † Greek divinities.

The Greeks settled in Egypt were able to command a most extensive commerce; they were masters of all the harbours on the Red sea; Tyre, the rival of every trading nation, was no more; they were not constrained by the ancient* superstitions of the country; in short, Egypt was become the centre of the world.

The kings of Syria left the commerce of the south to those of Egypt, and attached themselves only to the northern trade, which was carried on by means of the Oxus and the Caspian sea. They then imagined, that this sea was part of the † northern ocean; and Alexander, some time before his death had fitted out a fleet, † in order to discover whether it communicated with the ocean by the Euxine sea, or on some other eastern sea towards India. After him, Seleucus and Antiochus applied themselves to make discoveries in it, with a particular attention; and with this view they scoured it with their fleets. § That part which Seleucus surveyed. was called the Seleucidian sea: that which

Antiochus discovered, received the name of the sea of Antiochus. Attentive to the projects they might have formed on that side, they neglected the seas on the south: whether it was that the Ptolemies, by means of their fleets on the Red sea, were already become the masters of it; or that they discovered an invincible aversion in the Persians against engaging in maritime affairs. The southern coasts of Persia supplied them with no seamen; there had been none in those parts, except towards the latter end of Alexander's reign. But the Egyptian kings being masters of the isle of Cyprus, of Phœnicia, and of a great number of towns on the coast of Asia minor, were possessed of all sorts of conveniencies for undertaking maritime expeditions. They had no occasion to force, they had only to follow the genius and bent of their subjects.

I am surprized, I confess, at the obstinacy with which the ancients believed that the Caspian sea was a part of the ocean. The expeditions of Alexander, of the kings of Syria, of the Parthians and the Romans, could not make them change their sentiments; notwithstanding these nations described the Caspian sea with a wonderful exactness; but men are generally tenacious of their errors. When only the south of this sea was known, it was at first taken for the ocean; in proportion as they advanced along the banks of the northern coast, instead of imagining it a great lake, they still believed it to be the ocean, that here made a sort of a bay: surveying the coast, their discoveries never went eastward beyond the Jaxartes, nor westward further than the extremity of Albania. The sea towards the north was shallow,^{*} and of course very unfit for navigation. Hence it was, that they always looked upon this as the ocean.

The land army of Alexander had been on the east only as far as the Hypanis, which is the last of those rivers that fall into the Indus: thus the first trade which the Greeks carried on to the Indies was confined to a very small part of the country. Seleucus Nicator penetrated as far as the Ganges,[†] and there by discovered the sea into which this river falls, that is to say, the bay of Bengal. The moderns discover countries by voyages at sea; the ancients discovered seas by conquests at land.

Strabo,[‡] notwithstanding the testimony of Apollodorus, seems to doubt whether the Grecian kings[§] of Bactria proceeded farther than Seleucus and Alexander. Were it even true that they went no further to the east than Seleucus, yet they went farther towards the south: they discovered^{*} Siger, and the ports on the coast of Malabar, which gave rise to the navigation I am going to mention.

Pliny[†] informs us, that the navigation of the Indies was successively carried on by three different ways. At first they sailed from the cape of Siagre to the island of Patalena, which is at the mouth of the Indus. This we find was the course that Alexander's fleet steered to the Indies. They took afterwards,[‡] a shorter and more certain course, by sailing from the same cape or promontory to Siger: this can be no other but the kingdom of Siger, mentioned by Strabo,[§] and discovered by the Grecian kings of Bactria. Pliny, by saying that this way was shorter than the other, can mean only that

the voyage was made in less time: for as Siger was discovered by the kings of Bactria, it must have been farther than the Indus: by this passage they must therefore have avoided the windings of certain coasts, and taken advantage of particular winds. The merchants at last took a third way; they sailed to Canes, or Ocelis, ports situated at the entrance of the Red sea; from whence by a west wind, they arrived at Muziris, the first staple town of the Indies, and from thence to the other ports. Here we see, that instead of sailing to the mouth of the Red sea as far as Siagre, by coasting Arabia Felix to the north-east, they steered directly from west to east, from one side to the other, by means of the monsoons, whose regular course they discovered by sailing in these latitudes. The ancients never lost sight of the coasts, but when they took advantage of these^{*} and the trade winds, which were to them a kind of compass.

Pliny[†] says, that they set sail for the Indies in the middle of summer, and returned towards the end of December, or in the beginning of January. This is entirely conformable to our naval journals. In that part of the Indian sea which is between the peninsula of Africa, and that on this side the Ganges, there are two monsoons; the first, during which the winds blow from west to east, begins in the month of August or September; and the second, during which the wind is in the east, begins in January. Thus we set sail from Africa for Malabar, at the season of the year that Ptolemy's fleet used to put to sea from thence; and we return too at the same time as they.

Alexander's fleet was seven months in sailing from Patala to Susa. It set out in the month of July, that is, at a season when no ship dare now put to sea to return from the Indies. Between these two monsoons there is an interval of time, during which the winds vary; when a north wind meeting with the common winds, raises, especially near the coasts, the most terrible tempests. These continue during the months of June, July, and August. Alexander's fleet, therefore, setting sail from Patala in the month of July, must have been exposed to many storms, and the voyage must have been long, because they sailed against the monsoon.

Pliny says, that they set out for the Indies at the end of summer; thus they spent the time proper for taking advantage of the monsoon, in their passage from Alexandria to the Red sea.

Observe here, I pray, how navigation has by little and little arrived at perfection.

Darius's fleet was two years and an half^{*} in falling down the Indus, and going to the Red sea. Afterwards the fleet of Alexander,[†] descending the Indus, arrived at Susa in ten months, having sailed three months on the Indus, and seven on the Indian sea; at last, the passage from the coast of Malabar to the Red sea was made in forty days.[‡]

Strabo,[§] who accounts for their ignorance of the countries between the Hypanis and the Ganges, says, there were very few of those who sailed from Egypt to the Indies, that ever proceeded so far as the Ganges. Their fleets, in fact, never went thither: they

sailed with the western monsoons from the mouth of the Red sea to the coast of Malabar. They cast anchor in ports along that coast, and never attempted to get round the peninsula on this side the Ganges by cape Comorin and the coast of Coromandel. The plan of navigation laid down by the kings of Egypt and the Romans was, to set out and return the same year.¶

Thus it is demonstrable, that the commerce of the Greeks and Romans to the Indies was much less extensive than ours. We know immense countries, which to them were entirely unknown; we traffic with all the Indian nations; we even manage their trade, and in our bottoms carry on their commerce.

But this commerce of the ancients was carried on with far greater facility than ours. And if the moderns were to trade only to the coast of Guzarat and Malabar, and, without seeking for the southern isles, were satisfied with what these islanders brought them, they would certainly prefer the way of Egypt to that of the cape of Good-hope. Strabo** informs us, that they traded thus with the people of Taprobane.

CHAP. X.

Of the Circuit of Africa.

WE find from history, that before the discovery of the mariner's compass, four attempts were made to sail round the coast of Africa. The Phœnicians sent by* Necho, and Eudoxus† flying from the wrath of Ptolomy Lathyrus, set out from the Red sea, and succeeded. Sataspes‡ sent by Xerxes, and Hanno by the Carthaginians, set out from the Pillars of Hercules, and failed in the attempt.

The capital point in surrounding Africa was, to discover and double the cape of Good-hope. Those who set out from the Red sea, found this cape nearer by half, than it would have been in setting out from the Mediterranean. The shore from the Red sea is not so shallow as that from the cape§ to Hercules's pillars. The discovery of the cape by Hercules's pillars was owing to the invention of the compass, which permitted them to leave the coast of Africa, and to launch¶ out into the vast ocean, in order to sail towards the island of St. Helena, or towards the coast of Brasil. It was therefore very possible for them to sail from the Red sea into the Mediterranean, but not to set out from the Mediterranean to return by the Red sea.

Thus, without making this grand circuit, after which they could hardly ever hope to return, it was most natural to trade to the east of Africa by the Red sea, and to the western coast by Hercules's pillars.

The Grecian kings of Egypt discovered at first in the Red sea, that part of the coast of

Africa, which extends from the bottom of the gulph where stands the town of *Heroum*, as far as *Dira*, that is, to the streight, now known by the name of *Babelmandel*. From thence to the promontory of *Aromatia*, situate at the entrance of the Red sea,^{*} the coast had never been surveyed by navigators: and this is evident from what

Artemidorus tells us,[†] that they were acquainted with the places on that coast, but knew not their distances: the reason of which is, they successively gained a knowledge of those ports by land, without sailing from one to the other.

Beyond this promontory, at which the coast along the ocean commenced, they knew nothing, as we learn[‡] from Eratosthenes and Artemidorus.

Such was the knowledge they had of the coasts of Africa in Strabo's time, that is, in the reign of Augustus. But after that prince's decease, the Romans found out the two capes *Raptum* and *Passum*, of which Strabo makes no mention, because they had not been as yet discovered. It is plain, that both those names are of Roman original.

Ptolemy the geographer flourished under Adrian and Antoninus Pius; and the author of the Periplus of the Red sea, whoever he was, lived a little after. Yet the former limits known Africa^{*} to cape *Prassum*, which is in about the 14th degree of south latitude; while the author of the Periplus[†] confines it to cape *Raptum*, which is nearly in the 10th degree of the same latitude. In all likelihood, the latter took his limit from a place then frequented, and Ptolemy his from a place with which there was no longer any communication.

What confirms me in this notion is, that the people about cape *Prassum* were anthropophagi.[‡] Ptolemy takes notice[§] of a great number of places between the port or *emporium Aromaticum* and cape *Raptum*, but leaves an entire blank between the capes *Raptum* and *Prassum*. The great profits of the East-India trade must have occasioned a neglect of that of Africa. In fine, the Romans never had any settled navigation; they had discovered these several ports by land expeditions, and by means of ships driven on that coast; and, as at present, we are well acquainted with the maritime parts of Africa, but know very little of the inland country;^{||} the ancients, on the contrary, had a very good knowledge of the inland parts, but were almost strangers to the coasts.

I said, that the Phœnicians sent by Necho and Eudoxus under Ptolemy Lathryus, had made the circuit of Africa: but at the time of Ptolemy the geographer, those two voyages must have been looked upon as fabulous, since he places,^{**} after the *Sinus Magnus*, which I apprehend to be the gulph of Siam, an unknown country, extending from Asia to Africa, and terminating at cape *Prassum*, so that the Indian ocean would have been no more than a lake. The ancients, who discovered the Indies towards the north, advancing castward, placed this unknown country to the south.

CHAP. XI.

Of Carthage and Marseilles.

THE law of nations which obtained at Carthage, was very extraordinary: all strangers, who traded to Sardinia and towards Hercules's pillars, this haughty republic sentenced to be drowned. Her civil polity was equally surprizing; she forbid the Sardinians to cultivate their lands, upon pain of death. She increased her power by her riches, and afterwards her riches by her power. Being mistress of the coasts of Africa, which are washed by the Mediterranean, she extended herself along the ocean. Hanno, by order of the senate of Carthage, distributed thirty thousand Carthaginians from Hercules's pillars as far as Cerne. This place, he says, is as distant from Hercules's pillars, as the latter from Carthage. This situation is extremely remarkable. It lets us see, that Hanno limited his settlements to the 25th degree of north latitude, that is, to two or three degrees south of the Canaries.

Hanno being at Cerne, undertook another voyage, with a view of making further discoveries towards the South. He took but little notice of the continent. He followed the coast for twenty-six days, when he was obliged to return for want of provisions. The Carthaginians, it seems, made no use of this second enterprise. Scylax^{*} says, that the sea is not[†] navigable beyond Cerne, because it is shallow, full of mud and sea-weeds; and in fact, there are many of these in those latitudes.^{*} The Carthaginian merchants, mentioned by Scylax, might find obstacles, which Hanno, who had sixty vessels of fifty oars each, had surmounted. Difficulties are at most but relative; besides, we ought not to confound an enterprise, in which bravery and resolution must be exerted, with things that require no extraordinary conduct.

The relation of Hanno's voyage is a fine fragment of antiquity. It was written by the very man that performed it. His recital is not mingled with ostentation. Great commanders write their actions with simplicity; because they receive more glory from facts than from words.

The style is agreeable to the subject: he deals not in the marvellous. All he says of the climate, of the soil, the behaviour, the manners of the inhabitants, correspond with what is every day seen on this coast of Africa; one would imagine it the journal of a modern sailor.

He observed from his fleet,[†] that in the day-time there was a prodigious silence on the continent, that in the night he heard the sound of various musical instruments, and that fires might then be every where seen, some larger than others. Our relations are conformable to this; it has been discovered, that in the day the savages retire into the forests to avoid the heat of the sun, that they light up great fires in the night to disperse the beasts of prey, and that they are passionately fond of music and dancing.

The same writer describes a volcano with all the phænomena of Vesuvius; and relates, that he took two hairy women, who chose to die rather than follow the Carthaginians, and whose skins he carried to Carthage. This has been found not void of probability.

This narration is so much the more valuable, as it is a monument of Punic antiquity: and from hence alone it has been regarded as fabulous. For the Romans retained their hatred to the Carthaginians, even after they had destroyed them. But it was victory alone that decided whether we ought to say, *The Punic or the Roman faith*.

Some moderns^{*} have imbibed these prejudices. What is become, say they, of the cities described by Hanno, of which even in Pliny's time there remained no vestiges? But it would have been a wonder indeed, if any such vestiges had remained. Was it a Corinth or Athens that Hanno built on those coasts? He left Carthaginian families in such places as were most commodious for trade, and secured them as well as his hurry would permit, against savages and wild beasts. The calamities of the Carthaginians put a period to the navigation of Africa; these families must necessarily then either perish or become savages. Besides, were the ruins of these cities even still in being, who is it that would venture into the woods and marshes to make the discovery? We find, however, in Scylax and Polybius, that the Carthaginians had considerable settlements on those coasts. These are the vestiges of the cities of Hanno; there are no other, from the same reason that there are no other of Carthage itself.

The Carthaginians were in the high road to wealth; and had they gone so far as four degrees of north latitude, and fifteen of longitude, they would have discovered the gold-coast. They would then have had a trade of much greater importance than that which is carried on at present on that coast, at a time when America seems to have degraded the riches of all other countries. They would there have found treasures, of which they could never have been deprived by the Romans.

Very suprising things have been said of the riches of Spain. If we may believe

Aristotle,^{*} the Phœnicians, who arrived at Tartessus, found so much silver there, that their ships could not hold it all: and they made of this metal their meanest utensils. The

Carthaginians, according to Diodorus,[†] found so much gold and silver in the Pyrenean mountains, that they adorned the anchors of their ships with it. But no foundation can be built on such popular reports. Let us therefore examine into the facts themselves.

We find in a fragment of Polybius, cited by Strabo,[‡] that the silver mines at the source of the river Bætis, in which forty thousand men were employed, produced to the Romans twenty-five thousand drachmas a day, that is, about five millions of livres a year, at fifty livres to the mark. The mountains that contained these mines were called the[§] *Silver Mountains*: which shews they were the Potosi of those times. At present, the mines of Hanover do not employ a fourth part of the workmen, and yet they yield more. But as the Romans had not many copper-mines, and but few of silver; and as the

Greeks knew none but the Attic mines, which were of little value, they might well be astonished at their abundance.

In the war that broke out for the succession of Spain, a man called the marquis of Rhodes, of whom it was said that he was ruined in golden mines, and enriched in hospitals,^{*} proposed to the court of France to open the Pyrenean mines. He alledged the example of the Tyrians, the Carthaginians, and the Romans. He was permitted to search, but sought in vain; he still alledged, and found nothing.

The Carthaginians being masters of the gold and silver trade, were willing to be so of the lead and pewter. These metals were carried by land from the ports of Gaul upon the ocean to those of the Mediterranean. The Carthaginians were desirous of receiving them at the first hand: they sent Himilco to make a[†] settlement in the isles called Cassiterides, which are imagined to be those of Scilly.

These voyages from Bætica into England have made some persons imagine that the Carthaginians knew the compass: but it is very certain that they followed the coasts. There needs no other proof than Himilco's being four months in sailing from the mouth of the Bætis to England: besides the famous piece of history of the Carthaginian[‡] pilot, who, being followed by a Roman vessel, ran a-ground, that he might not^{||} shew her the way to England, plainly intimates, that those vessels were very near the shore, when they fell in with each other.

The ancients might have performed voyages, that would make one imagine they had the compass, though they had not. If a pilot was far from land, and during his voyage had such serene weather, that in the night he could always see a polar star, and in the day the rising and setting of the sun, it is certain he might regulate his course as well as we do now by the compass: but this must be a fortuirous case, and not a regular method of navigation.

We see in the treaty which put an end to the first Punic war, that Carthage was principally attentive to preserve the empire of the sea, and Rome that of the land.

Hanno,^{*} in his negotiation with the Romans, declared, that they should not be suffered even to wash their hands in the sea of Sicily; they were not permitted to sail beyond the *promontorium pulchrum* they were forbid to trade in Sicily,[†] Sardinia, and Africa, except at Carthage: an exception that lets us see there was no design to favour them in their trade with that city.

In early times there had been very great wars between Carthage and Marseilles[‡] on the subject of fishing. After the peace they entered jointly into the œconomical commerce. Marseilles at length grew jealous, especially as being equal to her rival in industry, she was become inferior to her in power. This is the motive of her great fidelity to the Romans. The war between the latter and the Carthaginians in Spain was a source of

riches to Marseilles, which was now become their magazine. The ruin of Carthage and Corinth still increased the glory of Marseilles; and had it not been for the civil wars, in which this republic ought on no account to have engaged, she would have been happy under the protection of the Romans, who had not the least jealousy of her commerce.

CHAP. XII.

The Isle of Delos. Mithridates.

UPON the destruction of Corinth by the Romans, the merchants retired to Delos, an island, which from religious considerations was looked upon as a place of safety: ^{*} besides, it was extremely well situated for the commerce of Italy and Asia, which, since the reduction of Africa, and the weakening of Greece, was grown more important.

From the earliest times, the Greeks, as we have already observed, sent colonies to Propontis, and to the Euxine sea: colonies which retained their laws and liberties under the Persians. Alexander, having undertaken his expedition against the barbarians only, did not molest these people. [†] Neither does it appear that the kings of Pontus, who were masters of many of those colonies, ever deprived them of their own civil government. [‡]

The power ^S of those kings increased as soon as they subdued those cities. Mithridates found himself able to hire troops on every side, to repair his frequent losses: to have a multitude of workmen, ships, and military machines; to procure himself allies; to bribe those of the Romans, and even the Romans themselves; to keep the barbarians of Asia and Europe in his pay; ^{*} to continue the war for many years, and of course to discipline his troops: he found himself able to train them to arms, to instruct them in the military art of [†] the Romans, and to form considerable bodies out of their deserters; in a word, he found himself able to sustain great losses, and to be frequently defeated, without being ruined; [‡] neither would he have been ruined, if the voluptuous and barbarous king had not destroyed, in his prosperous days, what had been done by the great prince in times of adversity.

Thus it is that when the Romans were arrived at their highest pitch of grandeur, and seemed to have nothing to apprehend but from the ambition of their own subjects, Mithridates once more ventured to contest the mighty point, which the overthrows of Philip, of Antiochus, and of Perseus, had already decided. Never was there a more destructive war: the two contending parties being possessed of great power, and receiving alternate advantages, the inhabitants of Greece and of Asia fell a sacrifice in the quarrel, either as foes, or as friends of Mithridates. Delos was involved in the general fatality; and commerce failed on every side; which was a necessary consequence, the people themselves being destroyed.

The Romans, in pursuance of a system of which I have spoken elsewhere,[§] acting as destroyers, that they might not appear as conquerors, demolished Carthage and Corinth; a practice by which they would have ruined themselves, had they not subdued the world. When the kings of Pontus became masters of the Greek colonies on the Euxine sea, they took care not to destroy what was to be the foundation of their own grandeur.

CHAP. XIII.

Of the Genius of the Romans as to Maritime Affairs.

THE Romans laid no stress on any thing but their land forces, who were disciplined to stand firm, to fight on one spot, and there bravely to die. They could not, like the practice of seamen, who first offer to fight, then fly, then return, constantly avoid danger, often make use of stratagem, and seldom of force. This was not suitable to the genius of the^{*} Greeks, much less to that of the Romans.

They destined, therefore, to the sea only those citizens who were not[†] considerable enough to have a place in their legions. Their marines were commonly freed-men.

At this time we have neither the same esteem for land-forces, nor the same contempt for those of the sea. In the former,[‡] art is decreased; in the[§] latter, it is augmented: now things are generally esteemed in proportion to the degree of ability requisite to discharge them.

CHAP. XIV.

Of the Genius of the Romans with Respect to Commerce.

THE Romans were never distinguished by a jealousy for trade. They attacked Carthage as a rival, not as a commercial nation. They favoured trading cities that were not subject to them. Thus they increased the power of Marseilles, by the cession of a large territory. They were vastly afraid of barbarians; but had not the least apprehension from a trading people. Their genius, their glory, their military education, and the very form of their government, estranged them from commerce.

In the city, they were employed only about war, elections, factions, and law-suits; in the country, about agriculture; and, as for the provinces, a severe and tyrannical government was incompatible with commerce.

But their political constitution was not more opposite to trade, than their law of nations.

“The people, says^{*} Pomponius the civilian, with whom we have neither friendship nor hospitality, nor alliance, are not our enemies; however, if any thing belonging to us falls into their hands, they are the proprietors of it; freemen become their slaves; and they are upon the same terms with respect to us.”

Their civil law was not less oppressive. The law of Constantine,[†] after having stigmatised as bastards the children of persons of a mean rank, who had been married to those of a superior station, confounds women, who retail merchandizes, with slaves, with the mistresses of taverns, with actresses, with the daughters of those who keep public stews, or who had been condemned to fight in the amphitheatre: this had its original in the ancient institutions of the Romans.

I am not ignorant that men prepossessed with these two ideas, that commerce is of the greatest service to a state, and that the Romans had the best-regulated government in the world, have believed that these people greatly honoured and encouraged commerce; but the truth is, they seldom troubled their heads about it.

CHAP. XV.

Of the Commerce of the Romans with the Barbarians.

THE Romans having erected a vast empire in Europe, Asia, and Africa; the weakness of the people and the tyranny of their laws united all the parts of this immense body. The Roman policy was then to avoid all communication with those nations whom they had not subdued: the fear of carrying to them the art of conquering, made them neglect the art of enriching themselves. They made laws to hinder all commerce with barbarians.

“Let nobody, said^{*} Valens and Gratian, send wine, oil, or other liquors to the barbarians, though it be only for them to taste. Let no one carry gold to them,[†] adds Gratian, Valentinian, and Theodosius: rather, if they have any, let our subjects deprive them of it by stratagem.” The exportation of iron was prohibited on pain of death.

Domitian, a prince of great timidity, ordered the[†] vines in Gaul to be pulled up; from a fear, no doubt, lest their wines should draw thither the barbarians. Probus and Julian, who had no such fears, gave orders for their being planted again.

I am sensible, that upon the declension of the Roman Empire, the barbarians obliged the Romans to establish staple towns,^{*} and to trade with them. But even this is a proof that the minds of the Romans were averse to commerce.[†]

CHAP. XVI.

Of the Commerce of the Romans with Arabia, and the Indies.

THE trade to Arabia Felix, and that to the Indies, were the two branches, and almost the only ones of their foreign commerce. The Arabians were possessed of immense riches, which they found in their seas and forests; and as they sold much and purchased little, they drew to[†] themselves the gold and silver of the Romans. Augustus[§] being well apprised of that opulence, resolved they should be either his friends, or his enemies. With this view, he sent Elius Gallus from Egypt into Arabia. This commander found the people indolent, peaceable, and unskilled in war. He fought battles, laid sieges to towns, and lost but seven of his men by the sword; but the perfidy of his guides, long marches, the climate, want of provisions, distempers, and ill conduct, caused the ruin of his army.

He was therefore obliged to be content with trading to Arabia, in the same manner as other nations, that is, with giving them gold and silver in exchange for their commodities. The Europeans trade with them still in the same manner; the caravans of Aleppo, and the royal vessel of Suez, carry thither immense sums.*[—]

Nature had formed the Arabs for commerce, not for war: but when those quiet people came to be near neighbours to the Parthians and the Romans, they acted as auxiliaries to both nations. Elius Gallus found them a trading people; Mahomet happened to find them trained to war; he inspired them with enthusiasm, which led them to glory and conquest.

The commerce of the Romans to the Indies was very considerable. Strabo[†] had been informed in Egypt, that they employed in this navigation one hundred and twenty vessels: this commerce was carried on entirely with bullion. They sent thither annually fifty millions of sesterces. Pliny[‡] says, that the merchandizes brought from thence, were sold at Rome at *cent. per cent.* profit. He speaks, I believe, too generally; if this trade had been so vastly profitable, every body would have been willing to engage in it, and then it would have been at an end.

It will admit of a question, whether the trade to Arabia and the Indies was of any advantage to the Romans? They were obliged to export their bullion thither, though they had not, like us, the resource of America, which supplies what we send away. I am persuaded, that one of the reasons of their increasing the value of their specie, by establishing base coin, was the scarcity of silver, owing to the continual exportation of it to the Indies: and though the commodities of this country were sold at Rome at the rate of *cent. per cent.* this profit of the Romans, being obtained from the Romans themselves, could not enrich the empire.

It may be alledged, on the other hand, that this commerce increased the Roman navigation, and of course their power; that new merchandizes augmented their inland trade, gave encouragement to the arts, and employment to the industrious; that the number of subjects multiplied in proportion to the new means of support; that this new commerce was productive of luxury, which I have proved to be as favourable to a monarchical government, as fatal to a commonwealth; that this establishment was of the same date as the fall of their republic; that the luxury of Rome was become necessary; and that it was extremely proper, that a city which had accumulated all the wealth of the universe, should refund it by its luxury.

Strabo^{*} says that the Romans carried on a far more extensive commerce to the Indies than the kings of Egypt; but it is very extraordinary, that those people who were so little acquainted with commerce, should have paid more attention to that of India, than the Egyptian kings, whose dominions lay so conveniently for it. The reason of this must be explained.

After the death of Alexander, the kings of Egypt established a maritime commerce to the Indies; while the kings of Syria, who were possessed of the more eastern provinces, and consequently of the Indies, maintained that commerce, of which we have taken notice in the sixth chapter, which was carried on partly by land, and partly by rivers, and had been farther facilitated by means of the Macedonian colonies; insomuch, that Europe had a communication with the Indies, both by Egypt and by Syria. The dismembering of the latter kingdom, from whence was formed that of Bactriana, did not prove any way prejudicial to this commerce. Marinus the Tyrian, quoted by Ptolemy,^{*} mentions the discoveries made in India by means of some Macedonian merchants, who found out new roads, which had been unknown to kings in their military expeditions. We find in Ptolemy,[†] that they went from Peter's tower,[‡] as far as Sera; and the discoveries made by mercantile people of so distant a mart, situated in the north-east part of China, was a kind of prodigy. Hence, under the kings of Syria and Bactriana, merchandizes were conveyed to the west from the southern parts of India, by the river Indus, the Oxus, and the Caspian sea; while those of the more eastern and northern parts were transported from Sera, Peter's tower, and other staples, as far as the Euphrates. Those merchants directed their route, nearly by the fortieth degree of north latitude, through countries situated to the west of China, more civilized at that time than at present, because they had not as yet been infested by the Tartars.

Now while the Syrian empire was extending its trade to such a distance by land, Egypt did not greatly enlarge its maritime commerce.

The Parthians soon after appeared, and founded their empire; and when Egypt fell under the power of the Romans, this empire was at its height, and had received its whole extension.

The Romans and Parthians were two rival nations, that fought not for dominion, but for their very existence. Between the two empires deserts were formed, and armies were always stationed on the frontiers; so that instead of there being any commerce, there was not so much as a communication between them. Ambition, jealousy, religion, national antipathy, and difference of manners, compleated the separation. Thus the trade from east to west, which had formerly so many channels, was reduced to one; and Alexandria becoming the only staple, the trade to this city was immensely enlarged.

We shall say but one word on their inland trade. Its principal branch was the corn brought to Rome for the subsistence of the people; but this was rather a political affair than a point of commerce. On this account the sailors were favoured with some privileges,^{*} because the safety of the empire depended on their vigilance.

CHAP. XVII.

Of Commerce after the Destruction of the Western Empire.

AFTER the invasion of the Roman empire, one effect of the general calamity was the destruction of commerce. The barbarous nations at first regarded it only as an opportunity for robbery; and when they had subdued the Romans, they honoured it no more than agriculture, and the other professions of a conquered people.

Soon was the commerce of Europe almost entirely lost. The nobility, who had every where the direction of affairs, were in no pain about it.

The laws of the[†] Visigoths permitted private people to occupy half the beds of great rivers, provided the other half remained free for nets and boats. There must have been very little trade in countries conquered by these barbarians.

In those times were established the ridiculous rights of escheatage and shipwrecks. These men thought, that as strangers were not united to them by any civil law, they owed them on the one hand no kind of justice, and on the other no sort of pity.

In the narrow bounds which nature had originally prescribed to the people of the north, all were strangers to them; and in their poverty they regarded all only as contributing to their riches. Being established, before their conquest, on the coasts of a sea of very little breadth, and full of rocks from these very rocks they drew their subsistence.

But the Romans, who made laws for all the world, had established the most^{*} humane ones with regard to shipwrecks. They suppressed the rapine of those who inhabited the coasts: and what was more still. the rapaciousness of their treasuries.[†]

CHAP. XVIII.

A particular Regulation.

THE [†]law of the Visigoths made however one regulation in favour of commerce. It ordained, that foreign merchants should be judged, in the differences that arose amongst themselves, by the laws and by judges of their own nation. This was founded on an established custom among all mixed people, that every man should live under his own law: a custom, of which I shall speak more at large in another place.

CHAP. XIX.

Of Commerce after the Decay of the Roman Power in the East.

THE Mahometans appeared, conquered, extended, and dispersed themselves. Egypt had particular sovereigns; these carried on the commerce of India, and being possessed of the merchandizes of this country, drew to themselves the riches of all other nations. The sultans of Egypt were the most powerful princes of those times. History informs us with what a constant and well-regulated force they stopped the ardor, the fire, and the impetuosity of the crusades.

CHAP. XX.

How Commerce broke through the Barbarism of Europe.

ARISTOTLE's philosophy being carried to the west, pleased the subtil geniuses, who were the virtuosi of those times of ignorance. The schoolmen were infatuated with it, and borrowed from that philosopher, ^{*} a great many notions on lending upon interest, whereas its source might have been easily traced in the gospel; in short, they condemned it absolutely and in all cases. Hence commerce, which was the profession only of mean persons, became that of knaves: for whenever a thing is forbidden, which nature permits or necessity requires, those who do it are looked upon as dishonest.

Commerce was transferred to a nation covered with infamy; and soon ranked with the most shameful usury, with monopolies, with the levying of subsidies, and with all the dishonest means of acquiring wealth.

The Jews,^{*} enriched by their exactions, were pillaged by the tyranny of princes; which pleased, indeed, but did not ease the people.

What passed in England may serve to give us an idea of what was done in other countries. King[†] John having imprisoned the Jews, in order to obtain their wealth, there were few who had not at least one of their eyes plucked out. Thus did that king administer justice. A certain Jew, who had a tooth pulled out every day for seven days successively, gave ten thousand marks of silver for the eighth. Henry III. extorted from Aaron, a Jew, at York, fourteen thousands marks of silver, and ten thousand for the queen. In those times they did by violence, what is now done in Poland with some semblance of moderation. As princes could not dive into the purses of their subjects, because of their privileges, they put the Jews to the torture, who were not considered as citizens.

At last a custom was introduced of confiscating the effects of those Jews who embraced Christianity. This ridiculous custom is known only by the[‡] law which suppressed it. The most vain and trifling reasons were given in justification of that proceeding; it was alledged, that it was proper to try them, in order to be certain, that they had entirely shaken off the slavery of the devil. But it is evident, that this confiscation was a species of the right of[§] amortisation, to recompense the prince, or the lords, for the taxes levied on the Jews, which ceased on their embracing Christianity. In those times, men, like lands, were regarded as property; I cannot help remarking by the way, how this nation has been sported with from one age to another: at one time, their effects were confiscated when they were willing to become Christians; and at another, if they refused to turn Christians, they were ordered to be burnt.

In the mean time, commerce was seen to arise from the bosom of vexation and despair. The Jews, proscribed by turns from every country, found out the way of saving their effects. Thus they rendered their retreat for ever fixed; for though princes might have been willing to get rid of their persons, yet they did not chuse to get rid of their money.

The^{*} Jews invented letters of exchange; commerce, by this method, became capable of eluding violence, and of maintaining every where its ground; the richest merchant having none but invisible effects, which he could convey imperceptibly wherever he pleased.

The theologians were obliged to limit their principles; and commerce, which they had before connected by main force with knavery, re-entered, if I may so express myself, the bosom of probity.

Thus we owe to the speculations of the schoolmen all the misfortunes[†] which accompanied the destruction of commerce; and to the avarice of princes, the

establishment of a practice which puts it in some measure out of their power.

From this time it became necessary that princes should govern with more prudence than they themselves could ever have imagined: for great exertions of authority were, in the event, found to be impolitic; and from experience it is manifest, that nothing but the goodness and lenity of a government can make it flourish.

We begin to be cured of Machiavelism, and recover from it every day. More moderation is become necessary in the councils of princes. What would formerly have been called a master-stroke in politics, would be now, independent of the horror it might occasion, the greatest imprudence.

Happy is it for men that they are in a situation, in which, though their passions prompt them to be wicked, it is, however, their interest to be humane and virtuous.

CHAP. XXI.

The Discovery of two new Worlds, and in what Manner Europe is affected by it.

THE compass opened, if I may so express myself, the universe. Asia and Africa were found, of which only some borders were known; and America, of which we knew nothing.

The Portuguese, sailing on the Atlantic ocean, discovered the most southern point of Africa; they saw a vast sea, which carried them to the East-Indies. Their danger upon this sea, the discovery of Mosambique, Melinda, and Calicut, have been sung by Camoens, whose poems make us feel something of the charms of the Odyssey, and the magnificence of the Æneid.

The Venetians had hitherto carried on the trade of the Indies through the Turkish dominions, and pursued it in the midst of oppressions and discouragements. By the discovery of the Cape of Good-hope, and those which were made some time after, Italy was no longer the centre of the trading world; it was, if I may be permitted the expression, only a corner of the universe, and is so still. The commerce even of the Levant depending now on that of the great trading nations to both the Indies, Italy even in that branch can no longer be considered as a principal

The Portuguese traded to the Indies in right of conquest. The^{*} constraining laws which the Dutch at present impose on the commerce of the little Indian princes, had been established before by the Portuguese.

The fortune of the house of Austria was prodigious. Charles V. succeeded to the possession of Burgundy, Castile, and Aragon; he arrived afterwards at the imperial dignity; and to procure him a new kind of grandeur, the globe extended itself, and there was seen a new world paying him obeisance.

Christopher Columbus discovered America; and though Spain sent thither only a force so small, that the least prince in Europe could have sent the same, yet it subdued two vast empires, and other great states.

While the Spaniards discovered and conquered the west, the Portuguese pushed their conquests and discoveries in the east. These two nations met each other; they had recourse to pope Alexander VI. who made the celebrated line of partition, and adjudged the great process.

But the other nations of Europe would not suffer them quietly to enjoy their shares. The Dutch chased the Portuguese from almost all their settlements in the East Indies; and several other nations planted colonies in America.

The Spaniards considered these new-discovered countries as the subject of conquest; while others, more refined in their views, found them to be the proper subjects of commerce, and upon this principle directed their proceedings. Hence several nations have conducted themselves with so much wisdom, that they have given a kind of sovereignty to companies of merchants, who governing these far-distant countries only with a view to trade, have made a great accessory power, without embarrassing the principal state.

The colonies they have formed are under a kind of dependance, of which there are but very few instances in all the colonies of the ancients: whether we consider them as holding of the state itself, or of some trading company established in the state.

The design of these colonies is to trade on more advantageous conditions than could otherwise be done with the neighbouring people, with whom all advantages are reciprocal. It has been established, that the ^{*}metropolis, or mother country, alone shall trade in the colonies, and that from very good reason; because the design of the settlement was the extension of commerce, not the foundation of a city, or of a new empire.

Thus it is still a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the ^{*}ancients, which are not at all applicable.

It is likewise acknowledged, that a commerce established between the mother countries, does not include a permission to trade in the colonies; for these always

continue in a state of prohibition.

The disadvantage of a colony that loses the liberty of commerce, is visibly compensated by the protection of the mother country, who defends it by her arms, or supports it by her laws.

From hence follows a third law of Europe, that when a foreign commerce with a colony is prohibited, it is not lawful to trade in those seas, except in such cases as are excepted by treaty.

Nations, who are, with respect to the whole globe, what individuals are in a state, like these are governed by the laws of nature, and by particular laws of their own making. One nation may resign to another the sea, as well as the land. The Carthaginians forbad[†] the Romans to sail beyond certain limits, as the Greeks had obliged the kings of Persia to keep as far distant from the sea-coast[‡] as a horse could gallop.

The great distance of our colonies is not an inconvenience that affects their safety; for if the mother country, on whom they depend for their defence, is remote, no less remote are those nations who rival the mother country, and by whom they may be afraid of being conquered.

Besides, this distance is the cause that those who are established there cannot conform to the manner of living in a climate so different from their own: they are obliged therefore to draw from the mother country all the conveniences of life. The

^{*}—Carthaginians, to render the Sardinians and Corsicans more dependant, forbad their planting, sowing, or doing any thing of the like kind, under pain of death; so that they supplied them with necessaries from Africa.

The Europeans have compassed the same thing, without having recourse to such severe laws. Our colonies in the Caribbee islands are under an admirable regulation in this respect; the subject of their commerce is what we neither have, nor can produce; and they want what is the subject of ours.

A consequence of the discovery of America was the connecting Asia and Africa with Europe; it furnished materials for a trade with that vast part of Asia known by the name of the East-Indies. Silver, that metal so useful as the medium of commerce, became now, as a merchandize, the basis of the greatest commerce in the world. In fine, the navigation to Africa became necessary, in order to furnish us with men to labour in the mines, and to cultivate the lands of America.

Europe is arrived to so high a degree of power, that nothing in history can be compared to it. Whether we consider the immensity of its expences, the grandeur of its engagements, the number of its troops, and the regular payment even of those that are least serviceable, and which are kept only for ostentation.

Father Duhalde says,[†] that the interior trade of China is much greater than that of all Europe. That might be, if our foreign trade did not augment our inland commerce. Europe carries on the trade and navigation of the other three parts of the world; as France, England, and Holland, do nearly that of Europe.

CHAP. XXII.

Of the Riches which Spain drew from America.

IF Europe^{*} has derived so many advantages from the American trade, it seems natural to imagine, that Spain must have derived much greater. She drew from the newly discovered world so prodigious a quantity of gold and silver, that all we had before could not be compared to it.

But (what one could never have expected) this great kingdom was every where baffled by its misfortunes. Philip II. who succeeded Charles V. was obliged to make the celebrated bankruptcy known to all the world. There never was a prince who suffered more from the murmurs, the insolence, and the revolt of troops constantly ill paid.

From that time the monarchy of Spain has been incessantly declining. This has been owing to an interior and physical defect in the nature of these riches, which renders them vain; a defect which increases every day.

Gold and silver are either a fictitious, or a representative wealth. The representative signs of wealth are extremely durable, and, in their own nature, but little subject to decay. But the more they are multiplied, the more they lose their value, because the fewer are the things which they represent.

The Spaniards, after the conquest of Mexico and Peru, abandoned their natural riches, in pursuit of a representative wealth which daily degraded itself. Gold and silver were extremely scarce in Europe, and Spain becoming all of a sudden mistress of a prodigious quantity of these metals, conceived hopes to which she had never before aspired. The wealth she found in the conquered countries, great as it was, did not however equal those of their mines. The Indians concealed part of them; and besides, these people, who made no other use of gold and silver than to give magnificence to the temples of their gods, and to the palaces of their kings, sought not for it with an avarice like ours. In short, they had not the secret of drawing these metals from every mine; but only from those in which the separation might be made with fire: they were strangers to the manner of making use of mercury, and perhaps of mercury itself.

However, it was not long before the specie of Europe was doubled; this appeared from the price of commodities which every where was doubled.

The Spaniards raked into the mines, scooped out mountains, invented machines to draw out water, to break the ore, and separate it; and, as they sported with the lives of the Indians, they forced them to labour without mercy. The specie of Europe soon doubled, and the profit of Spain diminished in the same proportion; they had every year the same quantity of metal, which was become by one-half less precious.

In double the time the specie still doubled, and the profit still diminished another half.

It diminished even more than half: let us see in what manner.

To extract the gold from the mines, to give it the requisite preparations, and to import it into Europe, must be attended with some certain expence; I will suppose this to be as 1 to 64. When the specie was once doubled, and consequently became by one-half less precious, the expence was as 2 to 64. Thus the galloons which brought to Spain the same quantity of gold, brought a thing which really was of less value by one-half, though the expences attending it had been one-half higher.

If we proceed doubling and doubling, we shall find in this progression the cause of the impotency of the wealth of Spain.

It is about two hundred years since they have worked their Indian mines. I suppose the quantity of specie at present in the trading world is to that before the discovery of the Indies, as 32 is to 1; that is, it has been doubled five times: in two hundred years more, the same quantity will be to that before the discovery, as 64 is to 1; that is, it will be doubled once more. Now at present, fifty^{*} quintals of ore yield four, five, and six ounces of gold; and when it yields only two, the miner receives no more from it than his expences. In two hundred years, when the miner will extract only four, this too will only defray his charges. There will then be but little profit to be drawn from the gold mines. The same reasoning will hold good of silver, except that the working of the silver mines is a little more advantageous than those of gold.

But, if mines should be discovered so fruitful as to give a much greater profit, the more fruitful they will be, the sooner the profit will cease.

The Portuguese in Brasil have found mines of gold so rich,[†] that they must necessarily very soon make a considerable diminution in the profits of those of Spain, as well as in their own.

I have frequently heard people deplore the blindness of the court of France, who repulsed Christopher Columbus when he made the proposal of discovering the Indies. Indeed they did, though perhaps without design, an act of the greatest wisdom. Spain has behaved like the foolish king, who desired that every thing he touched might be converted into gold, and who was obliged to beg of the gods to put an end to his misery.

The companies and banks established in many nations, have put a finishing stroke to the lowering of gold and silver, as a sign or representation of riches; for by new fictions they have multiplied in such a manner the signs of wealth, that gold and silver having this office only in part, are become less precious.

Thus public credit serves instead of mines, and diminishes the profit which the Spaniards draw from theirs.

True it is, that the Dutch trade to the East-Indies has increased, in some measure, the value of the Spanish merchandize; for as they carry bullion, and give it in exchange for the merchandizes of the East, they ease the Spaniards of part of a commodity, which in Europe abounds too much.

And this trade, in which Spain seems to be only indirectly concerned, is as advantageous to that nation as to those who are directly employed in carrying it on.

From what has been said, we may form a judgment of the last order of the council of Spain, which prohibits the making use of gold and silver in gildings, and other superfluities; a decree as ridiculous as it would be for the states of Holland to prohibit the consumption of spices.

My reasoning does not hold good against all mines; those of Germany and Hungary, which produce little more than the expence of working them, are extremely useful. They are found in the principal state; they employ many thousand men, who there consume their superfluous commodities; and they are properly a manufacture of the country.

The mines of Germany and Hungary promote the culture of land; the working of those of Mexico and Peru destroys it.

The Indies and Spain are two powers under the same master; but the Indies are the principal; while Spain is only an accessory. It is in vain for politics to attempt to bring back the principal to the accessory; the Indies will always draw Spain to themselves.

Of the merchandizes, to the value of about fifty millions of livres, annually sent to the Indies, Spain furnishes only two millions and a half: the Indies trade for fifty millions, the Spaniards for two and an half.

That must be a bad kind of riches which depends on accident, and not on the industry of a nation, on the number of its inhabitants, and on the cultivation of its lands. The king of Spain, who receives great sums from his custom-house at Cadiz, is in this respect only a rich individual in a state extremely poor. Every thing passes between strangers and himself, while his subjects have scarcely any share in it; this commerce is independent both of the good and bad fortune of his kingdom.

Were some provinces of Castile able to give him a sum equal to that of the custom-house of Cadiz, his power would be much greater: his riches would be the effect of the wealth of the country: these provinces would animate all the others, and they would be all together more capable of supporting their respective charges: instead of a great treasury, he would have a great people.

CHAP. XXIII.

A Problem.

IT is not for me to decide the question, whether if Spain be not herself able to carry on the trade of the Indies, it would not be better to leave it open to strangers. I will only say, that it is for their advantage to load this commerce with as few obstacles as politics will permit. When the merchandizes, which several nations send to the Indies, are very dear, the inhabitants of that country give a great deal of their commodities, which is gold and silver, for very little of those of foreigners: the contrary to this happens when they are at a low price. It would perhaps be of use, that these nations should undersell each other, to the end that the merchandizes carried to the Indies might be always cheap. These are principles which deserve to be examined, without separating them, however, from other considerations; the safety of the Indies, the advantages of one only custom-house, the danger of making great alterations, and the foreseen inconveniencies, which are often less dangerous than those which cannot be foreseen.

Endnotes

[*] Pliny, lib. vi. cap. 23.

[*] See Pliny, book vi. chap 19. and Strabo, book xv.

[*] Lib. vi.

[†] Lib. ii.

[‡] Diodorus, lib. ii.

[||] Ib.

[§] Pliny, lib. vi. cap. 16. & Strabo, lib. xi.

[††] Strabo, lib. xi.

[‡] Strabo, lib. xi.

[*] The authority of Patroclus is of great weight, as appears from a passage in Strabo, lib. ii.

[||] See Pliny, lib. vi. cap. 17. See also Strabo, lib. xi. upon the passage by which the merchandises were conveyed from the Phasis to the Cyrus.

[§] There must have been very great changes in that country since the time of Ptolemy, who gives us an account of so many rivers, that empty themselves into the east side of the Caspian sea. In the Czar's chart we find only the river of Astrabat; in that of M. Bathalsi there is none at all.

[**] See Jenkinson's account of this, in the Collection of Voyages to the North. Vol. iv.

[††] I am apt to think, that from thence the lake Aral was formed.

[†] Claudius Cæsar, in Plin. lib. vi. cap. 11.

[‡] He was slain by Ptolemy Ceraunus.

[||] See Strabo, lib. xi.

[*] They founded Tartessus, and made a settlement at Cadiz.

[†] Kings, lib. i. c. 9. Chron. lib. ii. c. 8.

[‡] Against Appian.

[*] Chap. 1. of this book.

[‡] The proportion betwixt gold and silver, as settled in Europe, may sometimes render it profitable to take gold instead of silver into the East-Indies; but the advantage is very trifling.

[†] See Pliny, lib. vi. cap. 22. and Strabo, lib. xv.

[*] They are mostly shallow; but Sicily has excellent ports.

[†] I say the province of Holland; for the ports of Zealand are deep enough.

[*] That is, to compare magnitudes of the same kind, the action or pressure of the fluid upon the ship, will be to the resistance of the same ship as, &c.

[*] The King of Persia.

[†] On the Athenian republic.

[*] See Strabo, lib. 8.

[*] Iliad, lib. ii.

[†] Ibid.

[‡] Strabo, lib. ix. p. 914.

[*] Strabo, lib. xv.

[†] Herodotus in Melpomene.

[*] Strabo, lib. xv.

[†] Strabo, lib. xv.

[‡] Pliny, lib. vi. cap. 23. Strabo, lib. xv.

[§] They sailed not upon the rivers, lest they should defile the elements. *Hyde's Religion of the Persians*. Even to this day they have no maritime commerce. Those who take to the sea, are treated by them as atheists.

[*] Strabo, lib. xv.

[†] Herodotus (in Melpomene) says, that Darius conquered the Indies; this must be understood only to mean Ariana; and even this was only an ideal conquest.

[‡] Strabo, lib. xv.

[§] This cannot be understood of all the Ichthyophagi, who inhabited a coast of ten thousand furlongs in extent. How was it possible for Alexander to have maintained them? How could he command their submission? This can be understood only of some particular tribes. Nearchus, in his book, *Rerum Indicarum*, says, that at the extremity of this coast, on the side of Persia, he had found some people, who were less Ichthyophagi than the others. I should think that Alexander's prohibition related to these people, or to some other tribe, still more bordering on Persia.

[*] Alexandria was founded on a flat shore, called Rhacotis, where, in ancient times, the kings had kept a garrison, to prevent all strangers, and more particularly the Greeks, from entering the country. *Pliny, lib. vi. cap. 10. Strabo, lib. xviii.*

[†] Arrian. de expedit. Alexandri, lib. vii.

[†] Ibid.

[*] Strabo, lib. vi. towards the end.

[†] Seeing Babylon overflowed, he looked upon the neighbouring country of Arabia as an island. Aristob. in Strabo, lib. xvi.

[†] See the book, Rerum Indicarum.

[*] Strabo, lib. xvi.

[†] Ibid.

[*] These gave them an aversion to strangers.

[†] Pliny, lib. ii. cap. 67. and lib. vi. cap. 9. and 12. and Strabo, lib. xi. Arrian. de expedit. Alexandri, lib. iii. p. 74. and lib. v. p. 104.

[†] Arrian. de expedit. Alexandri, lib. vii.

[§] Pliny, lib. ii. cap. 64.

[*] See the Czar's chart.

[†] Pliny, lib. vi. cap. 17.

[†] Lib. xv.

[§] Apollonius Adrumatinus in Strabo, lib. ii.

[*] The Macedonians of Bactria, India, and Ariana, having separated themselves from Syria, formed a great state.

[†] Lib. vi. cap. 23.

[†] Pliny, lib. vi. cap 23.

[§] Lib. xi. Sigertidis regnum.

[*] The monsoons blow part of the year from one quarter, and part from another; the trade winds blow the whole year round from the same quarter.

[†] Lib. vi. cap. 23.

[*] Herodotus in Melpomene.

[†] Pliny, lib. vi. cap. 23.

[‡] Ibid.

[§] Lib. xv.

[||] Pliny, lib. vi. cap. 23.

[**] Lib. xv.

[*] He was desirous of conquering it. Herodotus, lib. iv.

[†] Pliny, lib. ii. cap. 67. Pomponius Mela, lib. iii. cap. 9.

[‡] Herodotus in Melpomene.

[§] Add to this what I shall say in chap xi. of this book, on the navigation of Hanno.

[||] In the months of October, November, December, and January, the wind in the Atlantic ocean is found to blow north-east; our ships, therefore, either cross the line, and to avoid the wind which is there generally at east, they direct their course to the south; or else they enter into the torrid zone, in those places where the wind is at west.

[*] The sea to which we give this name was called by the ancients the gulph of Arabia; the name of Red sea they gave to that part of the ocean which borders on this gulph.

[†] Strabo, lib. xvi.

[‡] Ibid. Artemidorus settled the borders of the known coast at the place called *Austricornu* and Eratosthenes, *Cinnamomiferam*.

[*] Strabo, lib. i. cap. 7. lib. iv. cap. 9. table 4. of Africa.

[†] This Periplus is attributed to Arrian.

[‡] Ptol. lib. iv. cap. 9.

[§] Lib. iv. cap. 7 and 8.

[||] See what exact descriptions Strabo and Ptolemy have given us of the different parts of Africa. Their knowledge was owing to the several wars, which the two most powerful nations in the world had waged with the people of Africa, to the alliances they had contracted, and to the trade they had carried on with those countries.

[**] Lib. vii. cap. 3.

[*] See his Periplus under the article of Carthage.

[†] See Herodotus in Melpomene on the obstacles which Sataspes encountered.

[*] See the charts and relations in the first volume of voyages that contributed to the establishment of an East-India company, part i. p. 201. This weed covers the surface of the water in such a manner, as to be scarcely perceived, and ships can only pass through it with a stiff gale.

[†] Pliny tells us the same thing, speaking of mount Atlas: *Noctibus micare crebris ignibus, tiliarum cantu timpanorumque sonitu strepere, neminem interdum cerni.*

[*] Mr. Dodwell. See his *Dissertation on Hanno's Periplus.*

[*] Of wonderful things.

[†] Lib. iii.

[‡] Lib. vi.

[§] Mons Argentarius.

[*] He had some share in their management.

[†] See Festus Avienus

[‡] Strabo, lib. iii. towards the end.

[||] He was rewarded by the senate of Carthage.

[*] Frenshemius's Supplement to Livy, Decad. ii.

[†] In the parts subject to the Carthaginians.

[‡] Justin, lib. xliii. cap. 5.

[*] See Strabo, lib. x.

[†] He confirmed the liberty of the city of Amisus, an Athenian colony, which had enjoyed a popular government, even under the kings of Persia. Lucullus having taken Sinone and Amisus, restored them to their liberty, and recalled the inhabitants, who had fled on board their ships.

[‡] See what Appian writes concerning the Phanagoreans, the Amisians, and the Synopians, in his treatise of the Mithridatic war.

[§] See Appian, in regard to the immense treasures which Mithridates employed in his wars, those which he had buried, those which he frequently lost by the treachery of his own people, and those which were found after his death.

[*] See Appian on the Mithridatic war.

[†] Ibid.

[‡] He lost at one time 170,000 men, yet he soon recruited his armies.

[§] In the Considerations on the causes of the rise and declension of the Roman grandeur.

[*] As Plato has observed, lib. 4. of laws.

[†] Polybius, lib. 5.

[‡] See the Considerations on the causes of the rise and declension of the Roman grandeur.

[§] Ibid.

[*] Leg. v. ff. de Captivis.

[†] *Quæ mer cimoniis publicè præfuit.* Leg. v. cod. de natural. liberis.

[*] Leg. ad barbaricum cod. *Quæ res exportari non debeant.*

[†] Leg. 2. cod. *de commerc. & mercator.*

[‡] Leg. 2. *Quæ res exportari non debeant,* and Procopius, *war of the Persians,* book 1.

[*] See the Chronicles of Eusebius and Cedrenus.

[†] See the Considerations on the causes of the rise and declension of the Roman grandeur.

[‡] Pliny, lib. vi. cap. 28. and Strabo, lib. xvi.

[§] Ibid.

[*] The caravans of Aleppo and Suez carry thither annually to the value of about two millions of livres, and as much more clandestinely; the royal vessel of Suez carries thither also two millions.

[†] Lib. ii. pag. 81.

[‡] Lib. vi. cap. 23.

[*] He says, in his 12th book, that the Romans employed a hundred and twenty ships in that trade; and in the 17th book, that the Grecian kings scarcely employed twenty.

[*] Lib. i. cap. 2.

[†] Lib. i. cap. 13.

[‡] Our best maps place Peter's tower in the hundredth degree of longitude, and about the fortieth of latitude.

[*] Suet. in Claudio, leg. 8. Cod. Theodos. *de naviculariis*.

[†] Lib. viii. Tit. 4. sect. 9.

[*] Toto titulo ff. *de incend. ruin. & naufrag.* & cod. *de naufragiis*, & leg. iii. ff. ad leg. Cornel. *de ficariis*.

[†] Leg. i. cod. *de naufragiis*.

[‡] Lib. ii. Tit. 3. sect. 2.

[*] See Aristot. *polit.* lib. i. cap. 9 & 10.

[*] See in *Marca Hispanica* the constitutions of Aragon in the years 1228, and 1233; and in *Brussel*, the agreement in the year 1206, between the king, the countess of Champagne, and Guy of Dampierre.

[†] Stowe's *Survey of London*, book iii. page 54.

[‡] The edict passed at Baviile, April 4, 1392.

[§] In France, the Jews were slaves in mortmain, and the lords their successors. Mr. Brussels mentions an agreement made in the year 1206, between the king and Thibaut Count of Champagne, by which it was agreed, that the Jews of the one should not lend in the lands of the other.

[*] It is known, that under Philip-Augustus and Philip the Long, the Jews who were chased from France took refuge in Lombardy, and that there they gave to foreign merchants and travellers secret letters, drawn upon those to whom they had entrusted their effects in France, which were accepted.

[†] See the 83d novel of the emperor Leo, which revokes the law of Basil his father. This law of Basil is in Hermenopolus, under the name of Leo, lib. iii. tit. 7. sect. 27.

[*] See the relation of Fr. Pirard, part ii. chap. 15.

[*] This, in the language of the ancients, is the state which founded the colony.

[*] Except the Carthaginians, as we see by the treaty which put an end to the first Punic war.

[†] Polyb. lib. iii.

[‡] The king of Persia obliged himself by treaty, not to sail with any vessel of war beyond the Cyanan rocks, and the Chelidonean isles. *Plutarch, in the life of Cymon.*

[*] Aristotle *on wonderful things*. Livy, lib. vii. Dec. 2.

[†] Tome ii. page 170.

[*] This has been already shewn in a small treatise, written by the author about twenty years ago; which has been almost intirely incorporated in the present work.

[*] See Frezier's voyages.

[†] According to Lord Anson, Europe receives every year from Brasil two millions sterling in gold, which is found in sand at the foot of the mountains, or in the beds of rivers. When I wrote the little treatise mentioned in the first note of this chapter, the returns from Brasil were far from being so considerable an object as they are at present.

BOOK XXII. OF LAWS IN RELATION TO THE USE OF MONEY.

CHAP. I.

The Reason of the Use of Money.

PEOPLE who have few merchandizes, as savages, and among civilized nations, those who have only two or three species, trade by exchange. Thus the caravans of Moors who go to Tombactu, in the heart of Africa, have no need of money, for they exchange their salt for gold. The Moor puts his salt in a heap, and the Negro his dust in another; if there is not gold enough, the Moor takes away some of his salt, or the Negro adds more gold, till both parties are agreed.

But when a nation traffics with a great variety of merchandizes, money becomes

necessary; because a metal easily carried from place to place, saves the great expences which people would be obliged to be at, if they always proceeded by exchange.

As all nations have reciprocal wants, it frequently happens that one is desirous of a large quantity of the others merchandizes, when the latter will have very little of theirs, though, with respect to another nation, the case is directly opposite. But when nations have money, and proceed by buying and selling, those who take most merchandizes, pay the balance in specie. And there is this difference, that in the case of buying, the trade carried on is in proportion to the wants of the nation that has the greatest demands; whilst in bartering, the trade is only according to the wants of the nation whose demands are the fewest: without which, the latter would be under an impossibility of balancing its accounts.

CHAP. II.

Of the Nature of Money.

MONEY is a sign which represents the value of all merchandizes. Metal is taken for this design, as being durable,^{*} because it consumes but little by use; and because, without being destroyed, it is capable of many divisions. A precious metal has been chosen as a sign, as being most portable. A metal is most proper for a common measure, because it can be easily reduced to the same standard. Every state fixes upon it a particular impression, to the end that the form may correspond with the standard and the weight, and that both may be known by inspection only.

The Athenians, not having the use of metals, made use of oxen,[†] and the Romans of sheep: but one ox is not the same as another ox, in the manner that one piece of metal may be the same as another.

As specie is the sign of the value of merchandizes, paper is the sign of the value of specie: and when it is of the right sort, it represents this value in such a manner, that as to the effects produced by it, there is not the least difference.

In the same manner, as money is the sign and representative of a thing, every thing is a sign and representative of money; and the state is in a prosperous condition, when, on the one hand, money perfectly represents all things; and, on the other, all things perfectly represent money, and are reciprocally the sign of each other; that is, when they have such a relative value, that we may have the one as soon as we have the other. This never happens in any other than a moderate government, nor does it always happen there: for example, if the laws favour the dishonest debtor, his effects are no longer a representative or sign of money. With regard to a despotic government, it

would be a prodigy, did things there represent their sign. Tyranny and distrust make every one bury^{*} their specie: things are not there then the representative of money.

Legislators have sometimes had the art, not only to make things, in their own nature, the representative of specie, but to convert them even into specie, like the current coin.

Cæsar, when he was[†] dictator, permitted debtors to give their lands in payment to their creditors, at the price they were worth before the civil war. [‡]Tiberius ordered, that those who desired specie should have it from the public treasury, on binding over their land to double the value. Under Cæsar, the lands were the money which paid all debts: under Tiberius, ten thousand sesterces in land became as current money, equal to five thousand sesterces in silver.

The magna charta of England provides against the seizing the lands or revenues of a debtor, when his moveable or personal goods are sufficient to pay, and he is willing to give them up to his creditors: thus all the goods of an Englishman represented money.

The laws of the Germans constituted money a satisfaction for the injuries that were committed, and for the sufferings due to guilt. But as there was but very little specie in the country, they again constituted this money to be paid in goods or chattels. This we find appointed in a Saxon law, with certain regulations suitable to the ease and convenience of the several ranks of people. At first,^{*} the law declared the value of a sou in cattle; the sou of two tremises answered to an ox of twelve months, or to an ewe with her lamb; that of three tremises was worth an ox of sixteen months. With these people money became cattle, goods, and merchandize; and these again became money.

Money is not only a sign of things; it is also a sign and representative of money, as we shall see in the chapter on exchange.

CHAP. III.

Of ideal Money.

THERE is both real and ideal money. Civilized nations generally make use of ideal money only, because they have converted their real money into ideal. At first, their real money was some metal of a certain weight and standard: but soon dishonesty or want made them retrench a part of a metal from every piece of money, to which they left the same name; for example, from a livre at a pound weight they took half the silver, and still continued to call it a livre; the piece which was the twentieth part of a pound of silver, they continued to call a sou, though it is no more the twentieth part of this pound of silver. By this method the livre is an ideal livre, and the sou an ideal sou. Thus of the other subdivisions; and so far may this be carried, that what we call a livre, shall be

only a small part of the original livre or pound which renders it still more ideal. It may even happen, that we have no piece of money of the precise value of a livre, nor any piece exactly with a sou: then the livre and the sou will be purely ideal. They may give to any piece of money the denomination of as many livres and as many sous as they please, the variation may be continual; because it is as easy to give another name to a thing, as it is difficult to change the thing itself.

To take away the source of this abuse, it would be an excellent law for all countries, who are desirous of making commerce flourish, to ordain, that none but real money should be current; and, to prevent any methods from being taken, to render it ideal.

Nothing ought to be so exempt from variation, as that which is the common measure of all.

Trade is in its own nature extremely uncertain: and it is a great evil to add a new uncertainty to that which is founded on the nature of the thing.

CHAP. IV.

Of the Quantity of Gold and Silver.

WHILE civilized nations are the mistresses of the world, gold and silver, whether they draw it from amongst themselves, or fetch it from the mines, must increase every day. On the contrary, it diminishes when barbarous nations prevail. We know how great was the scarcity of these metals, when the Goths and Vandals on the one side, and on the other the Saracens and Tartars, broke in like a torrent on the civilized world.

CHAP. V.

The same Subject continued.

THE bullion drawn from the American mines, imported into Europe, and from thence sent to the east, has greatly promoted the navigation of the European nations; for it is a merchandize which Europe receives in exchange from America, and which she sends in exchange to the Indies. A prodigious quantity of gold and silver is therefore an advantage, when we consider these metals as a merchandize; but it is otherwise, when we consider them as a sign; because their abundance gives an allay to their quality as a sign, which is chiefly founded on their scarcity.

Before the first Punic war. copper was to silver as ^{*}960 to 1: [†] it is at present nearly as

73 and a half to 1. When the proportion shall be as it was formerly, silver will better perform its office as a sign.

CHAP. VI.

The Reason why Interest was lowered one half after the Conquest of the Indies.

GARCILASSO informs us,[†] that in Spain, after the conquest of the Indies, the interest, which was at ten *per cent.* fell to five. This was a necessary consequence. A great quantity of specie being all of a sudden brought into Europe, much fewer persons had need of money. The price of all things increased, while the value of money diminished; the proportion was then broken, and all the old debts were discharged. We may recollect the time of the system;^{*} when every thing was at a high price except specie. Those who had money after the conquest of the Indies, were obliged to lower the price or hire of their merchandize; that is, in other words, their interest.

From this time they were unable to bring interest to its ancient standard, because the quantity of specie brought to Europe has been annually increasing. Besides, as the public funds of some states, founded on riches procured by commerce, gave but a very small interest, it became necessary for the contracts of individuals to be regulated by these. In short, the course of exchange having rendered the conveying of specie from one country to another remarkably easy, money cannot be scarce in a place where they may be so readily supplied with it, by those who have it in plenty.

CHAP. VII.

How the Price of Things is fixed in the Variation of the Sign of Riches.

MONEY is the price of merchandizes or manufactures. But how shall we fix this price? Or in other words, by what piece of money is every thing to be represented?

If we compare the mass of gold and silver in the whole world, with the quantity of merchandizes therein contained, it is certain, that every commodity or merchandize in particular, may be compared to a certain portion of the entire mass of gold and silver. As the total of the one is to the total of the other, so part of the one will be to part of the other. Let us suppose, that there is only one commodity or merchandize in the world, or only one to be purchased, and that this is divisible like money: a part of this merchandize will answer to a part of the mass of gold and silver; the half of the total of

the one, to the half of the total of the other; the tenth, the hundredth, the thousandth part of the one, to the tenth, the hundredth, the thousandth part of the other. But as that which constitutes property amongst mankind is not all at once in trade; and as the metals or money, which are the signs of property, are not all in trade at the same time; the price is fixed in the compound ratio of the total of things with the total of signs, and that of the total of things in trade with the total of signs in trade also: and as the things which are not in trade today may be in trade to-morrow, and the signs not now in trade may enter into trade at the same time, the establishment of the price of things fundamentally depends on the proportion of the total of things to the total of signs.

Thus the prince or the magistrate can no more ascertain the value of merchandizes, that he can establish by a decree, that the relation 1 has to 10, is equal to that of 1 to 20. Julian's^{*} lowering the price of provisions at Antioch, was the cause of a most terrible famine.

CHAP. VIII.

The same Subject continued.

THE negroes on the coast of Africa have a sign of value without money. It is a sign merely ideal, founded on the degree of esteem which they fix in their minds for every merchandize, in proportion to the need they have of it. A certain commodity or merchandize is worth three macoutes; another, six macoutes; another, ten macoutes; that is, as if they said simply three, six, and ten. The price is formed by a comparison of all merchandizes with each other. They have therefore no particular money; but each kind of merchandize is money to the other.

Let us for a moment transfer to ourselves this manner of valuing things, and join it with ours: all the merchandizes and goods in the world, or else all the merchandizes or manufactures of a state, particularly considered as separate from all others, would be worth a certain number of macoutes; and, dividing the money of this state into as many parts as there are macoutes, one part of this division of money will be the sign of a macoute.

If we suppose the quantity of specie in a state doubled, it will be necessary to double the specie in the macoute; but if, in doubling the specie, you double also the macoute, the proportion will remain the same as before the doubling of either.

If since the discovery of the Indies, gold and silver have increased in Europe in the proportion of 1 to 20, the price of provisions and merchandizes must have been enhanced in proportion of 1 to 20. But if, on the other hand, the number of

merchandizes has increased as 1 to 2, it necessarily follows, that the price of these merchandizes and provisions, having been raised in proportion of 1 to 20, and fallen in proportion of 1 to 2, it necessarily follows, I say, that the proportion is only as 1 to 10.

The quantity of goods and merchandizes increases by an augmentation of commerce, the augmentation of commerce by an augmentation of the specie which successively arrives, and by new communications with fresh-discovered countries and seas, which furnish us with new commodities and new merchandizes.

CHAP. IX.

Of the relative Scarcity of Gold and Silver.

BESIDES the positive plenty and scarcity of gold and silver, there is still a relative abundance and a relative scarcity of one of these metals compared to the other.

The avaricious hoard up their gold and silver, for as they do not care to spend, they are fond of signs that are not subject to decay. They prefer gold to silver, because as they are always afraid of losing, they can best conceal that which takes up the least room. Gold therefore disappears when there is plenty of silver, by reason that every one has some to conceal; it appears again when silver is scarce, because they are obliged to draw it from its confinement.

It is then a rule: that gold is common when silver is scarce, and gold is scarce when silver is common. This lets us see the difference between their relative and their real abundance and scarcity: of which I shall presently speak more at large.

CHAP. X.

Of Exchange.

THE relative abundance and scarcity of specie in different countries, forms what is called the course of exchange.

Exchange is a fixing of the actual and momentary value of money.

Silver, as a metal, has value like all other merchandizes, and an additional value as it is capable of becoming the sign of other merchandizes. If it were no more than a mere merchandize, it would lose much of its value.

Silver, as money, has a value, which the prince in some respects can fix, and in others he cannot.

1. The prince establishes a proportion between a quantity of silver as metal, and the same quantity as money. 2. He fixes the proportion between the several metals made use of as money. 3. He establishes the weight and standard of every piece of money. In fine, 4. he gives to every piece that ideal value, of which I have spoken. I shall call the value of money in these four respects its *positive value*, because it may be fixed by law.

The coin of every state has, besides this, a *relative* value, as it is compared with the money of other countries. This relative value is established by the exchange, and greatly depends on its positive value. It is fixed by the general opinion of the merchants, never by the decrees of the prince; because it is subject to incessant variations, and depends on a thousand accidents.

The several nations, in fixing this relative value, are chiefly guided by that which has the greatest quantity of specie. If she has as much specie as all the others together, it is then most proper for the other to regulate theirs by her standard: and the regulation between all the others will pretty nearly agree with the regulation made with this principal nation.

In the actual state of the globe,^{*} Holland is the nation we are speaking of. Let us examine the course of exchange with relation to her.

They have in Holland a piece of money called a florin, worth twenty sous, or forty half-sous or gros. But, to render our ideas as simple as possible, let us imagine that they have not any such piece of money in Holland as a florin, and that they have no other but the gros: a man who should have a thousand florins, should have forty thousand gross; and so of the rest. Now the exchange with Holland is determined by our knowing how many gros every piece of money in other contries is worth; and as the French commonly reckon by a crown of three livres, the exchange makes it necessary for them to know how many gros are contained in a crown of three livres. If the course of exchange is at fifty-four, a crown of three livres will be worth fifty-four gros; if it is at sixty, it will be worth sixty gros. If silver is scarce in France, a crown of three livres will be worth more gros; if plentiful, it will be worth less.

This scarcity or plenty, from whence results the mutability of the course of exchange, is not the real, but a relative scarcity or plenty. For example; when France has greater occasion for funds in Holland, than the Dutch of having funds in France, specie is said to be common in France, and scarce in Holland; and *vice versa*.

Let us suppose that the course of exchange with Holland is at fifty-four. If France and Holland composed only one city, they would act as we do when we give change for a crown: the Frenchman would take three livres out of his pocket, and the Dutchman

fifty-four gros from his. But as there is some distance between Paris and Amsterdam, it is necessary that he, who for a crown of three livres gives me fifty-four gros, which he has in Holland, should give me a bill of exchange for fifty-four gros payable in Holland. The fifty-four gros is not the thing in question; but a bill for that sum. Thus, in order to judge of the^{*} scarcity or plenty of specie, we must know if there are in France more bills of fifty-four gros drawn upon Holland, than there are crowns drawn upon France. If there are more bills from Holland, than there are from France, specie is scarce in France, and common in Holland; it then becomes necessary that the exchange should rise, and that they give for my crown more than fifty-four gros; otherwise I will not part with it; and *vice versa*.

Thus the various turns in the course of exchange form an account of debtor and creditor, which must be frequently settled; and which the state in debt can no more discharge by exchange, than an individual can pay a debt by giving change for a piece of silver.

We will suppose that there are but three states in the world, France, Spain, and Holland; that several individuals in Spain are indebted to France to the value of one hundred thousand marks of silver; and that several individuals of France owe in Spain one hundred and ten thousand marks: now, if some circumstance both in Spain and France should cause each to withdraw his specie, what will then be the course of exchange? These two nations will reciprocally acquit each other of an hundred thousand marks; but France will still owe ten thousand marks in Spain, and the Spaniards will still have bills upon France, to the value of ten thousand marks, while France will have none at all upon Spain.

But if Holland was in a contrary situation with respect to France, and in order to balance the account must pay her ten thousand marks, the French would have two ways of paying the Spaniards; either by giving their creditors in Spain bills for ten thousand marks upon their debtors in Holland, or else by sending specie to the value of ten thousand marks to Spain.

From hence it follows, that when a state has occasion to remit a sum of money into another country, it is indifferent, in the nature of the thing, whether specie be conveyed thither, or they take bills of exchange. The advantage or disadvantage of these two methods solely depends on actual circumstances. We must enquire which will yield most gros in Holland, money carried thither in specie, or a bill upon Holland for the like sum.^{*}

When money of the same standard and weight in France yields money of the same standard and weight in Holland, we say that the exchange is at par. In the actual state of specie,[†] the par is nearly at fifty-four gros to the crown. When the exchange is above fifty-four gros, we say it is high: when beneath, we say it is low.

In order to know the loss and gain of a state, in a particular situation of exchange, it must be considered as debtor and creditor, as buyer and seller. When the exchange is below par, it loses as a debtor, and gains as a creditor; it loses as a buyer, and gains as a seller. It is obvious it loses as debtor; suppose, for example, France owes Holland a certain number of gros, the fewer gros there are in a crown, the more crowns she has to pay. On the contrary, if France is creditor for a certain number of gros, the less number of gros there are in a crown, the more crowns she will receive. The state loses also as buyer; for, there must be the same number of gros to purchase the same quantity of merchandizes; and while the change is low, every French crown is worth fewer gros. For the same reason, the state gains as a seller: I sell my merchandize in Holland for a certain number of gros; I receive then more crowns in France, when for every fifty gros I receive a crown, than I should do if I received only the same crown for every fifty-four. The contrary to this takes place in the other state. If the Dutch are indebted a certain number of crowns to France, they will gain; if this money is owing to them, they will lose; if they sell, they lose; and if they buy, they gain.

It is proper to pursue this something farther. When the exchange is below par; for example, if it be at fifty instead of fifty-four, it should follow, that France, on sending bills of exchange to Holland for fifty-four thousand crowns, could buy merchandizes only to the value of fifty thousand; and that, on the other hand, the Dutch sending the value of fifty thousand crowns to France, might buy fifty four thousand, which makes a difference of $\frac{8}{54}$ that is, a loss to France of more than $\frac{1}{7}$; so that France would be obliged to send to Holland $\frac{1}{7}$ more in specie or merchandize, than she would do was the exchange at par. And as the mischief must constantly increase, because a debt of this kind would bring the exchange still lower, France would in the end be ruined. It seems, I say, as if this should certainly follow; and yet it does not, because of the principle which I have^{*} elsewhere established; which is, that states constantly lean towards a balance, in order to preserve their independency. Thus they borrow only in proportion to their ability to pay, and measure their buying by what they sell: and taking the example from above, if the exchange falls in France from fifty-four to fifty, the Dutch who buy merchandizes in France to the value of a thousand crowns, for which they used to pay fifty-four thousand gros, would now pay only fifty thousand, if the French would consent to it. But the merchandize of France will rise insensibly, and the profit will be shared between the French and the Dutch; for, when a merchant can gain, he easily shares his profit: there arises then a communication of profit between the French and the Dutch. In the same manner the French, who bought merchandizes of Holland for fifty-four thousand gros, and who when the exchange was at fifty-four, paid for them a thousand crowns, will be obliged to add $\frac{1}{7}$ more in French crowns to buy the same merchandizes. But the French merchant, being sensible of the loss he suffers, will take up less of the merchandize of Holland. The French and the Dutch merchant will then be both losers, the state will insensibly fall into a balance, and the lowering of the exchange will not be attended with all those inconveniencies which we had reason to fear.

A merchant may send his stock into a foreign country, when the exchange is below par, without injuring his fortune; because, when it returns, he recovers what he had lost; but a prince, who sends only specie into a foreign country, which never can return, is always a loser.

When the merchants have great dealings in any country, the exchange there infallibly rises. This proceeds from their entering into many engagements, buying great quantities of merchandizes, and drawing upon foreign countries to pay for them.

A prince may amass great wealth in his dominions, and yet specie may be really scarce, and relatively common; for instance, if this state is indebted for many merchandizes to a foreign country, the exchange will be low, though specie be scarce.

The exchange of all places constantly tends to a certain proportion, and that in the very nature of things. If the course of exchange from Ireland to England is below par, and that of England to Holland is also under par, that of Ireland to Holland will be still lower; that is in the compound ratio of that of Ireland to England, and that of England to Holland; for a Dutch merchant who can have specie indirectly from Ireland, by the way of England, will not chuse to pay dearer, by having it in the direct way. This, I say, ought naturally to be the case: but, however, it is not exactly so; there are always circumstances which vary these things; and the different profit of drawing by one place, or of drawing by another, constitutes the particular art and dexterity of the bankers, which does not belong to the present subject.

When a state raises its specie, for instance, when it gives the name of six livres, or two crowns, to what was before called three livres, or one crown, this new denomination, which adds nothing real to the crown, ought not to procure a single gros more by the exchange. We ought only to have for the two new crowns, the same number of gros which we before received for the old one. If this does not happen, it must not be imputed as an effect of the regulation itself; but to the novelty and suddenness of the affair. The exchange adheres to what is already established, and is not altered till after a certain time.

When a state, instead of only raising the specie by a law, calls it in, in order to diminish its size, it frequently happens, that during the time taken up in passing again through the mint, there are two kinds of money; the large, which is the old, and the small, which is the new; and as the large is cried down, as not to be received as money, and bills of exchange must consequently be paid in the new, one would imagine then, that the exchange should be regulated by the new. If, for example, in France the ancient crown of three livres, being worth in Holland sixty gros, was reduced one half, the new crown ought to be valued only at thirty. On the other hand, it seems as if the exchange ought to be regulated by the old coin; because the banker who has specie, and receives bills, is obliged to carry the old coin to the mint, in order to change it for the new; by

which he must be a loser. The exchange then ought to be fixed between the value of the old coin, and that of the new. The value of the old is decreased, if we may call it so, both because there is already some of the new in trade, and because the bankers cannot keep up to the rigour of the law; having an interest in letting loose the old coin from their chests, and being sometimes obliged to make payments with it. Again, the value of this new specie must rise; because the banker having this, finds himself in a situation, in which, as we shall immediately prove, he will reap great advantage by procuring the old. The exchange should then be fixed, as I have already said, between the new and the old coin. For then the bankers find it their interest to send the old out of the kingdom; because by this method they procure the same advantage as they could receive from a regular exchange of the old specie, that is, a great many gros in Holland; and in return, a regular exchange a little lower, between the old and the new specie, which would bring many crowns to France.

Suppose that three livres of the old coin yield by the actual exchange forty-five gros, and that by sending this same crown to Holland, they receive sixty; but with a bill of forty-five gros, they procure a crown of three livres in France, which being sent in the old specie to Holland, still yields sixty gros; thus all the old specie would be sent out of the kingdom, and the bankers would run away with the whole profit.

To remedy this, new measures must be taken. The state, which coined the new specie, would itself be obliged to send great quantities of the old to the nation which regulates the exchange, and by thus gaining credit there, raise the exchange pretty nearly to as many gros for a crown of three livres out of the country. I say, to nearly the same; for while the profits are small, the bankers will not be tempted to send it abroad, because of the expence of carriage, and the danger of confiscation.

It is fit that we should give a very clear idea of this. Mr. Bernard, or any other banker employed by the state, proposes bills upon Holland, and gives them at one, two, or three gros higher than the actual exchange; he has made a provision in a foreign country, by means of the old specie which he has continually been sending thither; and thus he has raised the exchange to the point we have just mentioned. In the mean time, by disposing of his bills, he seizes on all the new specie, and obliges the other bankers, who have payments to make, to carry their old specie to the mint; and, as he insensibly obtains all the specie, he obliges the other bankers to give him bills of exchange at a very high price. By these means, his profit, in the end, compensates, in great measure, for the loss he suffered at the beginning.

It is evident, that during these transactions, the state must be in a dangerous crisis. Specie must become extremely scarce; 1. because much the greatest part is cried down; 2. because a part will be sent into foreign countries; 3. because every one will lay it up, as not being willing to give that profit to the prince, which he hopes to receive himself. It is dangerous to do it slowly; and dangerous also to do it in too much haste.

If the supposed gain be immoderate, the inconveniencies increase in proportion.

We see, from what has been already said, that when the exchange is lower than the specie, a profit may be made by sending it abroad; for the same reason, when it is higher than the specie, there is profit in causing it to return.

But there is a case in which profit may be made by sending the specie out of the kingdom, when the exchange is at par; that is, by sending it into a foreign country to be coined over again. When it returns, an advantage may be made of it, whether it be circulated in the country, or paid for foreign bills.

If a company has been erected in a state with a prodigious stock, and this stock has in a few months been raised twenty or twenty-five times above the original purchase; if, again, the same state established a bank, whose bills were to perform the office of specie, while the numerary value of these bills was prodigious, in order to answer to the numerary value of the stocks, (this is Mr. Law's system;) it would follow, from the nature of things, that these stocks and these bills would vanish in the same manner as they arose. Stocks cannot suddenly be raised twenty or twenty-five times above their original value, without giving a number of people the means of procuring immense riches in paper: every one would endeavour to secure his fortune; and as the exchange offers the most easy way of removing it from home, or conveying whither one pleases, people would incessantly remit a part of their effects to the nation that regulates the exchange. A project for making continual remittances into a foreign country, must lower the exchange. Let us suppose, that at the time of the *System*, in proportion to the standard and weight of the silver coin, the exchange was fixed at forty gros to the crown; when a vast quantity of paper became money, they were unwilling to give more than thirty-nine gros for a crown, and afterwards thirty-eight, thirty-seven, &c. This proceeded so far, that after a while they would give but eight gros, and at last there was no exchange at all.

The exchange ought in this case to have regulated the proportion between the specie and the paper of France. I suppose, that by the weight and standard of the silver, the crown of three livres in silver was worth forty gros, and that the exchange being made in paper, the crown of three livres in paper was worth only eight gros, the difference was four fifths. The crown of three livres in paper was then worth four-fifths less than the crown of three livres in silver.

CHAP. XI.

Of the Proceedings of the Romans with respect to Money.

HOW great soever the exertion of authority had been in our times, with respect to the specie of France during the administration of two successive ministers, still it was vastly exceeded by the Romans; not at the time when corruption had crept into their republic, nor when they were in a state of anarchy; but when they were as much by their wisdom as their courage, in the full vigour of the constitution, after having conquered the cities of Italy, and at the very time that they disputed for empire with the Carthaginians.

And here I am pleased that I have an opportunity of examining more closely into this matter, that no example may be taken from what can never justly be called one.

In the first Punic war the ^{*}as, which ought to be twelve ounces of copper, weighed only two, and in the second it was no more than one. This retrenchment answers to what we now call the raising of coin. To take half the silver from a crown of six livres, in order to make two crowns, or to raise it to the value of twelve livres, is precisely the same thing.

They have left us no monument of the manner in which the Romans conducted this affair in the first Punic war; but what they did in the second, is a proof of the most consummate wisdom. The republic found herself under an impossibility of paying her debts: the as weighed two ounces of copper, and the denarius, valued at ten ases, weighed twenty ounces of copper. The republic being willing to gain half on her creditors, made the as [†]of an ounce of copper, and by this means paid the value of a denarius with ten ounces. This proceeding must give a great shock to the state; they were obliged therefore to break the force of it as well as they could. It was in itself unjust, and it was necessary to render it as little so as possible. They had in view the deliverance of the republic, with respect to the citizens; they were not therefore obliged to direct their view to the deliverance of the citizens, with respect to each other. This made a second step necessary. It was ordained, the denarius, which hitherto contained but ten ases, should contain sixteen. The result of this double operation was, that while the creditors of the republic lost one half, ^{*} those of individuals lost only a fifth; [†] the price of merchandize was increased only a fifth; the real change of the money was only a fifth. The other consequences are obvious.

The Romans then conducted themselves with greater prudence than we, who in our transactions involved the public treasure, and the fortunes of individuals. But this is not all; their affair was carried on amidst more favourable circumstances than ours.

CHAP. XII.

The Circumstances in which the Romans changed the Value of their Specie.

THERE was formerly very little gold and silver in Italy. This country has few or no mines of gold or silver. When Rome was taken by the Gauls, they found only a thousand[†] weight of gold. And yet the Romans had sacked many powerful cities, and brought home their wealth. For a long time they made use of none but copper money; and it was not till after the peace with Pyrrhus, that they had silver enough to coin[§] money: they made denarii of this metal of the value of ten ases,^{||} or ten pounds of copper. At that time the proportion of silver was to that of copper, as 1 to 960. For as the Roman denarius was valued at ten ases, or ten pounds of copper, it was worth one hundred and twenty ounces of copper; and as the same denarius was valued only at one-eighth of an ounce of silver,^{*} thus produced the above proportion.

When Rome became mistress of that part of Italy which is nearest to Greece and Sicily, by degrees she found herself between two rich nations, the Greeks and the Carthaginians. Silver increased at Rome; and as the proportion of 1 to 960 between silver and copper could be no longer supported, she made several regulations with respect to money, which to us are unknown. However, at the beginning of the second Punic war, the[†] Roman denarius was worth no more than twenty ounces of copper; and thus the proportion between silver and copper was no longer but as 1 to 960. The reduction was very considerable, since the republic gained five-sixths upon all copper money. But she did only what was necessary in the nature of things, by establishing the proportion between the metals made use of as money.

The peace which terminated the first Punic war, left the Romans masters of Sicily. They soon entered Sardinia; afterwards they began to know Spain; and thus the quantity of silver increased at Rome. They took measures to reduce the[†] denarius from twenty ounces to sixteen, which had the effect of putting a nearear proportion between the silver and copper; thus the proportion, which was before as 1 to 160, was now made as 1 to 128.

If we examine into the conduct of the Romans, we shall never find them so great as in chusing a proper conjuncture for performing any extraordinary operation.

CHAP. XIII.

Proceedings with respect to Money in the Time of the Emperors.

IN the changes made in the specie during the time of the republic, they proceeded by diminishing it: the state reposed in the people the knowledge of its wants; and did not pretend to deceive them. Under the emperors, they proceeded by way of allay. These princes, reduced to despair even by their liberalities, found themselves obliged to degrade the specie; an indirect method, which diminished the evil, without seeming to

touch it. They with-held a part of the gift and yet concealed the hand that did it; and, without speaking of the diminution of the pay, or of the gratuity, it was found diminished.

We even still see^{*} in cabinets a kind of medals which are called plated; and are only pieces of copper covered with a thin plate of silver. This money is mentioned in a fragment of the 77th book of Dio.[†]

Didius Julian first began to debase it. We find that the coin of[‡] Caracalla had an alloy of more than half; that of Alexander Severus[§] of two thirds: the debasing still increased, till under Gallienus[¶] nothing was to be seen but copper silvered over.

It is evident, that such violent proceedings could not take place in the present age; a prince might deceive himself, but he could deceive nobody else. The exchange has taught the banker to draw a comparison between all the money in the world, and to establish its just value. The standard of money can be no longer a secret. Were the prince to begin to allay his silver, every body else would continue it, and do it for him; the specie of the true standard would go abroad first, and nothing would be sent back but base metal. If, like the Roman emperors, he debased the silver, without debasing the gold, the gold would suddenly disappear, and he would be reduced to his bad silver.

The exchange, as I have said in the preceding book,^{*} has deprived princes of the opportunity of shewing great exertions of authority, or at least has rendered them ineffectual.

CHAP. XIV.

How the Exchange is a Constraint on despotic Power.

MUSCOVY would have descended from its despotic power, but could not. The establishment of commerce depended on that of the exchange, and the transactions were inconsistent with all its laws.

In 1745, the Czarina made a law to expel the Jews, because they remitted into foreign countries the specie of those who were banished into Siberia, as well as that of the foreigners entertained in her service. As all the subjects of the empire are slaves, they can neither go abroad themselves, nor send away their effects without permission. The exchange which gives them the means of remitting their specie from one country to another, is therefore entirely incompatible with the laws of Muscovy.

Commerce itself is inconsistent with the Russian laws. The people are composed only of slaves employed in agriculture, and of slaves called ecclesiastics or gentlemen, who are the lords of those slaves: there is then nobody left for the third estate, which ought to

be composed of mechanics and merchants.

CHAP. XV.

The Practice of some Countries in Italy

THEY have made laws in some part of Italy to prevent subjects from selling their lands, in order to remove their specie into foreign countries. These laws may be good, when the riches of a state are so connected with the country itself, that there would be great difficulty in transferring them to another. But since, by the course of exchange, riches are in some degree independent on any particular state, and since they may with so much ease be conveyed from one country to another; that must be a bad law which will not permit persons for their own interest to dispose of their lands, while they can dispose of their money. It is a bad law, because it gives an advantage to moveable effects, in prejudice to the land; because it deters strangers from settling in the country; and, in short, because it may be eluded.

CHAP. XVI.

The Assistance a State may derive from Bankers.

THE bankers business is to change, not to lend money. If the prince makes use of them to exchange his specie, as he never does it but in great affairs, the least profit he can give for the remittance, becomes considerable; and if they demand large profits, we may be certain that there is a fault in the administration. On the contrary, when they are employed to advance specie, their art consists in procuring the greatest profit for the use of it, without being liable to be charged with usury.

CHAP. XVII.

Of public Debts.

SOME have imagined, that it was for the advantage of a state to be indebted to itself: they thought that this multiplied riches, by increasing the circulation.

Those who are of this opinion have, I believe, confounded a circulating paper which represents money, or a circulating paper which is the sign of the profits that a company

has, or will make by commerce, with a paper which represents a debt. The two first are extremely advantageous to the state: the last can never be so: and all that we can expect from it is, that individuals have a good security from the government for their money. But let us see the inconveniencies which result from it.

1. If foreigners possess much paper which represent a debt, they annually draw out of the nation a considerable sum for interest.
2. A nation that is thus perpetually in debt, ought to have the exchange very low.
3. The taxes raised for the payment of the interest of the debt, are a hurt to the manufactures, by raising the price of the artificer's labour.
4. It takes the true revenue of the state from those who have activity and industry, to convey it to the indolent; that is, it gives the conveniencies for labour to those who do not labour, and clogs with difficulties the industrious artist.

These are its inconveniencies: I know of no advantages. Ten persons have each a yearly income of a thousand crowns, either in land or trade; this raises to the nation, at five *per cent.* a capital of two hundred thousand crowns. If these ten persons employed the half of their income, that is, five thousand crowns, in paying the interest of an hundred thousand crowns which they had borrowed of others, that would be only to the state, as two hundred thousand crowns; that is, in the language of the Algebraists, 200,000 crowns - 100,000 crowns, + 100,000 crowns = 200,000.

People are thrown perhaps into this error, by reflecting, that the paper which represents the debt of a nation is the sign of riches; for none but a rich state can support such paper, without falling into decay. And if it does not fall, it is a proof that the state has other riches besides. They say that it is not an evil, because there are resources against it; and that it is an advantage, since these resources surpass the evil.

CHAP. XVIII.

Of the Payment of public Debts.

IT is necessary that there should be a proportion between the state as creditor, and the state as debtor. The state may be a creditor to infinity, but it can only be a debtor to a certain degree; and when it surpasses that degree, the title of creditor vanishes.

If the credit of the state has never received the least blemish, it may do what has been so happily practised in one of the kingdoms^{*} of Europe; that is, it may acquire a great quantity of specie, and offer to reimburse every individual, at least if they will not reduce

their interest. When the state borrows, the individuals fix the interest; when it pays, the interest for the future is fixed by the state.

It is not sufficient to reduce the interest: it is necessary to erect a sinking fund from the advantage of the reduction, in order to pay every year a part of the capital: a proceeding so happy, that its success increases every day.

When the credit of the state is not entire, there is a new reason for endeavouring to form a sinking fund, because this fund being once established, will soon procure the public confidence.

1. If the state is a republic, the government of which is in its own nature consistent with its entering into projects of a long duration, the capital of the sinking fund may be inconsiderable; but it is necessary in a monarchy for the capital to be much greater.

2. The regulations ought to be so ordered, that all the subjects of the state may support the weight of the establishment of these funds, because they have all the weight of the establishment of the debt; thus the creditor of the state, by the sums he contributes, pays himself.

3. There are four classes of men who pay the debts of the state; the proprietors of the land, those engaged in trade, the labourers and artificers, and, in fine, the annuitants either of the state, or of private people. Of these four classes, the last, in a case of necessity, one would imagine, ought least to be spared, because it is a class entirely passive, while the state is supported by the active vigour of the other three. But as it cannot be higher taxed, without destroying the public confidence, of which the state in general, and these three classes in particular, have the utmost need; as a breach in the public faith cannot be made on a certain number of subjects, without seeming to be made on all; as the class of creditors is always the most exposed to the projects of ministers, and always in their eye, and under their immediate inspection, the state is obliged to give them a singular protection, that the part which is indebted may never have the least advantage over that which is the creditor.

CHAP. XIX.

Of lending upon Interest.

SPECIE is the sign of value. It is evident, that he who has occasion for this sign, ought to pay for the use of it, as well as for every thing else that he has occasion for. All the difference is, that other things may be either hired or bought; whilst money, which is the price of things, can only be hired, and not bought.*

To lend money without interest, is certainly an action laudable and extremely good; but it is obvious, that it is only a counsel of religion, and not a civil law.

In order that trade may be successfully carried on, it is necessary that a price be fixed on the use of specie; but this should be very inconsiderable. If it be too high, the merchant, who sees that it will cost him more in interest than he can gain by commerce, will undertake nothing; if there is no consideration to be paid for the use of specie, nobody will lend it; and here too the merchant will undertake nothing.

I am mistaken when I say nobody will lend: the affairs of society will ever make it necessary. Usury will be established; but with all the disorders with which it has been constantly attended.

The laws of Mahomet confound usury with lending upon interest. Usury increases in Mahometan countries in proportion to the severity of the prohibition. The lender indemnifies himself for the danger he undergoes in suffering the penalty.

In those eastern countries, the greatest part of the people are secure of nothing; there is hardly any proportion between the actual possession of a sum, and the hope of receiving it again after having lent it: usury then must be raised in proportion to the danger of insolvency.

CHAP. XX.

Of maritime Usury.

THE greatness of maritime usury is founded on two things: the danger of the sea, which makes it proper that those who expose their specie, should not do it without considerable advantage; and the ease with which the borrower, by the means of commerce, speedily accomplishes a variety of great affairs. But usury, with respect to land-men, not being founded on either of these two reasons, is either prohibited by the legislators, or, what is more rational, reduced to proper bounds.

CHAP. XXI.

Of lending by Contract, and the State of Usury amongst the Romans.

BESIDES the loans made for the advantage of commerce, there is still a kind of lending by a civil contract, from whence results interest or usury.

As the people of Rome increased every day in power, the magistrates sought to insinuate themselves in their favour, by enacting such laws as were most agreeable to them. They retrenched capitals; they first lowered, and at length prohibited interest; they took away the power of confining the debtor's body: in fine, the abolition of debts was contended for, whenever a tribune was disposed to render himself popular.

These continual changes, whether made by the laws, or by the plebiscita, naturalised usury at Rome; for the creditors seeing the people their debtor, their legislator, and their judge, had no longer any confidence in their agreements; the people, like a debtor who has lost his credit, could only tempt them to lend, by allowing an exorbitant interest; especially as the laws applied a remedy to the evil only from time to time, while the complaints of the people were continual, and constantly intimidated the creditors. This was the cause that all honest means of borrowing and lending were abolished at Rome, and that the most monstrous usury established^{*} itself in that city, notwithstanding the strict prohibition and severity of the law. This evil was a consequence of the severity of the laws against usury. Laws excessively good are the source of excessive evil. The borrower found himself under a necessity of paying for the interest of the money, and for the danger the creditor underwent of suffering the penalty of the law.

CHAP. XXII.

The same Subject continued.

THE primitive Romans had not any laws to regulate the rate of usury.^{*} In the contests which arose on this subject between the plebeians and the patricians, even in the † sedition on the *Mons sacer*, nothing was alledged, on the one hand, but justice; and on the other, but the severity of contracts.

They then only followed private agreements, which, I believe, were most commonly at twelve *per cent. per annum*. My reason is, that in the † ancient language of the Romans, interest at six *per cent.* was called half usury, and interest at three *per cent.* quarter usury. Total usury must therefore have been interest at twelve *per cent.*

But if it be asked, how such great interest could be established amongst a people almost without commerce? I answer, that this people, being very often obliged to go to war without pay, were under a frequent necessity of borrowing: and as they incessantly made happy expeditions, they were commonly very able to pay. This is visible from the recital of the contests which arose on this subject; they did not then disagree concerning the avarice of creditors, but said, that those who complained might have been able to pay. had they lived in a more^{*} regular manner.

They then made laws, which had only an influence on the present situation of affairs: they ordained, for instance, that those who enrolled themselves for the war they were engaged in, should not be molested by their creditors; that those who were in prison should be set at liberty; that the most indigent should be sent into the colonies: and sometimes they opened the public treasury. The people, being eased of their present burthens, became appeased; and as they required nothing for the future, the senate were far from providing against it.

At the time when the senate maintained the cause of usury with so much constancy, the Romans were distinguished by an extreme love of frugality, poverty. and moderation: but the constitution was such, that the principal citizens alone supported all the expences of government, while the common people paid nothing. How then was it possible to deprive the former of the liberty of pursuing their debtors, and at the same time to oblige them to execute their offices, and to support the republic amidst its most pressing necessities?

Tacitus[†] says, that the law of the twelve tables fixed the interest at one *per cent*. It is evident that he was mistaken, and that he took another law, of which I am going to speak, for the law of the twelve tables. If this had been regulated in the law of the twelve tables, why did they not make use of its authority in the disputes which afterwards arose between the creditors and debtors? We find not any vestige of this law upon lending at interest; and let us have but never so little knowledge of the history of Rome, we shall see that a law like this could not be the work of the decemvirs.

The Licinian law, made^{*} eighty-five years after that of the twelve tables, was one of those temporary regulations of which we have spoken. It ordained, that what had been paid for interest should be deducted from the principal, and the rest discharged by three equal payments.

In the year of Rome 398, the tribunes Duellius and Menenius caused a law to be passed, which reduced the interest to[†] one *per cent. per annum*. It is this law which Tacitus[‡] confounds with that of the twelve tables, and this was the first ever made by the Romans to fix the rate of interest. Ten years after,[§] this usury was reduced one-half;[¶] and in the end entirely abolished;^{**} and if we may believe some authors whom Livy had read, this was under the consulate of^{††} C. Martius Rutilius and Q. Servilius, in the year of Rome 413.

It fared with this law as with all those in which the legislator carries things to excess; an infinite number of ways were found to elude it. They enacted, therefore, many others to confirm, correct, and temper it. Sometimes they quitted^{‡‡} the laws to follow the common practice, at others, the common practice to follow the laws; but in this case, custom easily prevailed. When a man wanted to borrow, he found an obstacle in the very law made in his favour; this law must be evaded by the person it was made to

succour, and by the person condemned. Sempronius Asellus, the prætor, having permitted the^{*} debtors to act in conformity to the laws, was[†] slain by the creditors for attempting to revive the memory of a severity that could no longer be supported.

I quit the city, in order to cast an eye on the provinces.

I have somewhere else[‡] observed, that the Roman provinces were exhausted by a severe and arbitrary government. But this is not all, they were also ruined by a most shocking usury.

Cicero takes notice,[§] that the inhabitants of Salamis wanted to borrow a sum of money at Rome, but could not, because of the Gabinian law. We must therefore enquire into the nature of this law.

As soon as lending upon interest was forbidden at Rome, they contrived[¶] all sort of means to elude the law; and as their allies,^{**} and the Latins, were not subject to the civil laws of the Romans, they employed a Latin, or an ally, to lend his name, and personate the creditor. The law, therefore, had only subjected the creditors to a matter of form, and the public were not relieved.

The people complained of this artifice; and Marius Sempronius, tribune of the people, by the authority of the senate, caused a plebiscitum to be enacted^{††} to this purport, that in regard to loans, the laws prohibiting usury betwixt Roman citizens, should equally take place between a citizen and an ally, or a citizen and a Latin.

At that time they gave the name of allies to the people of Italy properly so called, which extended as far as the Arno and the Rubicon, and was not governed in the form of a Roman province.

It is an observation of Tacitus,^{*} that new frauds were constantly committed, whenever any laws were passed for the prevention of usury. Finding themselves debarred from lending or borrowing in the name of an ally, they soon contrived to borrow of some inhabitant of the provinces.

To remedy this abuse, they were obliged to enact a new law; and Gabinus[‡] upon the passing of that famous law, which was intended to prevent the corruption of suffrages, must naturally have reflected, that the best way to attain this end, was to discourage the lending upon interest: these were two objects naturally connected; for usury always increased at the time of elections,[‡] because they stood in need of money to bribe the voters. It is plain, that the Gabinian law had extended the *Senatus Consultum* of Marcus Sempronius to the provinces, since the people of Salamis could not borrow money at Rome, because of that very law. Brutus, under fictitious names, lent them some money[§] at four *per cent.* a month,[¶] and obtained for that purpose two *Senatus Consultums*; in the former of which, it was expressly mentioned, that this loan should

not be considered as an evasion of the law,^{**} and that the governor of Sicily should determine according to the stipulations mentioned in the bond of the Salaminians.

As lending upon interest was forbidden by the Gabinian law between provincials and Roman citizens, and the latter at that time had all the money of the globe in their hands, there was a necessity for tempting them with the bait of extravagant interest, to the end that the avaricious might thus lose sight of the danger of losing their money. And as they were men of great power in Rome, who awed the magistrates, and overruled the laws, they were emboldened to lend, and to extort great usury. Hence the provinces were successively ravaged by every one who had any credit in Rome: and as each governor, at entering upon this province, published his edict,^{*} wherein he fixed the rate of interest in what manner he pleased, the legislature played into the hands of avarice, and the latter served the mean purposes of the legislator.

But the public business must be carried on; and wherever a total inaction obtains, the state is undone. On some occasion the towns, the corporate bodies, and societies, as well as private people, were under a necessity of borrowing; a necessity but too urgent, were it only to repair the ravages of armies, the rapacity of magistrates, the extortions of collectors, and the corrupt practices daily introduced; for never was there at one period so much poverty and opulence. The senate, being possessed of the executive power, granted, through necessity, and oftentimes through favour, a permission of borrowing from Roman citizens, so as to enact decrees for that particular purpose. But even these decrees were discredited by the law; for they might give occasion to the people's^{*} insisting upon new rates of interest, which would augment the danger of losing the capital, while they made a farther extension of usury. I shall ever repeat it, that mankind are governed, not by extremes, but by principles of moderation.

He pays least, says Ulpian,[†] who pays latest. This decides the question, whether interest be lawful? that is, whether the creditor can sell time, and the debtor buy it.

Endnotes

[*] The salt made use of for this purpose in Abyssinia has this defect, that it is continually wasting away.

[†] Herodotus, in Clio, tells us, that the Lydians found out the art of coining money; the Greeks learnt it from them; the Athenian coin had the impression of their ancient ox. I have seen one of those pieces in the Earl of Pembroke's cabinet.

[*] It is an ancient custom in Algiers, for the father of a family to have a treasure concealed in the earth. *Hist. of the Kingdom of Algiers by Logier de Tassis*

[†] Cæsar, on the Civil War, book iii.

[‡] Tacitus, lib. vi.

[*] The Laws of the Saxons, chap. 18.

[*] See chap. xii. of this book.

[†] Supposing a mark or eight ounces of silver to be worth forty-nine livres, and copper twenty sols *per* pound.

[‡] History of the civil wars of the Spaniards in the West Indies.

[*] In France, Mr. Law's project was called by this name.

[*] *History of the Church*, by Socrates, lib. ii.

[*] The Dutch regulate the exchange for almost all Europe, by a kind of determination amongst themselves, in a manner most agreeable to their own interests.

[*] There is much specie in a place, when there is more specie than paper; there is little, when there is more paper than specie.

[*] With the expences of carriage and insurance deducted.

[†] In 1744.

[*] See book xx. chap. 21.

[*] Pliny's Natural History, lib. xxxiii. art. 13.

[†] Ibid.

[*] They received ten ounces of copper for twenty.

[†] They received sixteen ounces of copper for twenty.

[‡] Pliny, lib. xxxiii. art. 5.

[§] Freinshemius, lib. v. of Decad. ii.

[||] Freinshemius, lib. v. decad. ii. They struck also, says the same author, half denarii, called quinarii; and quarters, called sesterces.

[*] An eighth, according to Budæus; according to other authors, a seventh.

[†] Pliny's Nat. Hist. lib. xxxiii. art. 13.

[‡] Ibid.

[*] See Father Joubert's Science of Medals, Paris edit. of 1739, pag. 59.

[†] Extracts of virtues and vices.

[‡] See *Savotte*, part ii. chap. 12. and *Le Journal des Sçavans* of the 28th of July, on a discovery of fifty thousand medals.

[§] See *Savotte*, *ibid.*

[||] Ibid.

[*] Chap. xvi.

[*] England.

[*] We speak not here of gold and silver considered as a merchandize.

[*] Tacit. *Annal.* lib. vi.

[*] Usury and interest among the Romans signified the same thing.

[†] See Dionysius Halicar. who has described it so well.

[‡] *Usuræ semisses, trientes quadrantes.* See the several titles of the digests and codes on usury, and especially the 17th law, with the note *ff. de Usuris.*

[*] See Appius's speech on this subject in Dionys. Halicarnass.

[†] *Annal.* lib. vi.

[*] In the year of Rome, 388. Tit. Liv. lib. vi.

[†] *Unciaria usura.* Tit. Liv. *lib.* vii. See the Defence of the Spirit of Laws, article *Usury.*

[‡] *Annal.* lib. vi.

[§] Under the consulate of L. Manlius Torquatus and C. Plautius, according to *T. Liv.* lib. vii. This is the law mentioned by Tacitus, *Annal.* lib. vi.

[||] *Semiunciaria usura.*

[**] As Tacitus says, *Annal.* lib. vi.

[††] This law was passed at the instance of M. Genucius, tribune of the people. *Tit. Liv.* lib. vii. towards the end.

[††] *Veteri jam more foenus receptum erat.* Appian, on the Civil War, lib. i.

[*] *Permisit eos legibus agere.* Appian, on the Civil War, lib. i. and the epitome of Livy, lib. lxiv.

[†] In the year of Rome, 663.

[‡] Book xi. c. 19.

[§] Letters to Atticus, lib. v. ep. 21.

[||] Livy.

[**] *Ibid.*

[††] In the year 561 of Rome. See Livy.

[*] *Annal.* lib. vi.

[†] In the year 615 of Rome.

[‡] See Cicero to Atticus, lib. iv. ep. 15 and 16.

[§] *Ibid.* lib. vi. ep. 10.

[||] Pompey having lent 600 talents to king Ariobarzanes, made that prince pay him thirty-three Attic talents every thirty days. *Cic. ad Att.* lib. iii. ep. 21. lib. vi. ep. 11.

[**] *Ut neque Salaminiis, neque cui eis dedisset, fraudi esset.* *Ibid.*

[*] Cicero's edict fixed it to one *per cent.* a month, with interest upon interest, at the expiration of the year. With regard to the farmers of the republic, he engaged them to grant a respite to their debtors: if the latter did not pay at the time fixed, he awarded the interest mentioned in the bond. *Cic. ad Att.* lib. vi. ep. 1.

[*] See what Lucretius says in the 21st letter to Atticus, lib. 5. There was even a general *Senatus Consultum*, to fix the rate of interest at one *per cent.* a month. See the same letter.

[†] *Leg. xii. ff. de verb. signif.*

BOOK XXIII. OF LAWS IN THE RELATION THEY BEAR TO THE NUMBER OF INHABITANTS.

CHAP. I.

Of Men and Animals, with respect to Multiplication of their Species.

*DELIGHT of human kind, † and Gods above;
Parent of Rome, propitious queen of love;*

* * * * *

*For when the rising spring adorns the mead,
And a new scene of nature stands display'd;
When teeming buds, and chearful greens appear,
And western gales unlock the lazy year;
The joyous birds thy welcome first express,
Whose native songs thy genial fire confess:
Then savage beasts bound o'er their slighted food,
Struck with thy darts, and tempt the raging flood:*

All nature is thy gift, earth, air, and sea,

Of all that breathes, the various progeny

Stung with delight, is goaded on by thee.

O'er barren mountains, o'er the flow'ry plain,

The leafy forest, and the liquid main,

Extends thy uncontroul'd and boundless reign.

*Thro' all the living regions thou dost move,
And scatter'st where thou go'st the kindly seeds of love.*

The females of brutes have an almost constant fecundity. But in the human species, the manner of thinking, the character, the passions, the humour, the caprice, the idea of preserving beauty, the pain of childbearing, and the fatigue of a too numerous family, obstruct propagation a thousand different ways.

CHAP. II.

Of Marriage.

THE natural obligation of the father to provide for his children has established marriage, which makes known the person who ought to fulfil this obligation.

The people^{*} mentioned by Pomponius Mela[†] had no other way of discovering him but by resemblance.

Among civilized nations, the father[‡] is that person on whom the laws, by the ceremony of marriage, have fixed this duty; because they find in him the man they want.

Amongst brutes this is an obligation which the mother can generally perform; but it is much more extensive amongst men. Their children indeed have reason; but this comes only by slow degrees. It is not sufficient to nourish them; we must also direct them: they can already live; but they cannot govern themselves.

Illicit conjunctions contribute but little to the propagation of the species. The father, who is under a natural obligation to nourish and educate his children, is not then fixed; and the mother, with whom the obligation remains, finds a thousand obstacles from shame, remorse, the constraint of her sex, and the rigour of laws; and besides, she generally wants the means.

Women who have submitted to a public prostitution, cannot have the conveniency of educating their children: the trouble of education is incompatible with their station: and they are so corrupt, that they can have no protection from the law.

It follows from all this, that public continence is naturally connected with the propagation of the species.

CHAP. III.

Of the Condition of Children.

IT is a dictate of reason, that when there is a marriage, children should follow the station or condition of the father; and that when there is not, they can belong to the mother only.^{*}

CHAP. IV.

Of Families.

IT is almost every where a custom for the wife to pass into the family of the husband.

The contrary is without any inconveniency established at Formosa,^{*} where the husband enters into the family of the wife.

This law, which fixes the family in a succession of persons of the same sex, greatly contributes, independently of the first motives, to the propagation of the human species. The family is a kind of property: a man who has children of a sex which does not perpetuate it, is never satisfied if he has not those who can render it perpetual.

Names, whereby men acquire an idea of a thing, which one would imagine ought not to perish, are extremely proper to inspire every family with a desire of extending its duration. There are people, amongst whom names distinguish families: there are others, where they only distinguish persons: the latter have not the same advantage as the former.

CHAP. V.

Of the several Orders of lawful Wives.

LAWS and religion sometimes establish many kinds of civil conjunctions; and this is the case among the Mahometans, where there are several orders of wives, the children of whom are distinguished by being born in the house, by civil contracts, or even by the slavery of the mother, and the subsequent acknowledgment of the father.

It would be contrary to reason, that the law should stigmatize the children for what it approved in the father. All these children ought therefore to succeed, at least if some particular reason does not oppose it, as in Japan, where none inherit but the children of the wife given by the emperor. Their policy demands that the gifts of the emperor should not be too much divided, because they subject them to a kind of service, like that of our ancient fiefs.

There are countries, where a wife of the second rank enjoys nearly the same honours in a family, as in our part of the world are granted to an only consort: there the children of concubines are deemed to belong to the first or principal wife. Thus it is also established in China. Filial respect,^{*} and the ceremony of deep mourning, are not due to the natural mother, but to her appointed by the law.

By means of this fiction, they have no bastard children; and where such a fiction does not take place, it is obvious, that a law to legitimate the children of concubines, must be considered as an act of violence, as the bulk of the nation would be stigmatised by such a decree. Neither is there any regulation in those countries, with regard to children born in adultery. The recluse lives of women, the locks, the inclosures, and the eunuchs,

render all infidelity to their husbands so difficult, that the law judges it impossible. Besides, the same sword would exterminate the mother and the child.

CHAP. VI.

Of Bastards in different Governments.

THEY have, therefore, no such thing as bastards, where polygamy is permitted; this disgrace is known only in countries, in which a man is allowed to marry but one wife. Here they were obliged to stamp a mark of infamy upon concubinage, and consequently they were under a necessity of stigmatizing the issue of such unlawful conjunctions.

In republics, where it is necessary that there should be the purest morals, bastards ought to be more degraded than in monarchies.

The laws made against them at Rome were perhaps too severe, but as the ancient institutions laid all the citizens under a necessity of marrying; and as marriages were also softened by the permission to repudiate, or make a divorce; nothing but an extreme corruption of manners could lead them to concubinage.

It is observable, that as the quality of a citizen was a very considerable thing in a democratic government, where it carried with it the sovereign power, they frequently made laws in respect to the state of bastards, which had less relation to the thing itself, and to the honesty of marriage, than to the particular constitution of the republic. Thus the people have sometimes admitted bastards into the number^{*} of citizens, in order to increase their power in opposition to the great. Thus the Athenians excluded bastards from the privilege of being citizens, that they might possess a greater share of the corn sent them by the king of Egypt. In fine, Aristotle informs us,[†] that in many cities where there was not a sufficient number of citizens, their bastards succeeded to their possessions; and that when there was a proper number, they did not inherit.

CHAP. VII.

Of the Father's Consent to Marriage.

THE consent of fathers is founded on their authority, that is, on their right of property. It is also founded on their love, on their reason, and on the uncertainty of that of their children, whom youth confines in a state of ignorance, and passion in a state of ebriety.

In the small republics, or singular institutions already mentioned, they might have laws

which gave to magistrates that right of inspection over the marriages of the children of citizens, which nature had already given to fathers. The love of the public might there equal or surpass all other love. Thus Plato would have marriages regulated by the magistrates: this the Lacedæmonian magistrates performed.

But in common institutions, fathers have the disposal of their children in marriage: their prudence in this respect is always supposed to be superior to that of a stranger. Nature gives to fathers a desire of procuring successors to their children, when they have almost lost the desire of enjoyment themselves. In the several degrees of progeniture, they see themselves insensibly advancing to a kind of immortality. But what must be done, if oppression and avarice arise to such a height as to usurp all the authority of fathers? Let us hear what Thomas Gage^{*} says in regard to the conduct of the Spaniards in the West-Indies.

"According to the number of the sons and daughters that are marriageable, the father's tribute is raised and increased, until they provide husbands and wives for their sons and daughters, who, as soon as they are married, are charged with tribute; which, that it may increase, they will suffer none above fifteen years of age to live unmarried. Nay, the set time of marriage, appointed for the Indians, is at fourteen years for the man, and thirteen for the woman; alledging that they are sooner ripe for the fruit of wedlock, and sooner ripe in knowledge and malice, and strength for work and service, than any other people. Nay, sometimes they force them to marry, who are scarce twelve and thirteen years of age, if they find them well-limbed and strong in body, explaining a point of one of the canons, which alloweth fourteen and fifteen years, *Nisi malitia suppleat ætatem*." He saw a list of these taken. It was, says he, a most shameful affair. Thus in an action which ought to be the most free, the Indians are the greatest slaves.

CHAP. VIII.

The same Subject continued.

IN England, the law is frequently abused by the daughters marrying according to their own fancy, without consulting their parents. This custom is, I am apt to imagine, more tolerated there than any where else, from a consideration, that as the laws have not established a monastic celibacy, the daughters have no other state to chuse but that of marriage, and this they cannot refuse. In France, on the contrary, young women have always the resource of celibacy; and therefore the law which ordains that they shall wait for the consent of their fathers, may be more agreeable. In this light, the custom of Italy and Spain must be less rational; convents are there established, and yet they may marry without the consent of their fathers.

CHAP. IX.

Of young Women.

YOUNG women who are conducted by marriage alone to liberty and pleasure; who have a mind which dares not think, a heart which dares not feel, eyes which dare not see, ears which dare not hear, who appear only to shew themselves silly, condemned without intermission to trifles and precepts, have sufficient inducements to lead them on to marriage: it is the young men that want to be encouraged.

CHAP. X.

What it is that determines to Marriage.

WHEREVER a place is found in which two persons can live commodiously, there they enter into marriage. Nature has a sufficient propensity to it, when unrestrained by the difficulty of subsistence.

A rising people increase and multiply extremely. This is, because with them it would be a great inconveniency to live in celibacy; and none to have many children. The contrary of which is the case when a nation is formed.

CHAP. XI.

Of the Severity of Government.

MEN who have absolutely nothing, such as beggars, have many children. This proceeds from their being in the case of a rising people: it costs the father nothing to give his art to his offspring, who even in their infancy are the instruments of this art. These people multiply in a rich or superstitious country, because they do not support the burthen of society; but are themselves the burthen. But men who are poor, only because they live under a severe government; who regard their fields less as the source of their subsistence, than as a cause of vexation; these men, I say, have few children: they have not even subsistence for themselves; how then can they think of dividing it? They are unable to take care of their own persons when they are sick; how then can they attend to the wants of creatures whose infancy is a continual sickness?

It is pretended by some, who are apt to talk of things which they have never examined, that the greater the poverty of the subjects, the more numerous their families: that the

more they are loaded with taxes, the more industriously they endeavour to put themselves in a station in which they will be able to pay them: two sophisms, which have always destroyed, and will for ever be the destruction of monarchies.

The severity of government may be carried to such an extreme, as to make the natural sentiments destructive of the natural sentiments themselves. Would the women of^{*} America have refused to bear children, had their masters been less cruel?

CHAP. XII.

Of the Number of Males and Females in different Countries.

I HAVE already observed,[†] that there are born in Europe rather more boys than girls. It has been remarked, that in^{*} Japan there are born rather more girls than boys: all things compared, there must be more fruitful women in Japan than in Europe, and consequently it must be more populous.

We are informed[†], that at Bantam there are ten girls to one boy. A disproportion like this must cause the number of families there, to be to the number of those of other climates, as 1 to 5½; which is a prodigious difference. Their families may be much larger indeed; but there must be few men in circumstances sufficient to provide for so large a family.

CHAP. XIII.

Of Sea-port Towns.

IN sea-port towns, where men expose themselves to a thousand dangers, and go abroad to live or die in distant climates, there are fewer men than women: and yet we see more children there than in other places. This proceeds from the greater ease with which they procure the means of subsistence. Perhaps even the oily parts of fish are more proper to furnish that matter which contributes to generation. This may be one of the causes of the infinite number of people in[†] Japan and China[‡], where they live almost wholly on^S fish. If this be the case, certain monastic rules, which oblige the monks to live on fish, must be contrary to the spirit of the legislator himself.

CHAP. XIV.

Of the Productions of the Earth which require a greater or less Number of Men.

PASTURE lands are but little peopled, because they find employment only for a few. Corn lands employ a great many men, and vineyards infinitely more.

It has been a frequent complaint in England^{*}, that the increase of pasture land diminished the inhabitants; and it has been observed in France, that the prodigious number of vineyards is one of the great causes of the multitude of people.

Those countries where coal-pits furnish a proper substance for fuel, have this advantage over others, that not having the same occasion for forests, the lands may be cultivated.

In countries productive of rice, they are at vast pains in watering the land; a great number of men must therefore be employed. Besides, there is less land required to furnish subsistence for a family, than in those which produce other kinds of grain. In fine, the land which is elsewhere employed in raising cattle, serves immediately for the subsistence of man; and the labour, which in other places is performed by cattle, is there performed by men; so that the culture of the soil becomes to man an immense manufacture.

CHAP. XV.

Of the Number of Inhabitants with relation to the Arts.

WHEN there is an Agrarian law, and the lands are equally divided, the country may be extremely well peopled, though there are but few arts; because every citizen receives from the cultivation of his land whatever is necessary for his subsistence, and all the citizens together consume all the fruits of the earth. Thus it was in some republics.

In our present situation, in which lands are unequally distributed, they produce much more than those who cultivate them are able to consume; if the arts therefore should be neglected, and nothing minded but agriculture, the country could not be peopled. Those who cultivate, or employ others to cultivate, having corn to spare, nothing would engage them to work the following year: the fruits of the earth would not be consumed by the indolent; for these would have nothing with which they could purchase them. It is necessary then that the arts should be established, in order that the produce of the land may be consumed by the labourer and the artificer. In a word, it is now proper that many should cultivate much more than is necessary for their own use. For this purpose, they must have a desire of enjoying superfluities; and these they can receive only from the artificer.

The machines designed to abridge art, are not always useful. If a piece of workmanship is of a moderate price, such as is equally agreeable to the maker and the buyer, those machines which would render the manufacture more simple, or, in other words, diminish the number of workmen, would be pernicious. And if water-mills were not every where established, I should not have believed them so useful as is pretended, because they have deprived an infinite multitude of their employment, a vast number of persons of the use of water, and great part of the land of its fertility.

CHAP. XVI.

The Concern of the Legislator in the Propagation of the Species.

REGULATIONS on the number of citizens depend greatly on circumstances. There are countries, in which nature does all; the legislator then has nothing to do. What need is there of inducing men by laws to propagation, when a fruitful climate yields a sufficient number of inhabitants? Sometimes the climate is more favourable than the soil; the people multiply, and are destroyed by famine: this is the case of China. Hence a father sells his daughters, and exposes his children. In Tonquin^{*}, the same causes produce the same effects; so we need not, like the Arabian travellers mentioned by Renaudot, search for the origin of this in their sentiments[†] on the metempsychosis.

For the same reason, the religion of the isle of Formosa[‡] does not suffer the women to bring their children into the world, till they are thirty-five years of age; the priestess before this age, by bruising the belly, procures abortion.

CHAP. XVII.

Of Greece, and the Number of its Inhabitants.

THAT effect which in certain countries of the East springs from physical causes, was produced in Greece by the nature of the government. The Greeks were a great nation, composed of cities, each of which had a distinct government and separate laws. They had no more the spirit of conquest and ambition, than those of Swisserland, Holland, and Germany, have at this day. In every republic the legislator had in view the happiness of the citizens at home, and their power abroad, lest it should prove inferior^{*} to that of the neighbouring cities. Thus, with the enjoyment of a small territory and great happiness, it was easy for the number of the citizens to increase to such a degree as to become burthensome. This obliged them incessantly to send out colonies[‡]; and, as the Swiss do now, to let their men out to war. Nothing was neglected that could

hinder the too great multiplication of children.

They had amongst them republics, whose constitution was very remarkable. The nations they had subdued were obliged to provide subsistence for the citizens. The Lacedæmonians were fed by the Helotes, the Cretans by the Periecians, and the Thessalians by the Penestes. They were obliged to have only a certain number of freemen, that their slaves might be able to furnish them with subsistence. It is a received maxim in our days, that it is necessary to limit the number of regular troops: now the Lacedæmonians were an army maintained by the peasants: it was proper therefore that this army should be limited; without this the freemen, who had all the advantages of society, would increase beyond number, and the labourers be overloaded.

The politics of the Greeks were particularly employed in regulating the number of citizens. Plato^{*} fixes them at five thousand and forty, and he would have them stop or encourage propagation, as was most convenient, by honours, shame, and the advice of the old men; he would even[†] regulate the number of marriages, in such a manner, that the republic might be recruited without being overcharged.

If the laws of a country, says Aristotle[‡], forbid the exposing of children, the number of those brought forth ought to be limited. If they have more than the number prescribed by law, he advises^{||} to make the women miscarry before the foetus be formed.

The same author mentions the infamous means made use of by the Cretans, to prevent their having too great a number of children; a proceeding too indecent to repeat.

There are places, says Aristotle[§] again, where the laws give the privilege of being citizens to strangers, or to bastards, or to those whose mothers only are citizens; but as soon as they have a sufficient number of people, this privilege ceases. The savages of Canada burn their prisoners; but when they have empty cottages to give them, they receive them into their nation.

Sir William Petty, in his calculations, supposes that a man in England is worth what he would sell for at Algiers^{**}. This can be true only with respect to England. There are countries where a man is worth nothing, there are others where he is worth less than nothing.

CHAP. XVIII.

Of the State and Number of People before the Romans.

ITALY, Sicily, Asia Minor, Gaul and Germany, were nearly in the same state as Greece;

full of small nations that abounded with inhabitants, they had no need of laws to increase their number.

CHAP. XIX.

Of the Depopulation of the Globe.

ALL these little republics were swallowed up in a large one, and the globe insensibly became depopulated. In order to be convinced of this, we need only consider the state of Italy and Greece, before and after the victories of the Romans.

"You will ask me," says Livy^{*}, "where the Volsci could find soldiers to support the war, after having been so often defeated. There must have been formerly an infinite number of people in those countries, which at present would be little better than a desert, were it not for a few soldiers and Roman slaves."

"The oracles have ceased," says Plutarch, "because the places where they spoke are destroyed. At present we can scarcely find in Greece three thousand men fit to bear arms."

"I shall not describe," says Strabo[†], "Epirus and the adjacent places; because these countries are intirely deserted. This depopulation, which began long ago, still continues; so that the Roman soldiers encamp in the houses they have abandoned." We find the cause of this in Polybius, who says, that Paulus Æmilius, after his victory, destroyed seventy cities of Epirus, and carried away a hundred and fifty thousand slaves.

CHAP. XX.

That the Romans were under a Necessity of making Laws, to encourage the Propagation of the Species.

THE Romans, by destroying others, were themselves destroyed: incessantly in action, in the heat of battle, and in the most violent attempts, they wore out like a weapon kept constantly in use.

I shall not here speak of the attention with which they applied themselves to procure^{*} citizens in the room of those they lost, of the associations they entered into, the privileges they bestowed, and of that immense nursery of citizens, their slaves. I shall mention what they did to recruit the number, not of their citizens, but of their men; and

as these were the people in the world who knew best how to adapt their laws to their projects, an examination of their conduct, in this respect, cannot be a matter of indifference.

CHAP. XXI.

Of the Laws of the Romans relating to the Propagation of the Species.

THE ancient laws of Rome endeavoured greatly to incite the citizens to marriage. The senate and the people made frequent regulations on this subject, as Augustus says in his speech related by Dio^{*}.

Dionysius Halicarnasseus[†] cannot believe, that after the death of three hundred and five of the Fabii, exterminated by the Veientes, there remained no more of this family but one single child; because the ancient law, which obliged every citizen to marry and to educate all his children[‡], was still in force.

Independently of the laws, the censors had a particular eye upon marriages, and according to the exigencies of the republic, engaged them to it by[¶] shame and by punishments.

The corruption of manners that began to take place, contributed vastly to disgust the citizens against marriage, which was painful to those who had no taste for the pleasures of innocence. This is the purport of that speech[§] which Metellus Numidicus, when he was censor, made to the people: "If it were possible for us to do without wives, we should deliver ourselves from this evil: but as nature has ordained that we cannot live very happily with them, nor subsist without them, we ought to have more regard to our own preservation, than to transient gratifications."

The corruption of manners destroyed the censorship, which was itself established to destroy the corruption of manners: for when this depravation became general, the censor lost his power^{**}.

Civil discords, triumvirates, and proscriptions, weakened Rome more than any war she had hitherto engaged in. They left but few citizens^{*}, and the greatest part of them unmarried. To remedy this last evil, Cæsar and Augustus re-established the censorship, and would even be[†] censors themselves. Cæsar gave[‡] rewards to those who had many children. All[¶] women under forty-five years of age, who had neither husband nor children, were forbid to wear jewels, or to ride in litters; an excellent method thus to attack celibacy by the power of vanity. The laws of Augustus[§] were more pressing: he imposed^{**} new penalties on such as were not married, and increased the rewards both of those who were married, and of those who had children. Tacitus calls these Julian

laws^{††}; to all appearance they were founded on the ancient regulations made by the senate, the people, and the censors.

The law of Augustus met with innumerable obstacles; and thirty-four years^{‡‡‡} after it had been made, the Roman knights insisted on its being abolished. He placed on one side such as were married, and on the other side those who were not: these last appeared by far the greatest number; upon which the citizens were astonished and confounded.

Augustus, with the gravity of the ancient censors, addressed them in this manner^{§§}:

“While sickness and war snatch away so many citizens, what must become of this state if marriages are no longer contracted? the city does not consist of houses, of porticos, of public places, but of inhabitants. You do not see men, like those mentioned in Fable, starting out of the earth to take care of your affairs. Your celibacy is not owing to the desire of living alone: for none of you eats or sleeps by himself. You only seek to enjoy your irregularities undisturbed. Do you cite the example of the Vestal Virgins? If you preserve not the laws of chastity, you ought to be punished like them. You are equally bad citizens, whether your example has an influence on the rest of the world, or whether it be disregarded. My only view is the perpetuity of the republic. I have increased the penalties of those who have disobeyed; and with respect to rewards, they are such, as I do not know whether virtue has ever received greater. For less will a thousand men expose life itself; and yet will not these engage you to take a wife, and provide for children?”

He made a law, which was called after his name, *Julia*, and *Papia Poppæa*, from the names of the consuls^{*} for part of that year. The greatness of the evil appeared, even in their being elected: Dio[†] tells us, that they were not married, and that they had no children.

This decree of Augustus was properly a code of laws, and a systematic body of all the regulations that could be made on this subject. The Julian[‡] laws were incorporated into it; and received a greater strength. It was so extensive in its use, and had an influence on so many things, that it formed the finest part of the civil law of the Romans.

We find^{*} parts of it dispersed in the precious fragments of Ulpian, in the laws of the Digest, collected from authors who wrote on the Papian laws, in the historians and others who have cited them, in the Theodosian code, which abolished them, and in the works of the fathers, who have censured them, without doubt, from a laudable zeal for the things of the other life, but with very little knowledge of the affairs of this.

These laws had many heads[†], of which we know thirty-five. But to return to my subject as speedily as possible, I shall begin with that head, which Aulus Gellius[‡] informs us was the seventh, and relates to the honours and rewards granted by that law.

The Romans, who for the most part sprung from the cities of the Latins, which were

Lacedæmonian[¶] colonies, and had received a part of their laws even from those cities[§], had, like the Lacedæmonians, such veneration for old age, as to give it all honour and precedence. When the republic wanted citizens, she granted to marriage, and to a number of children, the privileges which had been given to age^{††}. She granted some to marriage alone, independently of the children which might spring from it: this was called the right of husbands. She gave others to those who had any children, and larger still to those who had three children. These three things must not be confounded. These last had those privileges which married men constantly enjoyed; as for example, a particular place in the theatre^{*}; they had those which could only be enjoyed by men who had children; and which none could deprive them of but such as had a greater number.

These privileges were very extensive. The married men, who had the most children, were always preferred[†], whether in the pursuit, or in the exercise of honours. The consul, who had the most numerous offspring, was the[‡] first who received the fasces; he had his choice of the[¶] provinces: the senator, who had most children, had his name written first in the catalogue of senators, and was the first in giving his opinion[§] in the senate. They might even stand sooner than ordinary for an office, because every child gave a dispensation of a year^{**}. If an inhabitant of Rome had three children, he was exempted from all troublesome offices^{††}. The free-born women who had three children, and the freed-women who had four, passed^{††} out of that perpetual tutelage, in which they had been^{¶¶} held by the ancient laws of Rome.

As they had rewards, they had also penalties^{§§}. Those who were not married, could receive no advantage from the will of any person that was not a relation^{†††}; and those who, being married, had no children, could receive only half^{*}. The Romans, says Plutarch[†], marry only to *be* heirs, and not to *have* them.

The advantages which a man and his wife might receive from each other by will[‡], were limited by law. If they had children of each other, they might receive the whole; if not, they could receive only a tenth part of the succession on the account of marriage; and if they had any children by a former venter, as many tenths as they had children.

If a husband absented himself[¶] from his wife on any other cause than the affairs of the republic, he could not inherit from her.

The law gave to a surviving husband or wife two years[§] to marry again, and a year and a half in case of a divorce. The fathers who would not suffer their children to marry, or refused to give their daughters a portion, were obliged to do it by the magistrates^{**}.

They were not allowed to betroth, when the marriage was to be deferred for more than two years^{††}; and as they could not marry a girl till she was twelve years old, they could not be betrothed to her. till she was ten. The law would not suffer them to trifle^{*} to no

purpose; and under a pretence of being betrothed, to enjoy the privileges of married men.

It was contrary to law for a man of sixty to marry [†]a woman of fifty. As they had given great privileges to married men, the law would not suffer them to enter into useless marriages. For the same reason, the Calvisian *Senatus Consultum* declared the marriage of a woman above fifty, with a man less than sixty, to be [†]unequal; so that a woman of fifty years of age could not marry, without incurring the penalties of these laws. Tiberius added [‡] to the rigour of the Papian law, and prohibited men of sixty from marrying women under fifty; so that a man of sixty could not marry in any case whatsoever, without incurring the penalty. But Claudius abrogated [§] this law made under Tiberius.

All these regulations were more conformable to the climate of Italy, than to that of the North, where a man of sixty years of age has still a considerable degree of strength; and where women of fifty are not always past child-bearing.

That they might not be unnecessarily limited in the choice they were to make, Augustus permitted all the free-born citizens, who were not senators ^{††}, to marry freed-women ^{††}. The Papian ^{‡‡} law forbid the senators marrying freed-women, or those who had been brought to the stage; and from the time of ^{§§} Ulpian, free-born persons were forbid to marry women who had led a disorderly life, who had played in the theatre, or who had been condemned by a public sentence. This must have been established by a decree of the senate. During the time of the republic they had never made laws like these, because the censors corrected this kind of disorders as soon as they arose, or else prevented their rising.

Constantine ^{*} made a law, in which he comprehended, in the prohibition of the Papian law, not only the senators, but even such as had a considerable rank in the state, without mentioning persons in an inferior station: this constituted the law of those times. These marriages were therefore no longer forbidden, but to the free-born comprehended in the law of Constantine. Justinian [†] however abrogated the law of Constantine, and permitted all sorts of persons to contract these marriages: and thus we have acquired so fatal a liberty.

It is evident, that the penalties inflicted on such as married contrary to the prohibition of the law, were the same as those inflicted on persons who did not marry. These marriages did not give them any civil advantage [†]; for the dowry [‡] was confiscated [§] after the death of the wife.

Augustus having adjudged the succession and legacies of those, whom these laws had declared incapable, to the public treasury ^{††}, they had the appearance rather of fiscal, than of political and civil laws. The disgust they had already conceived at a burden

which appeared too heavy, was increased by their seeing themselves a continual prey to the avidity of the treasury. On this account it became necessary, under Tiberius, that^{*} these laws should be softened, that Nero should lessen the rewards given out of the treasury to the[†] informers, that Trajan[‡] should put a stop to their plundering, that Severus[¶] should also moderate these laws, and that the civilians should consider them as odious, and in all their decisions deviate from the literal rigour.

Besides, the emperors enervated[§] these laws, by the privileges they granted, of the rights of husbands, of children, and of three children. More than this, they gave^{††} particular persons a dispensation from the penalties of these laws. But the regulations established for the public utility seemed incapable of admitting an alleviation.

It was highly reasonable, that they should grant the rights of children to the vestals^{††}, whom religion retained in a necessary virginity: they gave, in the same manner, the privilege of^{‡‡‡} married men to soldiers, because they could not marry. It was customary to exempt the emperors from the constraint of certain civil laws. Thus Augustus was freed from the constraint of the law, which limited the power of^{§§} enfranchising, and of that which set bounds to the right of^{*} bequeathing by testament. These were only particular cases: but, at last, dispensations were given without discretion, and the rule itself became no more than an exception.

The sects of philosophers had already introduced in the empire a disposition that estranged them from business; a disposition which could not gain ground in the time of the[†] republic, when every body was employed in the arts of war and peace. From hence arose an idea of perfection, as connected with a life of speculation; from hence an estrangement from the cares and embarrassments of a family. The Christian religion coming after this philosophy, fixed, if I may make use of the expression, the ideas which that had only prepared.

Christianity stamped its character on jurisprudence; for empire has ever a connexion with the priesthood. This is visible from the Theodosian code, which is only a collection of the decrees of the Christian emperors.

A panegyrist[‡] of Constantine says to that Emperor, "Your laws were made only to correct vice, and to regulate manners: you have stripped the ancient laws of that artifice, which seemed to have no other aim than to lay snares for simplicity."

It is certain, that the alterations made by Constantine took their rise, either from sentiments relating to the establishment of Christianity, or from ideas conceived of its perfection. From the first proceeded those laws which gave such authority to bishops, and which have been the foundation of the ecclesiastical jurisdiction: from hence those laws which weakened paternal authority^{*}, by depriving the father of his property in the possessions of his children. To extend a new religion, they were obliged to take away

the dependance of children, who are always left attached to what is already established.

The laws made with a view to Christian perfection were more particularly those by which the [†]penalties of the Papian laws were abolished; the unmarried were equally exempted from them, with those who being married had no children.

"These laws were established," says an ecclesiastic [†]historian, "as if the multiplication of the human species was an effect of our care; instead of being sensible that the number is increased or diminished, according to the order of providence."

Principles of religion have had an extraordinary influence on the propagation of the human species. Sometimes they have promoted it, as amongst the Jews, the Mahometans, the Gaur, and the Chinese; at others, they have put a damp to it, as was the case of the Romans upon their conversion to Christianity.

They every where incessantly preached up continency; a virtue the more perfect, because in its own nature it can be practised but by very few.

Constantine had not taken away the decimal laws, which granted a greater extent to the donations between man and wife, in proportion to the number of their children:

Theodosius the younger [‡] abrogated even these laws.

Justinian declared all those marriages ^{*}valid, which had been prohibited by the Papian laws. These laws require people to marry again: Justinian granted [†]privileges to those who did not marry again.

By the ancient institutions, the natural right which every one had to marry, and beget children, could not be taken away. Thus when they received a [†]legacy, on condition of not marrying, or when a patron made his [‡]freed-man swear, that he would neither marry nor beget children, the Papian law annulled both the [§]condition and the oath. The clauses *on continuing in widowhood*, established amongst us, contradict the ancient law, and descend from the constitutions of the emperors, founded on ideas of perfection.

There is no law that contains an express abrogation of the privileges and honours, which the Romans had granted to marriages, and to a number of children. But where celibacy had the pre-eminence, marriage could not be held in honour; and since they could oblige the officers of the public revenue to renounce so many advantages by the abolition of the penalties, it is easy to perceive, that with yet greater ease they might put a stop to the rewards.

The same spiritual reason which had permitted celibacy, soon imposed it even as necessary. God forbid that I should here speak against celibacy, as adopted by religion:

but who can be silent when it is built on libertinism; when the two sexes corrupting each other, even by the natural sensations themselves, fly from a union which ought to make them better, to live in that which always renders them worse?

It is a rule drawn from nature, that the more the number of marriages is diminished, the more corrupt are those who have entered into that state: the fewer married men, the less fidelity is there in marriage; as when there are more thieves, more thefts are committed.

CHAP. XXII.

Of the Exposing of Children.

THE Roman policy was very good, in respect to the exposing of children. Romulus, says Dionysius Halicarnasseus^{*}, laid the citizens under an obligation to educate all their male children, and the eldest of their daughters. If the infants were deformed and monstrous, he permitted the exposing them, after having shewn them to five of their nearest neighbours.

Romulus did not suffer[†] them to kill any infants under three years old: by which means he reconciled the law that gave to fathers the right over their children of life and death, with that which prohibited their being exposed.

We find also in Dionysius Halicarnasseus[†], that the law which obliged the citizens to marry, and to educate all their children, was in force in the 277th year of Rome: we see that custom had restrained the law of Romulus, which permitted them to expose their younger daughters.

We have no knowledge of what the law of the twelve tables (made in the year of Rome 301), appointed with respect to the exposing of children, except from a passage of Cicero[‡], who, speaking of the office of tribune of the people, says, that soon after its birth, like the monstrous infant of the law of the twelve tables, it was stifled: the infant that was not monstrous, was therefore preserved, and the law of the twelve tables made no alteration in the preceding institutions.

“The Germans, says Tacitus^{*}, never expose their children; amongst them, the best manners have more force, than in other places the best laws.” The Romans had therefore laws against this custom, and yet they did not follow them. We find not any[†] Roman law, that permitted the exposing of children: this was, without doubt, an abuse introduced towards the decline of the republic, when luxury robbed them of their freedom, when wealth divided was called poverty, when the father believed that all was lost which he gave to his family, and when this family was distinct from his property.

CHAP. XXIII.

Of the State of the World after the Destruction of the Romans.

THE regulations made by the Romans to increase the number of their citizens, had their effect, while the republic, in the full vigour of her constitution, had nothing to repair but the losses she sustained by her courage, by her intrepidity, by her firmness, her love of glory, and of virtue. But soon the wisest laws could not re-establish what a dying republic, what a general anarchy, what a military government, what a rigid empire, what a proud despotic power, what a feeble monarchy, what a stupid, weak, and superstitious court had successively pulled down. It might indeed be said, that they conquered the world only to weaken it, and to deliver it up defenceless to barbarians. The Gothic nations, the Getes, the Saracens, and Tartars, by turns harrassed them: and soon the barbarians had none to destroy but barbarians. Thus, in fabulous times, after the inundations and the deluge, there arose out of the earth armed men, who exterminated one another.

CHAP. XXIV.

The Changes which happened in Europe, with regard to the Number of the Inhabitants.

IN the state Europe was in, one would not imagine it possible for it to be retrieved; especially when under Charlemain it formed only one vast empire. But by the nature of government at that time, it became divided into an infinite number of petty sovereignties; and as the lord or sovereign, who resided in his village, or city, was neither great, rich, powerful, nor even safe, but by the number of his subjects; every one employed himself with a singular attention to make his little country flourish. This succeeded in such a manner, that notwithstanding the irregularities of government, the want of that knowledge which has since been acquired in commerce, and the numerous wars and disorders incessantly arising, most countries of Europe were better peopled in those days, than they are even at present.

I have not time to treat fully of this subject. But I shall cite the prodigious armies engaged in the crusades, composed of men of all countries, Puffendorf^{*} says, that in the reign of Charles IX. there were in France twenty millions of men.

It is the perpetual re-union of many little states that has produced this diminution. Formerly, every village of France was a capital; there is at present only one large one:

every part of the state was a center of power; at present, all has a relation to one center; and this center is, in some measure, the state itself.

CHAP. XXV.

The same Subject continued.

EUROPE, it is true, has for these two ages past greatly increased its navigation: this has both procured and deprived it of inhabitants. Holland sends every year a great number of mariners to the Indies; of whom not above two thirds return: the rest either perish or settle in the Indies. The same thing must happen to every other nation concerned in that trade.

We must not judge of Europe as of a particular state engaged alone in an extensive navigation. This state would increase in people, because all the neighbouring nations would endeavour to have a share in this commerce; and mariners would arrive from all parts. Europe, separated from the rest of the world by religion[†], by vast seas and desarts, cannot be repaired in this manner.

CHAP. XXVI.

Consequences.

FROM all this we may conclude, that Europe is at present in a condition to require laws to be made in favour of the propagation of the human species. The politics of the ancient Greeks incessantly complain of the inconveniencies attending a republic, from the excessive number of citizens; but the politics of this age call upon us to take proper means to increase ours.

CHAP. XXVII.

Of the Law made in France to encourage the Propagation of the Species.

LEWIS XIV. appointed^{*} particular pensions to those who had ten children, and much larger to such as had twelve. But it is not sufficient to reward prodigies. In order to communicate a general spirit, which leads to the propagation of the species, it is

necessary for us to establish, like the Romans, general rewards, or general penalties.

CHAP. XXVIII.

By what Means we may remedy a Depopulation.

WHEN a state is depopulated by particular accidents, by wars, pestilence, or famine, there are still resources left. The men who remain may preserve the spirit of industry; they may seek to repair their misfortunes, and calamity itself may make them become more industrious. This evil is almost incurable, when the depopulation is prepared before-hand by interior vice and a bad government. When this is the case, men perish with an insensible and habitual disease: born in misery and weakness, in violence, or under the influence of a wicked administration, they see themselves destroyed, and frequently without perceiving the cause of their destruction. Of this we have a melancholy proof, in the countries desolated by despotic power, or by the excessive advantages of the clergy over the laity.

In vain shall we wait for the succour of children yet unborn, to re-establish a state thus depopulated. There is not time for this; men in their solitude are without courage or industry. With land sufficient to nourish a nation, they have scarcely enough to nourish a family. The common people have not even a property in the miseries of the country, that is, in the fallows with which it abounds. The clergy, the prince, the cities, the great men, and some of the principal citizens, insensibly become proprietors of all the land which lies uncultivated: the families who are ruined have left their fields; and the labouring man is destitute.

In this situation they should take the same measures throughout the whole extent of the empire, which the Romans took in a part of theirs; they should practise in their distress what these observed in the midst of plenty; that is, they should distribute land to all the families who are in want, and procure them materials for clearing and cultivating it. This distribution ought to be continued so long as there is a man to receive it; and in such a manner, as not to lose a moment, that can be industriously employed.

CHAP. XXIX.

Of Hospitals.

A MAN is not poor because he has nothing, but because he does not work. The man

who without any degree of wealth has an employment, is as much at his ease as he who without labour has an income of a hundred crowns a year. He who has no substance, and yet has a trade, is not poorer than he who possessing ten acres of land, is obliged to cultivate it for his subsistence. The mechanic, who gives his art as an inheritance to his children, has left them a fortune, which is multiplied in proportion to their number. It is not so with him, who having ten acres of land, divides it amongst his children.

In trading countries, where many men have no other subsistence but from the arts, the state is frequently obliged to supply the necessities of the aged, the sick, and the orphan. A well-regulated government draws this support from the arts themselves. It gives to some such employment as they are capable of performing; others are taught to work, and this teaching of itself becomes an employment.

The alms given to a naked man in the street do not fulfil the obligations of the state, which owes to every citizen a certain subsistence, a proper nourishment, convenient cloathing, and a kind of life not incompatible with health.

Aurengzebe^{*} being asked, why he did not build hospitals, said, "I will make my empire so rich, that there shall be no need of hospitals." He ought to have said, I will begin, by rendering my empire rich, and then I will build hospitals.

The riches of the state suppose great industry. Amidst the numerous branches of trade, it is impossible but some must suffer; and consequently the mechanics must be in a momentary necessity.

Whenever this happens, the state is obliged to lend them a ready assistance; whether it be to prevent the sufferings of the people, or to avoid a rebellion. In this case hospitals, or some equivalent regulations, are necessary to prevent this misery.

But when the nation is poor, private poverty springs from the general calamity; and is, if I may so express myself, the general calamity itself. All the hospitals in the world cannot cure this private poverty; on the contrary, the spirit of indolence, which it constantly inspires, increases the general, and consequently the private misery.

Henry VIII.^{*} resolving to reform the church of England, ruined the monks, of themselves a lazy set of people, that encouraged laziness in others; because, as they practised hospitality, an infinite number of idle persons, gentlemen and citizens, spent their lives in running from convent to convent. He demolished even the hospitals, in which the lower people found subsistence, as the gentlemen did theirs in the monasteries. Since these changes, the spirit of trade and industry has been established in England.

At Rome, the hospitals place every one at his ease, except those who labour, except

those who are industrious, except those who have land, except those who are engaged in trade.

I have observed, that wealthy nations have need of hospitals, because fortune subjects them to a thousand accidents: but it is plain, that transient assistances are much better than perpetual foundations. The evil is momentary; it is necessary, therefore, that the succour should be of the same nature, and that it be applied to particular accidents.

Endnotes

[†] Dryden's *Lucr.*

[*] *The Garamantes.*

[†] *Lib. i. cap. 8.*

[†] *Pater est quem nuptiæ demonstrant.*

[*] For this reason, among nations that have slaves, the child almost always follows the station or condition of the mother.

[*] *Du Halde, tom. i. p. 165.*

[*] *Du Halde, vol. ii. p. 129.*

[*] *Aristotle, Politics, lib. vi. cap. 4.*

[†] *Ibid. lib. iii. cap. 3.*

[*] *A new Survey of the West Indies, by Thomas Gage, p. 345, 3d edit.*

[*] *A New Survey of the West Indies, by Thomas Gage, p. 97. 3d edit.*

[†] *Book xvi. chap. 4.*

[*] See *Kempfer*, who gives a computation of the people of *Meaco*.

[†] *Collection of Voyages that contributed to the establishment of the East India company, vol. 1. p. 347.*

[†] *Japan is composed of a number of isles, where there are many banks, and the sea is there extremely full of fish.*

[||] China abounds in rivers.

[§] See Du Halde, tom. ii. p. 130. 142.

[*] The greatest number of the proprietors of land, says Bishop Burnet, finding more profit in selling their wool than their corn, inclosed their estates: the commons, ready to perish with hunger, rose up in arms; they insisted on a division of the lands: the young king even wrote on this subject. And proclamations were made against those who inclosed their lands. *Abridg. of the Hist. of the Reformation.*

[*] Dampiere's Voyages, vol. ii.

[†] Ibid. p. 167.

[‡] See the collection of voyages that contributed to the establishment of the East-India company, vol. i. part 1. page 182, and 188.

[*] In valour, discipline, and military exercises.

[†] The Gauls, who were in the same circumstances, acted in the same manner.

[*] Republic, lib. v.

[†] Ibid.

[‡] Polit. lib. vii. cap. 16.

[||] Ibid.

[§] Polit. lib. iii. cap. 3.

[**] Sixty pounds sterling.

[*] Lib. vi.

[†] Lib. vii. page 496.

[*] I have treated of this in the Considerations on the causes of the rise and declension of the Roman grandeur.

[*] Lib. 56.

[†] Lib. 2.

[‡] In the year of Rome 277.

[||] See what was done in this respect in T. Livy, lib. 45. The Epitome of T. Livy, lib. 59. Aulus Gellius, lib. i. cap. 6. Valerius Maximus, lib. ii. cap. 19.

[§] It is in Aulus Gellius, lib. i. cap. 6.

[**] See what I have said in book v. chap. 19.

[*] Cæsar, after the civil war, having made a survey of the Roman citizens, found there were no more than one hundred and fifty thousand heads of families. Florus's epitome of Livy, 17th. decad.

[†] See Dio, lib. 43, and Xiphilinus in August.

[‡] Dio, lib. 43, Suetonius, life of Cæsar, chap. 20; Appian, lib. 2. of the civil war.

[||] Eusebius, in his Chronicle.

[§] Dio, lib. 54.

[**] In the year of Rome 736.

[††] Julius rogationes, Annal. lib. 3.

[|||] In the year of Rome 762. Dio. lib. 56.

[§§] I have abridged this speech, which is of a tedious length; it is to be found in Dio, lib. 56.

[*] Marcus Papius Mutilus, and Q. Poppæus, Sabinus, *Dio, lib. 56.*

[†] Ibid.

[‡] The 14th title of the fragments of Ulpian distinguishes very rightly between the Julian and the Papian law.

[*] James Godfrey has made a collection of these.

[†] The 35th is cited in the 19th law ff. *de ritu nuptiarum.*

[‡] Lib. ii. cap. 15.

[||] Dionys. Halicarnasseus.

[§] The deputies of Rome, who were sent to search into the laws of Greece, went to Athens, and to the cities of Italy.

[††] Aulus Gellius, lib. ii. cap. 15.

[*] Suetonius in Augusto, cap. 44.

[†] Tacitus, lib. 2. Ut numerus liberorum in candidatis præpolleret, quod lex jubebat.

[‡] Aulus Gellius, lib. 2. cap. 15.

[‖] Tacitus, Ann. lib. 15.

[§] See Law 6. sect. 5. de decurion.

[**] See Law 2. ff. de minorib.

[††] Law 1. and 2. ff. de vacatione et excusat. munerum.

[‡‡] Frag. of Ulpian, tit. 29. sect. 3.

[‖‖] Plutarch, life of Numa.

[§§] See the fragments of Ulpian, tit. 14, 15, 16, 17, and 18, which compose one of the most valuable pieces of the ancient civil law of the Romans.

[†††] Sozom. lib. i. cap. 9. they could receive from their relations. Frag. of Ulpian, tit. 16. sect. 1.

[*] Sozom. lib. i. cap. 9. et leg. unic. cod. Theod. de Infirm. pœnis cœlib. et orbit.

[†] Moral Works, of the love of fathers towards their children.

[‡] See a more particular account of this in the fragm. of Ulpian, tit. 15. and 16.

[‖] Fragm. of Ulpian, tit. 16. sect. 1.

[§] Fragm. of Ulpian, tit. 14. It seems the first Julian laws allowed three years. Speech of Augustus in Dio, lib. 56. Suetonius, life of Augustus, cap. 34. Other Julian laws granted but one year: the Papian law gave two. Fragm. of Ulpian, tit. 14. These laws were not agreeable to the people; Augustus therefore softened or strengthened them, as they were more or less disposed to comply with them.

[**] This was the 35th head of the Papian law. *Leg. 19. ff. de ritu nuptiarum.*

[††] See Dio, lib. 54. anno 736. Suetonius in Octavio, cap. 34.

[*] Dio, lib. 54. and in the same Dio, the speech of Augustus, lib. 56.

[†] Fragm. of Ulpian, tit. 16. and the 27th law, *cod. de nuptiis*.

[‡] Frag. of Ulpian, tit. 16. sect. 3.

[¶] See Suetonius in Claudio, cap. 23.

[§] See Suetonius, life of Claudius, cap. 23. and the Fragm. of Ulpian, tit. 16. sect. 3.

[††] Dio, lib. 54. Fragm. of Ulpian, tit, 13.

[‡‡] Augustus's speech in Dio, lib. 56.

[¶¶] Fragm. of Ulpian, cap. 13. and the 44th law, ff. *de ritu nuptiarum*.

[§§] Fragm. of Ulpian, tit. 13, and 16.

[*] See Law 1. in *cod. de natur. lib*,

[†] Novell. 177.

[‡] Law 37. ff. de operib. libertorum, sect. 7. Frag. of Ulpian, tit. 16. sect. 2.

[¶] Fragm. of Ulpian, tit. 16. sect. 2.

[§] See book xxvi. chap. 13.

[††] Except in certain cases. See the Fragment of Ulpian, tit. 18. and the only law in *Cod. de Caduc. tollend*.

[*] Relatum de moderanda Papia Poppæa. *Tacit. Annal. lib. iii. page 117*.

[†] He reduced them to the fourth part. *Suetonius in Nerone*, cap. 10.

[‡] See Pliny's panegyric.

[¶] Severus extended even to twenty-five years for the males, and to twenty for the females, the time fixed by the Papian law, as we see by comparing the Fragment of Ulpian, tit. 16, with what Tertullian says, *Apol. cap. 4*.

[§] P. Scipio, the censor, complains, in his speech to the people, of the abuses which were already introduced; that they received the same privileges for adopted, as for natural children. *Aulus Gellius, lib. 5. cap. 19*.

[††] See the 31st law, ff. *de ritu nuptiarum*.

[‡‡] Augustus, in the Papian law, gave them the privilege of mothers. See Dio, lib. 66. Numa had granted them the ancient privilege of women who had three children, that is, of having no guardian. *Plutarch, life of Numa.*

[‖‖] This was granted them by Claudius. Dio, lib. 60.

[§§] Leg. apud cum ff. de manumissionib. sect. 1.

[*] Dio, lib. 55.

[†] See in Cicero's Offices, his sentiments on this spirit of speculation.

[‡] Nazarius in panegyrico Constantini, anno 321.

[*] See Law 1, 2, 3, in the Theodosian code, *de bonis maternis maternique generis*, &c. and the only law in the same code, *de bonis quæ filiis famil. acquiruntur.*

[†] Leg. unic. cod. Theod. de infirm. pan. cælib. & orbit.

[‡] Sozomenus, page 27.

[‖] Leg. 2. & 3. cod. Theod. de jur liber.

[*] Leg. Sancimus, cod. de nuptiis.

[†] Novell. 127. cap 3. Novell. 118. cap. 5.

[‡] Leg. 54. ff. de condit. et demonst.

[‖] Leg. 5. sect. 4. de jure patronatus.

[§] Paul, in his sentences, lib. iii. tit. 4. sect. 15.

[*] Antiquities of Rome, lib. 2.

[†] Ibid.

[‡] Lib. 9.

[‖] Lib. 3. de legib.

[*] De Morib. German.

[†] There is not any title on this subject in the Digest; the title of the Code says nothing of it, no more than the Novels.

[*] Introduction to the history of Europe, chap. 5. of France.

[†] Mahometan countries surround it almost on every side.

[*] The edict of 1666, in favour of marriages.

[*] See Sir John Chardin's Travels through Persia, vol. 8.

[*] See Burnet's History of the Reformation.

BOOK XXIV. OF LAWS AS RELATIVE TO RELIGION, CONSIDERED IN ITSELF, AND IN ITS DOCTRINES.

CHAP. I.

Of Religion in general.

AS amidst several degrees of darkness we may form a judgment of those which are the least thick, and among precipices, which are the least deep; so we may search among false religions for those that are most conformable to the welfare of society; for those which, though they have not the effect of leading men to the felicity of another life, may contribute most to their happiness in this.

I shall examine therefore the several religions of the world, in relation only to the good they produce in civil society; whether I speak of that which has its root in heaven, or of those which spring from the earth.

As in this work I am not a divine, but a political writer, I may here advance things which are no otherwise true, than as they correspond with a worldly manner of thinking, not as considered in their relation to truths of a more sublime nature.

With regard to the true religion, a person of the least degree of impartiality must see, that I have never pretended to make its interests submit to those of a political nature, but rather to unite them; now, in order to unite, it is necessary that we should know them.

The Christian religion, which ordains that men should love each other, would, without doubt, have every nation blest with the best civil, the best political laws; because these, next to this religion, are the greatest good that men can give and receive.

CHAP. II.

A Paradox of Mr. Bayle's.

MR. ^{*} Bayle has pretended to prove, that it is better to be an atheist than an idolater; that is, in other words, that it is less dangerous to have no religion at all, than a bad one. "I had rather, said he, it should be said of me that I had no existence, than that I am a villain." This is only a sophism, founded on this, that it is of no importance to the human race to believe that a certain man exists; whereas it is extremely useful for them to believe the existence of a God. From the idea of his non-existence, immediately follows that of our independence; or, if we cannot conceive this idea, that of disobedience. To say that religion is not a restraining motive, because it does not always restrain, is equally absurd, as to say, that the civil laws are not a restraining motive. It is a false way of reasoning against religion, to collect, in a large work, a long detail of the evils it has produced, if we do not give, at the same time, an enumeration of the advantages which have flowed from it. Were I to relate all the evils that have arisen in the world from civil laws, from monarchy, and from republican government, I might tell of frightful things. Were it of no advantage for subjects to have religion, it would still be of some if princes had it, and if they whitened with foam the only rein which can restrain those who fear not human laws.

A prince who loves and fears religion is a lion, who stoops to the hand that strokes, or to the voice that appeases him. He who fears and hates religion, is like the savage beast that growls and bites the chain which prevents his flying on the passenger. He who has no religion at all, is that terrible animal, who perceives his liberty only when he tears in pieces, and when he devours.

The question is not to know, whether it would be better that a certain man, or a certain people, had no religion, than to abuse what they have; but to know what is the least evil, that religion be sometimes abused, or that there be no such restraint as religion on mankind.

To diminish the horror of atheism, they lay too much to the charge of idolatry. It is far from being true, that when the ancients raised altars to a particular vice, they intended to shew that they loved the vice; this signified, on the contrary, that they hated it. When the Lacedæmonians erected a temple to Fear, it was not to shew that this warlike nation desired, that he would in the midst of battle possess the hearts of the Lacedæmonians. They had deities to whom they prayed not to inspire them with guilt; and others whom they besought to shield them from it.

CHAP. III.

That a moderate Government is most agreeable to the Christian

Religion, and a despotic Government to the Mahometan.

THE Christian religion is a stranger to mere despotic power. The mildness so frequently recommended in the gospel, is incompatible with the despotic rage with which a prince punishes his subjects, and exercises himself in cruelty.

As this religion forbids the plurality of wives, its princes are less confined, less concealed from their subjects, and consequently have more humanity: they are more disposed to be directed by laws, and more capable of perceiving, that they cannot do whatever they please.

While the Mahometan princes incessantly give or receive death, the religion of the Christians render their princes less timid, and consequently less cruel. The prince confides in his subjects, and the subjects in the prince. How admirable the religion, which, while it only seems to have in view the felicity of the other life, continues the happiness of this!

It is the Christian religion, that, in spite of the extent of the empire and the influence of the climate, has hindered despotic power from being established in Æthiopia, and has carried into the heart of Africa the manners and laws of Europe.

The heir to the empire of Æthiopia enjoys a principality, and gives to other subjects an example of love and obedience. Not far from thence may be seen the Mahometan shutting up the children of the King^{*} of Sennar, at whose death, the council sends to murder them, in favour of the prince who mounts the throne.

Let us set before our eyes, on the one hand, the continual massacres of the kings and generals of the Greeks and Romans; and, on the other, the destruction of people and cities by those famous conquerors Timur Beg and Jenghiz Khan, who ravaged Asia; and we shall see, that we owe to Christianity, in government, a certain political law; and in war, a certain law of nations; benefits which human nature can never sufficiently acknowledge.

It is owing to this law of nations, that amongst us, victory leaves these great advantages to the conquered, life, liberty, laws, wealth, and always religion, when the conqueror is not blind to his own interest.

We may truly say, that the people of Europe are not at present more disunited than the people and the armies, or even the armies amongst themselves, were under the Roman empire, when it was become a despotic and military government. On the one hand, the armies engaged in war against each other; and, on the other, they pillaged the cities, and divided or confiscated the lands.

CHAP. IV.

Consequences from the Character of the Christian Religion, and that of the Mahometan.

FROM the characters of the Christian and Mahometan religions, we ought, without any further examination, to embrace the one, and reject the other: for it is much easier to prove, that religion ought to humanize the manners of men, than that any particular religion is true.

It is a misfortune to human nature, when religion is given by a conqueror. The Mahometan religion, which speaks only by the sword, acts still upon men with that destructive spirit with which it was founded.

The history of Sabbaco^{*}, one of the pastoral kings of Egypt, is very extraordinary. The tutelar god of Thebes appearing to him in a dream, ordered him to put to death all the priests of Egypt. He judged, that the gods were displeased at his being on the throne, since they commanded him to commit an action contrary to their ordinary pleasure; and therefore he retired into Æthiopia.

CHAP. V.

That the Catholic Religion is most agreeable to a Monarchy, and the Protestant to a Republic.

WHEN a religion is introduced and fixed in a state, it is commonly such as is most suitable to the plan of government there established; for those who receive it, and those who are the cause of its being received, have scarcely any other idea of policy, than that of the state in which they were born.

When the Christian religion, two centuries ago, became unhappily divided into Catholic and Protestant, the people of the North embraced the Protestant, and those of the south adhered still to the Catholic.

The reason is plain: the people of the north have, and will for ever have, a spirit of liberty and independence, which the people of the south have not; and therefore a religion, which has no visible head, is more agreeable to the independency of the climate, than that which has one.

In the countries themselves where the Protestant religion became established, the revolutions were made pursuant to the several plans of political government. Luther

having great princes on his side, would never have been able to make them relish an ecclesiastic authority that had no exterior pre-eminence; while Calvin, having to do with people who lived under republican governments, or with obscure citizens in monarchies, might very well avoid establishing dignities and preferments.

Each of these two religions was believed to be the most perfect; the Calvinist judging his most conformable to what Christ had said, and the Lutheran to what the Apostles had practised.

CHAP. VI.

Another of Mr. Bayle's Paradoxes.

MR. BAYLE, after having abused all religions, endeavours to sully Christianity: he boldly asserts, that true Christians cannot form a government of any duration. Why not? Citizens of this profession being infinitely enlightened with respect to the various duties of life, and having the warmest zeal to fulfil them, must be perfectly sensible of the rights of natural defence. The more they believe themselves indebted to religion, the more they would think due to their country. The principles of Christianity, deeply engraved on the heart, would be infinitely more powerful than the false honour of monarchies, than the humane virtues of republics, or the servile fear of despotic states.

It is astonishing, that this great man should not be able to distinguish between the orders for the establishment of Christianity, and Christianity itself; and that he should be liable to be charged with not knowing the spirit of his own religion. When the legislator, instead of laws, has given counsels, this is, because he knew, that if these counsels were ordained as laws, they would be contrary to the spirit of the laws themselves.

CHAP. VII.

Of the Laws of Perfection in Religion.

HUMAN laws, made to direct the will, ought to give precepts, and not counsels; religion, made to influence the heart, should give many counsels, and few precepts.

When, for instance, it gives rules, not for what is good, but for what is better; not to direct to what is right, but to what is perfect; it is expedient, that these should be counsels, and not laws: for perfection can have no relation to the universality of men or

things. Besides, if these were laws, there would be a necessity for an infinite number of others, to make people observe the first. Celibacy was advised by Christianity: when they made it a law in respect to a certain order of men, it became necessary to make new^{*} ones every day, in order to oblige those men to observe it. The legislator wearied himself, and he wearied society, to make men execute by precept, what those who love perfection would have executed as counsel.

CHAP. VIII.

Of the Connection between the moral Laws and those of Religion.

IN a country so unfortunate as to have a religion that God has not revealed, it is necessary for it to be agreeable to morality; because, even a false religion is the best security we can have of the probity of men.

The principal points of religion of the inhabitants of Pegu^{*} are, not to commit murder, not to steal, to avoid uncleanness, not to give the least uneasiness to their neighbour, but to do him, on the contrary, all the good in their power. With these rules they think they should be saved in any religion whatsoever. From hence it proceeds, that those people, though poor and proud, behave with gentleness and compassion to the unhappy.

CHAP. IX.

Of the Essenes.

THE Essenes[†] made a vow to observe justice to mankind, to do no ill to any person, upon whatsoever account, to keep faith with all the world, to hate injustice, to command with modesty, always to side with truth, and to fly from all unlawful gain.

CHAP. X.

Of the Sect of Stoics.

THE several sects of philosophy amongst the ancients, were a species of religion. Never were any principles more worthy of human nature, and more proper to form the good man, than those of the Stoics; and if I could for a moment cease to think that I am a

Christian, I should not be able to hinder myself from ranking the destruction of the sect of Zeno among the misfortunes that have befallen the human race.

It carried to excess only those things in which there is true greatness, the contempt of pleasure and of pain.

It was this sect alone that made citizens; this alone that made great men; this alone, great emperors.

Laying aside for a moment revealed truths, let us search through all nature, and we shall not find a nobler object than the Antoninus's: even Julian himself, Julian, (a commendation thus wrested from me, will not render me an accomplice of his apostacy) no, there has not been a prince since his reign more worthy to govern mankind.

While the Stoics looked upon riches, human grandeur, grief, disquietudes and pleasure, as vanity; they were entirely employed in labouring for the happiness of mankind, and in exercising the duties of society. It seems as if they regarded that sacred spirit, which they believed to dwell within them, as a kind of favourable providence watchful over the human race.

Born for society, they all believed that it was their destiny to labour for it; with so much the less fatigue, as their rewards were all within themselves. Happy by their philosophy alone, it seemed as if only the happiness of others could increase theirs.

CHAP. XI.

Of Contemplation.

MEN being made to preserve, to nourish, to clothe themselves, and do all the actions of society, religion ought not to give them too contemplative a life^{*}.

The Mahometans become speculative by habit; they pray five times a day, and each time they are obliged to cast behind them every thing which has any concern with this world: this forms them for speculation. Add to this, that indifference for all things which is inspired by the doctrine of unalterable sate.

If other causes besides these concur to disengage their affections; for instance, if the severity of the government, if the laws concerning the property of land, give them a precarious spirit, all is lost.

The religion of the Gaurs formerly rendered Persia a flourishing kingdom; it corrected the bad effects of despotic power. The same empire is now destroyed by the

Mahometan religion.

CHAP. XII.

Of Penances.

PENANCES ought to be joined with the idea of labour, not with that of idleness; with the idea of good, not with that of super-eminent; with the idea of frugality, not with that of avarice.

CHAP. XIII.

Of inexpiable Crimes.

IT appears from a passage of the books of the pontiffs, quoted by Cicero^{*}, that they had amongst the[†] Romans inexpiable crimes; and it is on this that Zozyms founds the narration so proper to blacken the motives of Constantine's conversion; and Julian, that bitter raillery on this conversion in his Cæsars.

The Pagan religion indeed, which prohibited only some of the grosser crimes, and which stopped the hand, but meddled not with the heart, might have crimes that were inexpiable: but a religion which bridles all the passions; which is not more jealous of actions than of thoughts and desires; which holds us not by a few chains, but by an infinite number of threads; which, leaving human justice aside, establishes another kind of justice; which is so ordered, as to lead us continually from repentance to love, and from love to repentance; which puts between the judge and the criminal a greater mediator, between the just and the mediator a great judge; a religion like this ought not to have inexpiable crimes. But, while it gives fear and hope to all, it makes us sufficiently sensible, that though there is no crime in its own nature inexpiable, yet a whole criminal life may be so; that it is extremely dangerous to affront mercy, by new crimes and new expiations; that an uneasiness on account of ancient debts, from which we are never entirely free, ought to make us afraid of contracting new ones, of filling up the measure, and going even to that point where paternal goodness is limited.

CHAP. XIV.

In what manner Religion has an Influence on civil Laws.

AS both religion and the civil laws ought to have a peculiar tendency to render men good citizens, it is evident, that when one of these deviates from this end, the tendency of the other ought to be strengthened. The less severity there is in religion, the more there ought to be in the civil laws.

Thus the reigning religion of Japan having few doctrines, and proposing neither future rewards nor punishments, the laws to supply these defects have been made with the spirit of severity, and are executed with an extraordinary punctuality.

When the doctrine of necessity is established by religion, the penalties of the laws ought to be more severe, and the magistrate more vigilant; to the end that men, who would otherwise become abandoned, might be determined by these motives; but it is quite otherwise, where religion has established the doctrine of liberty.

From the inactivity of the soul springs the Mahometan doctrine of predestination, and from this doctrine of predestination springs the inactivity of the soul. This, they say, is in the decrees of God; they must therefore indulge their repose. In a case like this, the magistrate ought to waken by the laws, those who are lulled asleep by religion.

When religion condemns things which the civil laws ought to permit, there is danger lest the civil laws, on the other hand, should permit what religion ought to condemn. Either of these is a constant proof of a want of true ideas of that harmony and proportion which ought to subsist between both.

Thus the Tartars^{*} under Jenghiz-Khan, amongst whom it was a sin and even a capital crime to put a knife in the fire, to lean against a whip, to strike a horse with his bridle, to break one bone with another; did not believe it to be any sin to break their word, to seize upon another man's goods, to do an injury to a person, or to commit murder. In a word, laws which render that necessary which is only indifferent, have this inconveniency, that they make those things indifferent which are absolutely necessary.

The people of Formosa^{*} believe, that there is a kind of hell; but it is to punish those who at certain seasons have not gone naked; who have dressed in callico, and not in silk; who have presumed to look for oysters; or who have undertaken any business without consulting the song of birds: whilst drunkenness and debauchery are not regarded as crimes. They believe, even that the debauches of their children are agreeable to their gods.

When religion absolves the mind by a thing merely accidental, it loses its greatest influence on mankind. The people of India believe, that the waters of the Ganges have a sanctifying virtue[†]. Those who die on its banks are imagined to be exempted from the torments of the other life, and to be entitled to dwell in a region full of delights; and for this reason the ashes of the dead are sent from the most distant places to be thrown into this river. Little then does it signify whether they have lived virtuously or not, so

they be but thrown into the Ganges.

The idea of a place of rewards has a necessary connection with the idea of the abodes of misery; and when they hope for the former without fearing the latter, the civil laws have no longer any influence. Men who think themselves sure of the rewards of the other life, are above the power of the legislator; they look upon death with too much contempt: how shall the man be restrained by laws, who believes that the greatest pain the magistrate can inflict, will end in a moment to begin his happiness?

CHAP. XV.

How false Religious are sometimes corrected by the Civil Laws.

SIMPLICITY, superstition, or a respect for antiquity, have sometimes established mysteries or ceremonies shocking to modesty: of this the world has furnished numerous examples. Aristotle^{*} says, that in this case the law permits the fathers of families to repair to the temple to celebrate these mysteries for their wives and children. How admirable the civil law, which in spite of religion preserves the manners untainted!

Augustus[†] excluded the youth of either sex from assisting at any nocturnal ceremony, unless accompanied by a more aged relation; and when he revived the *Lupercalia*, he would not allow the young men to run naked.

CHAP. XVI.

How the Laws of Religion correct the Inconveniencies of a political Constitution.

ON the other hand, religion may support a state, when the laws themselves are incapable of doing it.

Thus, when a kingdom is frequently agitated by civil wars, religion may do much, by obliging one part of the state to remain always quiet. Among the Greeks, the Eleans, as priests of Apollo, lived always in peace. In Japan^{*}, the city of Meaco enjoys a constant peace, as being a holy city: religion supports this regulation, and that empire which seems to be alone upon earth, and which neither has, nor will have, any dependence on foreigners, has always, in its own bosom, a trade which war cannot ruin.

In kingdoms, where wars are not entered upon by a general consent, and where the

laws have not pointed out any means either of terminating or preventing them, religion establishes times of peace, or cessation from hostilities, that the people may be able to sow their corn, and perform those other labours, which are absolutely necessary for the subsistence of the state.

Every year all hostility ceases between the[†] Arabian tribes for four months; the least disturbance would then be an impiety. In former times, when every lord in France declared war or peace, religion granted a truce, which was to take place at certain seasons.

CHAP. XVII.

The same Subject continued.

WHEN a state has many causes for hatred, religion ought to produce many ways of reconciliation. The Arabs, a people addicted to robbery, are frequently guilty of doing injury and injustice. Mahomet[‡] enacted this law: "If any one forgives[‡] the blood of his brother, he may pursue the malefactor for damages and interest: but he who shall injure the wicked, after having received satisfaction, shall, in the day of judgment, suffer the most grievous torments."

The Germans inherited the hatred and enmity of their near relations: but these were not eternal. Homicide was expiated by giving a certain number of cattle, and all the family received satisfaction: a thing extremely useful, says Tacitus^{*}, because enmities are most dangerous amongst a free people. I believe, indeed, that their ministers of religion, who were held by them in so much credit, were concerned in these reconciliations.

Amongst the inhabitants of Malacca[†], where no form of reconciliation is established, he who has committed murder, certain of being assassinated by the relations or friends of the deceased, abandons himself to fury, and wounds or kills all he meets.

CHAP. XVIII.

How the Laws of Religion have the Effect of Civil Laws.

THE first Greeks were small nations, frequently dispersed, pirates at sea, unjust at land, without government, and without laws. The mighty actions of Hercules and Theseus let us see the state of that rising people. What could religion do more, to inspire them with

horror against murder? It declared, that the man who had been[†] murdered was enraged against the assassin, that he would possess his mind with terror and trouble, and oblige him to yield to him the places he had frequented when alive. They could not touch the criminal, nor converse with him^{*}, without being defiled: the murderer was to be expelled the city, and an expiation made for the crime[†].

CHAP. XIX.

That it is not so much the Truth or Falsity of a Doctrine which renders it useful or pernicious to Men in Civil Government, as the Use or Abuse of it.

THE most true and holy doctrines may be attended with the very worst consequences, when they are not connected with the principles of society; and, on the contrary, doctrines the most false may be attended with excellent consequences, when contrived so as to be connected with these principles.

The religion of Confucius[†] disowns the immortality of the soul; and the sect of Zeno did not believe it. These two sects have drawn from their bad principles consequences, not just indeed, but most admirable as to their influence on society. Those of the religion of Tao, and of Foe, believe the immortality of the soul; but from this sacred doctrine they draw the most frightful consequences.

The doctrine of the immortality of the soul falsely understood, has, almost in every part of the globe, and in every age, engaged women, slaves, subjects, friends, to murder themselves, that they might go and serve in the other world the object of their respect or love in this. Thus it was in the West-Indies; thus it was amongst the Danes^{*}; thus it is at present in Japan[†], in Macassar[†], and many other places.

These customs do not so directly proceed from the doctrine of the immortality of the soul, as from that of the resurrection of the body, from whence they have drawn this consequence, that, after death, the same individual will have the same wants, the same sentiments, the same passions. In this point of view, the doctrine of the immortality of the soul has a prodigious effect on mankind; because the idea of only a simple change of habitation, is more within the reach of the human understanding, and more adapted to flatter the heart, than the idea of a new modification.

It is not enough for religion to establish a doctrine, it must also direct its influence. This the Christian religion performs in the most admirable manner, particularly with regard to the doctrines of which we have been speaking. It makes us hope for a state, which is the object of our belief; not for a state which we have already experienced, or known:

thus every article, even the resurrection of the body, leads us to spiritual ideas.

CHAP. XX.

The same Subject continued.

THE sacred books^{*} of the ancient Persians say, "If you would be holy, instruct your children, because all the good actions which they perform will be imputed to you." They advise them to marry betimes, because children at the day of judgment will be as a bridge, over which those who have none cannot pass. These doctrines were false, but extremely useful.

CHAP. XXI.

Of the Metempsychosis.

THE doctrine of the immortality of the soul is divided into three branches, that of pure immortality, that of a simple change of habitation, and that of a metempsychosis; that is, the system of the Christians, that of the Scythians, and that of the Indians. We have just been speaking of the two first, and I shall say of the last, that as it has been well or ill explained, it has had good or bad effects. As it inspires men with a certain horror against bloodshed, very few murders are committed in the Indies; and though they seldom punish with death, yet they enjoy a perfect tranquility.

On the other hand, women burn themselves at the death of their husbands; thus it is only the innocent who suffer a violent death.

CHAP. XXII.

That it is dangerous for Religion to inspire an Aversion for Things in themselves indifferent.

A KIND of honour established in the Indies by the prejudices of religion, has made the several tribes conceive an aversion against each other. This honour is founded entirely on religion; these family distinctions form no civil distinctions; there are Indians who would think themselves dishonoured by eating with their king.

These sorts of distinctions are connected with a certain aversion for other men, very different from those sentiments which naturally arise from difference of rank; which, amongst us, comprehends a love for inferiors.

The laws of religion should never inspire an aversion to any thing but vice, and, above all, they should never estrange man from a love and tenderness for his own species.

The Mahometan and Indian religions embrace an infinite number of people: the Indians hate the Mahometans, because they eat cows; the Mahometans detest the Indians, because they eat hogs.

CHAP. XXIII.

Of Festivals.

WHEN religion appoints a cessation from labour, it ought to have a greater regard to the necessities of mankind, than to the grandeur of the being it designs to honour.

Athens^{*} was subject to great inconveniencies from the excessive number of its festivals. These powerful people, to whose decision all the cities of Greece came to submit their quarrels, could not have time to dispatch such a multiplicity of affairs.

When Constantine ordained that the people should rest on the sabbath, he made this decree for the cities[†], and not for the inhabitants of the open country; he was sensible, that labour in the cities was useful, but in the fields necessary.

For the same reason, in a country supported by commerce, the number of festivals ought to be relative to this very commerce. Protestant and Catholic countries are situated[‡] in such a manner that there is more need of labour in the former than in the latter; the suppression of festivals is therefore more suitable to Protestant than to Catholic countries.

Dampier^{||} observes, that the diversions of different nations vary greatly, according to the climate. As hot climates produce a quantity of delicate fruits, the barbarians easily find necessaries, and therefore spend much time in diversions. The Indians of colder countries have not so much leisure, being obliged to fish and hunt continually; hence they have less music, dancing, and festivals. If a new religion should be established amongst these people, it ought to have regard to this in the institution of festivals.

CHAP. XXIV.

Of the local Laws of Religion.

THERE are many local laws in various religions: and when Montezuma with so much obstinacy insisted, that the religion of the Spaniards was good for their country, and his for Mexico, he did not assert an absurdity; because, in fact, legislators could never help having a regard to what nature had established before them.

The opinion of the metempsychosis is adapted to the climate of the Indies. An excessive heat burns ^{*}up all the country; they can breed but very few cattle; they are always in danger of wanting them for tillage; their black cattle multiply but indifferently[†]; and they are subject to many distempers: a law of religion which preserves them, is therefore more suitable to the policy of the country.

While the meadows are scorched up, rice and pulse, by the assistance of water, are brought to perfection; a law of religion which permits only this kind of nourishment, must therefore be extremely useful to men in those climates.

The flesh[‡] of cattle in that country is insipid, but the milk and butter which they receive from them serves for a part of their subsistence; therefore the law which prohibits the eating and killing of cows, is in the Indies not unreasonable.

Athens contained a prodigious multitude of people, but its territory was barren. It was therefore a religious maxim with this people, that those who offered some small presents to the gods^{*}, honoured them more than those who sacrificed an ox.

CHAP. XXV.

The Inconveniency of transplanting a Religion from one Country to another.

IT follows from hence, that there are frequently many inconveniencies attending the transplanting a religion from one country to any other.

“The hog,” says Mr. de Boulainvilliers[†], “must be very scarce in Arabia, where there are almost no woods, and hardly any thing fit for the nourishment of these animals: besides, the saltness of the water and food renders the people most susceptible of cutaneous disorders.” This local law could not be good in other[‡] countries, where the hog is almost an universal, and in some sort a necessary nourishment.

I shall here make a reflection. Sanctorius has observed that pork transpires but little[‡], and that this kind of meat greatly hinders the transpiration of other food; he has found

that this diminution amounts to a third[§]. Besides, it is known that the want of transpiration forms or increases the disorders of the skin. The feeding on pork ought rather to be prohibited in climates where the people are subject to these disorders, as in Palestine, Arabia, Ægypt, and Lybia.

CHAP. XXVI.

The same Subject continued.

SIR John Chardin^{*} says, that there is not a navigable river in Persia, except the Kur, which is at the extremity of the empire. The ancient law of the Gaurs, which prohibited sailing on rivers, was not therefore attended with any inconvenience in this country, though it would have ruined the trade of another.

Frequent bathings are extremely useful in hot climates. On this account they are ordained in the Mahometan law, and in the Indian religion. In the Indies it is a most meritorious act to pray to[†] God in the running stream: but how could these things be performed in other climates?

When a religion adapted to the climate of one country clashes too much with the climate of another, it cannot be there established; and whenever it has been introduced, it has been afterwards discarded. It seems to all human appearance, as if the climate had prescribed the bounds of the Christian and the Mahometan religions.

It follows from hence, that it is almost always proper for a religion to have particular doctrines, and a general worship. In laws concerning the practice of religious worship, there ought to be but few particulars: for instance, they should command mortification in general, and not a certain kind of mortification. Christianity is full of good sense: abstinence is of divine institution; but a particular kind of abstinence is ordained by human authority, and therefore may be changed.

Endnotes

[*] Thoughts on the Comet.

[*] Description of Æthiopia, by M. Ponce, a Physician. *Collection of edisying Letters*.

[*] See Diodorus, lib. 2.

[*] Dupin's Ecclesiastical Library of the 6th century, vol. 5.

[*] Collection of Voyages that contributed to the establishment of the East India Company, vol. iii. part 1. page 36.

[†] Hist. of the Jews, by Prideaux.

[*] This is the inconvenience of the doctrine of Foe and Laockium.

[*] Lib. 2. of laws.

[†] Sacrum commissum, quod neque expiari poterit, impie commissum est; quod expiari poterit publici sacerdotes expianto.

[*] See the relation written by John Duplan Carpin, sent to Tartary by Pope Innocent IV. in the year 1246.

[*] Collection of Voyages that contributed to the establishment of the East India company, vol. v. page 192.

[†] Edifying Letters, collect. 15.

[*] Polit. lib. vii. cap. 17.

[†] Suetonius in Augusto, cap. 31.

[*] Collection of Voyages made to establish an India company, vol. iv. page 127.

[†] See Prideaux, life of Mahomet, page 64.

[‡] Koran, book 1. chap. of the cow.

[||] On renouncing the law of retaliation.

[*] De morib. Germanorum.

[†] Collection of voyages that contributed to the establishment of the East India company, vol. vii. page 303. See also Memoirs of the C. de Forbin, and what he says of the people of Macassar.

[‡] Plato, of laws, lib. 9.

[*] Tragedy of Oedipus Coloneus.

[†] Plato, of laws, lib. 9.

[‡] A Chinese philosopher reasons thus against the doctrine of Foe. "It is said, in a

book of that sect, that the body is our dwelling place, and the soul the immortal guest which lodges there: but if the bodies of our relations are only a lodging, it is natural to regard them with the same contempt we should feel for a structure of earth and dirt. Is not this endeavouring to tear from the heart the virtue of love to one's own parents? This leads us even to neglect the care of the body, and to refuse it the compassion and affection so necessary for its preservation; hence the disciples of Foe kill themselves by thousands." *Work of an ancient Chinese philosopher, in the collection of Du Halde*, vol. iii. page 52.

[*] See Tho. Bartholin's Antiq. of the Danes.

[†] An Account of Japan, in the Collection of Voyages that contributed to establish an East India company.

[‡] Forbin's memoirs.

[*] Mr. Hyde.

[*] Xenophon on the republic of Athens.

[†] Leg. 3. Cod. de Feriis. This law was doubtless made only for the Pagans.

[‡] The Catholics lie more towards the south, and the Protestants towards the north.

[||] Dampiere's voyages, vol. ii.

[*] See Bernier's travels, vol. ii. page 137.

[†] Edifying letters, col. xii. page 95.

[‡] Bernier's travels, vol. ii. page 187.

[*] Euripides in Athenæus, lib. 2.

[†] Life of Mahomet.

[‡] As in China.

[||] Medicina Statica, sect. iii. aphor. 23.

[§] Ibid.

[*] Travels into Persia, vol. 2.

[†] Bernier's Travels, vol. 2.

**BOOK XXV. OF LAWS AS RELATIVE TO THE ESTABLISHMENT OF
RELIGION AND ITS EXTERNAL POLITY.**

CHAP. I.

Of religious Sentiments.

THE pious man and the atheist always talk of religion; the one speaks of what he loves, and the other of what he fears.

CHAP. II.

Of the Motives of Attachment to different Religions.

THE different religions of the world do not give to those who profess them equal motives of attachment; this depends greatly on the manner in which they agree with the turn of thought and perceptions of mankind.

We are extremely addicted to idolatry, and yet have no great inclination for the religion of idolaters: we are not very fond of spiritual ideas, and yet are most attached to those religions which teach us to adore a spiritual being. This proceeds from the satisfaction we find in ourselves at having been so intelligent as to chuse a religion, which raises the deity from that baseness in which he had been placed by others. We look upon idolatry as the religion of an ignorant people; and the religion which has a spiritual being for its object, as that of the most enlightened nations.

When with a doctrine that gives us the idea of a spiritual supreme being, we can still join those of a sensible nature, and admit them into our worship, we contract a greater attachment to religion; because those motives, which we have just mentioned, are added to our natural inclinations for the objects of sense. Thus the Catholics, who have more of this kind of worship than the Protestants, are more attached to their religion than the Protestants are to theirs, and more zealous for its propagation.

When the^{*} people of Ephesus were informed that the fathers of the council had declared they might call the Virgin Mary the *mother of God*, they were transported with joy, they kissed the hands of the bishops, they embraced their knees, and the whole city refounded with acclamations.

When an intellectual religion superadds a choice made by the deity, and a preference to those who proress it to those who do not, this greatly attaches us to religion. The Mahometans would not be such good mussulmans, if on the one hand there were not

idolatrous nations, who make them imagine themselves the champions of the unity of God; and on the other Christians, to make them believe that they are the objects of his preference.

A religion burthened with many[†] ceremonies, attaches us to it more strongly than that which has a fewer number. We have an extreme propensity to things in which we are continually employed; witness the obstinate prejudices of the[†] Mahometans and the Jews; and the readiness with which barbarous and savage nations change their religion, who, as they are employed entirely in hunting, or war, have but few religious ceremonies.

Men are extremely inclined to the passions of hope and fear; a religion therefore, that had neither a heaven nor a hell, could hardly please them. This is proved by the ease with which foreign religions have been established in Japan, and the zeal and fondness with which they were received^{*}.

In order to raise an attachment to religion, it is necessary that it should inculcate pure morals. Men who are knaves by retail, are extremely honest in the gross: they love morality. And were I not treating of so grave a subject, I should say, that this appears remarkably evident in our theatres: we are sure of pleasing the people by sentiments avowed by morality; we are sure of shocking them by those it disapproves.

When external worship is attended with great magnificence, it flatters our minds, and strongly attaches us to religion. The riches of temples, and those of the clergy, greatly affect us. Thus, even the misery of the people, is a motive that renders them fond of a religion, which has served as a pretext to those who were the cause of their misery.

CHAP. III.

Of Temples.

ALMOST all civilized nations dwell in houses; from hence naturally arose the idea of building a house for God, in which they might adore and seek him, amidst all their hopes and fears.

And, indeed, nothing is more comfortable to mankind, than a place in which they may find the deity peculiarly present, and where they may assemble together to confess their weakness, and tell their griefs.

But this natural idea never occurred to any but such as cultivated the land; those who have no houses for themselves, were never known to build temples.

This was the cause that made Jenghis-Khan discover such a prodigious contempt for mosques^{*}. This prince[†] examined the Mahometans, he approved of all their doctrines, except that of the necessity of going to Mecca: he could not comprehend why God might not be every where adored. As the Tartars did not dwell in houses, they could have no idea of temples.

Those people who have no temples, have but a small attachment to their own religion.

This is the reason why the Tartars have in all times given so great a toleration[‡]; why the barbarous nations who conquered the Roman empire, did not hesitate a moment to embrace Christianity; why the savages of America have so little fondness for their own religion; why, since our missionaries have built churches in Paraguay, the natives of that country are become so zealous for ours.

As the deity is the refuge of the unhappy, and none are more unhappy than criminals, men have been naturally led to think temples an asylum for those wretches. This idea appeared still more natural to the Greeks, where murderers, chased from their city and the presence of men, seemed to have no houses but the temples, nor other protectors but the gods.

At first these were only designed for involuntary homicides; but when the people made them a sanctuary for those who had committed great crimes, they fell into a gross contradiction. If they had offended men, they had much greater reason to believe they had offended the gods.

These asylums multiplied in Greece. The temples, says Tacitus^{*}, were filled with insolvent debtors, and wicked slaves; the magistrate found it difficult to exercise his office; the people protected the crimes of men as the ceremonies of the gods; at length the senate was obliged to retrench a great number of them.

The laws of Moses were perfectly wise. The man who involuntarily killed another, was innocent; but he was obliged to be taken away from before the eyes of the relations of the deceased: Moses therefore appointed an asylum[†] for such unfortunate people. The perpetrators of great crimes deserved not a place of safety, and they had none[‡], the Jews had only a portable tabernacle, which continually changed its place: this excluded the idea of a sanctuary. It is true, that they had afterwards a temple; but the criminals, who would resort thither from all parts, might disturb the divine service. If persons who had committed manslaughter, had been driven out of the country, as was customary amongst the Greeks, they had reason to fear that they would worship strange gods. All these considerations made them establish cities of safety, where they might stay till the death of the high-priest.

CHAP. IV.

Of the Ministers of Religion.

THE first men, says Porphyry, sacrificed only vegetables. In a worship so simple, every one might be priest in his own family.

The natural desire of pleasing the Deity multiplied ceremonies. From hence it followed, that men employed in agriculture became incapable of observing them all, and of filling up the number.

Particular places were consecrated to the gods; it then became necessary that they should have ministers to take care of them; in the same manner as every citizen took care of his house and domestic affairs. Hence the people who have no priests are commonly barbarians: such were formerly the Pedalians^{*}, and such are still the Wolgusky[†].

Men consecrated to the Deity ought to be honoured, especially amongst people who have formed an idea of a personal purity necessary to approach the places most agreeable to the gods, and for the performance of particular ceremonies.

The worship of the gods requiring a continual application, most nations were led to consider the clergy as a separate body. Thus, amongst the Egyptians, the Jews, and the Persians[‡], they consecrated to the Deity certain families who performed and perpetuated the service. There have been even religions, which have not only estranged ecclesiastics from business, but have also taken away the embarrassments of a family; and this is the practice of the principal branch of Christianity.

I shall not here treat of the consequences of the law of celibacy: it is evident, that it may become hurtful, in proportion as the body of the clergy may be too numerous; and, in consequence of this, that of the laity too small.

By the nature of the human understanding, we love in religion every thing which carries the idea of difficulty; as in point of morality we have a speculative fondness for every thing which bears the character of severity. Celibacy has been most agreeable to those nations to whom it seemed least adapted, and with whom it might be attended with the most fatal consequences. In the southern countries of Europe, where, by the nature of the climate, the law of celibacy is more difficult to observe, it has been retained; in those of the north, where the passions are less lively, it has been banished. Further, in countries where there are but few inhabitants, it has been admitted; in those that are vastly populous, it has been rejected. It is obvious, that these reflections relate only to the too great extension of celibacy, and not to celibacy itself.

CHAP. V.

Of the Bounds which the Laws ought to prescribe to the Riches of the Clergy.

AS particular families may be extinct, their wealth cannot be a perpetual inheritance. The clergy is a family which cannot be extinct; wealth is therefore fixed to it for ever, and cannot go out of it.

Particular families may increase, it is necessary then that their wealth should also increase. The clergy is a family which ought not to increase; their wealth ought then to be limited.

We have retained the regulations of the Levitical laws as to the possessions of the clergy, except those relating to the bounds of these possessions: indeed, amongst us we must ever be ignorant of the limit, beyond which any religious community can no longer be permitted to acquire.

These endless acquisitions appear to the people so unreasonable, that he who should speak in their defence, would be regarded as an idiot.

The civil laws find sometimes many difficulties in altering established abuses; because they are connected with things worthy of respect; in this case an indirect proceeding would be a greater proof of the wisdom of the legislator, than another which struck directly at the thing itself. Instead of prohibiting the acquisitions of the clergy, we should seek to give them a distaste for them; to leave them the right, and to take away the deed.

In some countries of Europe, a respect for the privileges of the nobility has established in their favour a right of indemnity over immoveable goods acquired in mortmain. The interest of the prince has in the same case made him exact a right of amortization: In Castile, where no such right prevails, the clergy have seized upon every thing. In Arragon, where there is some right of amortization, they have obtained less: in France, where this right and that of indemnity are established, they have acquired less still; and it may be said, that the prosperity of this kingdom is in a great measure owing to the exercise of these two rights. If possible then, increase these rights, and put a stop to the mortmain.

Render the ancient and necessary patrimony of the clergy sacred and inviolable: let it be fixt and eternal like that body itself: but let new inheritances be out of their power.

Permit them to break the rule, when the rule is become an abuse; suffer the abuse, when it enters into the rule.

They still remember at Rome a certain memorial sent thither on some disputes with the

clergy, in which was this maxim; "The clergy ought to contribute to the expences of the state, let the Old Testament say what it will." They concluded from this passage, that the author of this memorial was better versed in the language of the tax-gatherers, than in that of religion.

CHAP. VI.

Of Monasteries.

THE least degree of common sense will let us see, that bodies designed for a perpetual continuance should not be allowed to sell their funds for life, nor to borrow for life; unless we want them to be heirs to all those who have no relations, and to those who do not chuse to have any. These men play against the people, but they hold the bank themselves.

CHAP. VII.

Of the Luxury of Superstition.

"THOSE are guilty of impiety towards the gods, *says Plato*^{*}, who deny their existence; or who, while they believe it, maintain that they do not interfere with what is done below; or, in fine, who think that they can easily appease them by sacrifices: three opinions equally pernicious." Plato has here said all that the clearest light of nature has ever been able to say, in point of religion.

The magnificence of external worship has a principal connection with the constitution of the state. In good republics, they have curbed not only the luxury of vanity, but even that of superstition. They have introduced frugal laws into religion. Of this number are many of the laws of Solon, many of those of Plato on funerals, adopted by Cicero; and, in fine, some of the laws of Numa^{*} on sacrifices.

Birds, says Cicero, and paintings begun and finished in a day, are gifts the most divine. We offer common things, says a Spartan, that we may always have it in our power to honour the gods.

The desire of man to pay his worship to the deity, is very different from the magnificence of this worship. Let us not offer our treasures to him, if we are not proud of shewing that we esteem what he would have us despite.

"What must the gods think of the gifts of the impious" said the admirable Plato, "when a

good man would blush to receive presents from a villain?"

Religion ought not, under the pretence of gifts, to draw from the people, what the necessities of the state have left them; but, as Plato[†] says, "The chaste and the pious ought to offer gifts, which resemble themselves."

Nor is it proper for religion to encourage expensive funerals. What is there more natural, than to take away the difference of fortune in a circumstance, and in the very moment, which equals all fortunes?

CHAP. VIII.

Of the Pontificate.

WHEN religion has many ministers, it is natural for them to have a chief, and for a sovereign pontif to be established. In monarchies, where the several orders of the state cannot be kept too distinct, and where all powers ought not to be lodged in the same person; it is proper that the pontificate be distinct from the empire. The same necessity is not to be met with in a despotic government, the nature of which is to unite all the different powers in the same person. But in this case it may happen, that the prince may regard religion as he does the laws themselves, as dependent on his own will. To prevent this inconveniency, there ought to be monuments of religion, for instance, sacred books, which fix and establish it. The king of Persia is the chief of the religion; but this religion is regulated by the Koran. The emperor of China is the sovereign pontif; but there are books in the hands of every body, to which he himself must conform. In vain a certain emperor attempted to abolish them: they triumphed over tyranny.

CHAP. IX.

Of Toleration in point of Religion.

WE are here politicians, and not divines: but the divines themselves must allow, that there is a great difference between tolerating and approving a religion.

When the legislator has believed it a duty to permit the exercise of many religions, it is necessary that he should inforce also a toleration amongst these religions themselves. It is a principle that every religion which is persecuted, becomes itself persecuting: for as soon as by some accidental turn it arises from persecution, it attacks the religion which persecuted it: not as a religion, but as a tyranny.

It is necessary then that the laws require from the several religions, not only that they shall not embroil the state, but that they shall not raise disturbances amongst themselves. A citizen does not fulfil the laws by not disturbing the government; it is requisite that he should not trouble any citizen whomsoever.

CHAP. X.

The same Subject continued.

AS there are scarce any but persecuting religions that have an extraordinary zeal for being established in other places (because a religion that can tolerate others, seldom thinks of its own propagation); it must therefore be a very good civil law, when the state is already satisfied with the established religion, not to suffer the establishment of another^{*}.

This is then a fundamental principle of the political laws in regard to religion: That when the state is at liberty to receive or to reject a new religion, it ought to be rejected; when it is received, it ought to be tolerated.

CHAP. XI.

Of changing a Religion.

A PRINCE who undertakes to destroy or to change the established religion of his kingdom, must greatly expose himself. If his government is despotic, he runs a much greater risk of seeing a revolution arise from such a proceeding, than from any tyranny whatsoever, and a revolution is not an uncommon thing in such states. The reason of this is, because a state cannot change its religion, manners and customs, in an instant, and with the same rapidity as the prince publishes the ordinance which establishes a new religion.

Besides, the ancient religion is connected with the constitution of the kingdom, and the new one is not; the former agrees with the climate, and very often the new one is opposite to it. Moreover, the citizens become disgusted with their laws, and look upon the government already established with contempt; they conceive a jealousy against the two religions, instead of a firm belief in one; in a word, these innovations give to the state, at least for some time, both bad citizens and bad believers.

CHAP. XII.

Of penal Laws.

PENAL laws ought to be avoided, in respect to religion: they imprint fear, it is true; but as religion has also penal laws which inspire the same passion, the one is effaced by the other; and between these two different kinds of fear, the mind becomes hardened.

The threatenings of religion are so terrible, and its promises so great, that when they actuate the mind, whatever efforts the magistrate may use to oblige us to renounce it, he seems to leave us nothing when he deprives us of the exercise of our religion, and to bereave us of nothing when we are allowed to profess it.

It is not therefore by filling the soul with the idea of this great object, by hastening her approach to that critical moment in which it ought to be of the highest importance, that religion can be most successfully attacked: a more certain way is to tempt her by favours, by the conveniencies of life, by hopes of fortune; not by that which revives, but by that which extinguishes the sense of her duty; not by that which shocks her, but by that which throws her into indifference, at the time when other passions actuate the mind, and those which religion inspires are hushed into silence. A general rule in changing a religion; the invitations should be much stronger than the penalties.

The temper of the human mind has appeared even in the nature of punishments. If we take a survey of the persecutions in Japan^{*}, we shall find that they were more shocked at cruel torments than at long sufferings, which rather weary than affright, which are the more difficult to surmount, from their appearing less difficult.

In a word, history sufficiently informs us, that penal laws have never had any other effect but to destroy.

CHAP. XIII.

A most humble Remonstrance to the Inquisitors of Spain and Portugal.

A JEWESS of ten years of age, who was burnt at Lisbon at the last *Auto-de-fé*, gave occasion to the following little piece; the most idle, I believe, that ever was written. When we attempt to prove things so evident, we are sure never to convince.

The author declares, that though a Jew, he has a respect for the Christian religion; and that he should be glad to take away from the princes who are not Christians, a plausible

pretence for persecuting this religion.

“You complain, says he to the inquisitors, that the emperor of Japan caused all the Christians in his dominions to be burnt by a slow fire. But he will answer, we treat you who do not believe like us, as you yourselves treat those who do not believe like you: you can only complain of your weakness, which has hindered you from exterminating us, and which has enabled us to exterminate you.

“But it must be confessed, that you are much more cruel than this emperor. You put us to death, who believe only what you believe, because we do not believe *all* that you believe. We follow a religion, which you yourselves know to have been formerly dear to God. We think that God loves it still, and you think that he loves it no more: and because you judge thus, you make those suffer by sword and fire, who hold an error so pardonable as to believe, that God^{*} still loves what he once loved.

“If you are cruel to us, you are much more so to our children; you cause them to be burnt, because they follow the inspirations given them by those whom the law of nature, and the laws of all nations, teach them to regard as Gods.

“You deprive yourselves of the advantage you have over the Mahometans, with respect to the manner in which their religion was established. When they boast of the number of their believers, you tell them that they have obtained them by violence, and that they have extended their religion by the sword: why then do you establish yours by fire?

“When you would bring us over to you, we object a source from which you glory to descend. You reply to us, that though your religion is new, it is divine; and you prove it from its growing amidst the persecutions of Pagans, and when watered by the blood of your martyrs: but at present you play the part of the Dioclesians, and make us take yours.

“We conjure you, not by the mighty God whom both you and we serve, but by that Christ who, you tell us, took upon him a human form, to propose himself for an example for you to follow; we conjure you to behave to us, as he himself would behave was he upon earth. You would have us be Christians, and you will not be so yourselves.

“But if you will not be Christians, be at least men: treat us as you would, if having only the weak light of justice which nature bestows, you had not a religion to conduct, and a revelation to enlighten you.

“If heaven has had so great a love for you, as to make you see the truth, you have received a singular favour: but is it for children, who have received the inheritance of their father, to hate those who have not?

"If you have this truth, hide it not from us, by the manner in which you propose it. The characteristic of truth is its triumph over hearts and minds, and not that impotency which you confess, when you would force us to receive it by tortures.

"If you were wise, you would not put us to death for no other reason, but because we are unwilling to deceive you. If your Christ is the son of God, we hope he will reward us for being so unwilling to profane his mysteries; and we believe, that the God whom both you and we serve, will not punish us for having suffered death for a religion which he formerly gave us, only because we believe that he still continues to give it.

"You live in an age in which the light of nature shines more bright than it has ever done; in which philosophy has enlightened human understandings; in which the morality of your gospel has been more known; in which the respective rights of mankind, with regard to each other, and the empire which one conscience has over another, are best understood. If you do not therefore shake off your ancient prejudices, which, whilst unregarded, mingle with your passions, it must be confessed, that you are incorrigible, incapable of any degree of light, or instruction; and a nation must be very unhappy that gives authority to such men.

"Would you have us frankly tell you our thoughts? You consider us rather as your enemies, than as the enemies of your religion: for if you loved your religion, you would not suffer it to be corrupted by such gross ignorance.

"It is necessary that we should advertise you of one thing; that is, if any one in times to come shall dare to assert, that in the age in which we live, the people of Europe were civilized, you will be cited to prove that they were barbarians; and the idea they will have of you, will be such as will dishonour your age, and spread hatred over all your cotemporaries."

CHAP. XIV.

Why the Christian Religion is so odious in Japan.

WE have already mentioned^{*} the perverse temper of the people of Japan. The magistrates considered the firmness which Christianity inspires, when they attempted to make the people renounce their faith, as in itself most dangerous: they fancied that it increased their obstinacy. The law of Japan punishes severely the least disobedience. The people were ordered to renounce the Christian religion: they did not renounce it; this was disobedience: the magistrates punished this crime; and the continuance in disobedience seemed to deserve another punishment.

Punishments amongst the Japanese are considered as the revenge of an insult done to

the prince. The songs of triumph sung by our martyrs appeared as an outrage against him; the title of martyr provoked the magistrates; in their opinion it signified rebel: they did all in their power to prevent their obtaining it. Then it was that their minds were exasperated, and a horrid struggle was seen between the tribunals that condemned, and the accused who suffered; between the civil laws, and those of religion.

CHAP. XV.

Of the Propagation of Religion.

ALL the people of the East, except the Mahometans, believe all religions in themselves indifferent. They fear the establishment of another religion, no otherwise than as a change in government. Amongst the Japanese, where there are many sects, and where the state has had for so long a time an ecclesiastic superior, they^{*} never dispute on religion. It is the same with the people of Siam[†]. The Calmucks[‡] do more, they make it a point of conscience to tolerate every species of religion: at Calicut^{||} it is a maxim of the state, that every religion is good.

But it does not follow from hence, that a religion brought from a far distant country, and quite different in climate, laws, manners, and customs, will have all the success to which its holiness might entitle it. This is more particularly true in great despotic empires: here strangers are tolerated at first, because there is no attention given to what does not seem to strike at the authority of the prince. As they are extremely ignorant, an European may render himself agreeable, by the knowledge he communicates: this is very well in the beginning. But as soon as he has any success, when disputes arise, and when men who have some interest, become informed of it; as their empire, by its very nature, above all things requires tranquility, and as the least disturbance may overturn it, they proscribe the new religion and those who preach it: disputes between the preachers breaking out, they begin to entertain a distaste for religion, on which even those who propose it are not agreed.

Endnotes

[*] St. Cyril's letter.

[†] This does not contradict what I have said in the last chapter of the preceding book: I here speak of the motives of attachment to religion, and there of the means of rendering it more general.

[†] This has been remarked over all the world. See, as to the Turks, the missions of the Levant; the Collection of Voyages that contributed to the establishment of an East India company, vol. iii. p. 201. on the Moors of Batavia; and Father Labat on the Mahometan negroes, &c.

[*] The Christian and the Indian religions: these have a hell and a paradise, which the religion of Sintos has not.

[*] Entering the mosque of Bochara, he took the Koran, and threw it under his horse's feet. *Hist. of the Tartars*, p. 273.

[†] Ibid. page 342.

[†] This disposition of mind has been communicated to the Japanese, who, as it may be easily proved, derive their original from the Tartars.

[*] Annal. lib. 2.

[†] Numb. xxxv.

[†] Ibid.

[*] Lilius Giralduus, page 726.

[†] A people of Siberia. See the account given by Mr. Everard Ysbrant Ides, in the Collection of Travels to the North, vol. 8.

[†] Mr. Hyde.

[*] Of Laws, book 10.

[*] Regum vino ne respergito. Law of the Twelve Tables.

[†] On Laws, book ii.

[*] I do not mean to speak in this chapter of the Christian religion; for, as I have elsewhere observed, the Christian religion is our chief blessing. See the end of the preceding chapter, and the defence of the Spirit of Laws, part 2.

[*] In the collection of voyages that contributed to the establishment of an East-India company, vol. v.

[*] The source of the blindness of the Jews is, their not perceiving that the œconomy of the gospel is in the order of the decrees of God; and that it is in this light a

consequence of his immutability.

[*] Book iv. chap. 24.

[*] See Kempfer.

[†] Forbin's Memoirs.

[‡] History of the Tartars, part 5.

[§] Pirard's Travels, chap. 27.

BOOK XXVI. OF LAWS, AS RELATIVE TO THE ORDER OF THINGS ON WHICH THEY DETERMINE.

CHAP. I.

Idea of this Book.

MEN are governed by several kinds of laws; by the law of nature; by the divine law, which is that of religion; by ecclesiastical, otherwise called canon law, which is that of religious polity; by the law of nations, which may be considered as the civil law of the whole globe, in which sense every nation is a citizen; by the general political law, which relates to that human wisdom from whence all societies derive their origin; by the particular political law, the object of which is each society; by the law of conquest founded on this, that one nation has been willing and able, or has had a right to offer violence to another; by the civil law of every society, by which a citizen may defend his possessions and his life, against the attacks of any other citizen; in fine, by domestic law, which proceeds from a society's being divided into several families, all which have need of a particular government.

There are therefore different orders of laws, and the sublimity of human reason consists in perfectly knowing to which of these orders the things that are to be determined ought to have a principal relation, and not to throw into confusion those principles which should govern mankind.

CHAP II.

Of Laws divine and human.

WE ought not to decide by divine laws what should be decided by human laws; nor

determine by human what should be determined by divine laws.

These two sorts of laws differ in their original, in their object, and in their nature.

It is universally acknowledged, that human laws are in their own nature different from those of religion; this is an important principle; but this principle is itself subject to others, which must be enquired after.

1. It is in the nature of human laws to be subject to all the accidents which can happen, and to vary in proportion as the will of man changes: on the contrary, by the nature of the laws of religion, they are never to vary. Human laws appoint for some good; those of religion for the best: good may have another object, because there are many kinds of good: but the best is but one, it cannot therefore change. We may alter laws, because they are reputed no more than good; but the institutions of religion are always supposed to be the best.

2. There are kingdoms, in which the laws are of no value, as they depend only on the capricious and fickle humour of the sovereign. If in these kingdoms the laws of religion were of the same nature as the human institutions, the laws of religion too would be of no value. It is however necessary to the society, that it should have something fixed; and it is religion that has this stability.

3. The influence of religion proceeds from its being believed; that of human laws, from their being feared. Antiquity suits with religion, because we have frequently a firmer belief of things, in proportion to their distance: for we have no ideas annexed to them drawn from those times, which can contradict them. Human laws, on the contrary, receive advantage from their novelty, which implies the actual and particular attention of the legislator to put them in execution.

CHAP. III.

Of Civil Laws contrary to the Law of Nature.

IF a slave, says Plato^{*}, defends himself, and kills a freeman, he ought to be treated as a parricide. This is a civil law which punishes self-defence, though dictated by nature.

The law of Henry VIII. which condemned a man without being confronted by witnesses, was contrary to self-defence. In order to pass sentence of condemnation, it is necessary that the witnesses should know, whether the man against whom they make their deposition, is he whom they accuse, and that this man be at liberty to say, I am not the person you mean.

The law passed under the same reign, which condemned every woman, who, having carried on a criminal commerce, did not declare it to the king before she married him, violated the regard due to natural modesty. It is as unreasonable to oblige a woman to make this declaration, as to oblige a man not to attempt the defence of his own life.

The law of Henry II. which condemned the woman to death who lost her child, in case she did not make known her pregnancy to the magistrate, was not less contrary to self-defence. It would have been sufficient to oblige her to inform one of her nearest relations, who might watch over the preservation of the infant.

What other information could she give in this situation, so torturing to natural modesty? Education has heightened the notion of preserving that modesty; and in those critical moments, scarce has she any idea remaining of the loss of life.

There has been much talk of a law in^{*} England, which permitted girls seven years old to chuse a husband. This law was shocking two ways; it had no regard to the time when nature gives maturity to the understanding, nor to that in which she gives maturity to the body.

Amongst the Romans, a father might oblige his daughter to repudiate[†] her husband, though he himself had consented to the marriage. But it is contrary to nature, for a divorce to be in the power of a third person.

A divorce can be agreeable to nature only when it is by consent of the two parties, or at least of one of them: but when neither consents, it is a monstrous separation. In short, the power of divorcement can be given only to those who feel the inconveniencies of marriage, and who are sensible of the moment when it is for their interest to make them cease.

CHAP. IV.

The same Subject continued.

GUNDEBALD^{*} king of Burgundy decreed, that if the wife or son of a person guilty of robbery, did not reveal the crime, they were to become slaves. This was contrary to nature: a wife to inform against her husband! a son to accuse his father! to avenge one criminal action, they ordained another still more criminal.

The law of Recessuinthus[†] permits the children of the adulteress, or those of her husband, to accuse her, and to put the slaves of the house to the torture. How iniquitous the law, which, to preserve a purity of morals, overturns nature, the origin, the source of all morality!

With pleasure we behold in our theatres a young hero express as much horror against the discovery of his mother-in-law's guilt, as against the guilt itself. In his surprize, though accused, judged, condemned, proscribed, and covered with infamy, he scarcely dares to reflect on the abominable blood from whence Phædra sprang: he abandons the most tender object, all that is most dear, all that lies nearest his heart, all that can fill him with rage, to deliver himself up to the unmerited vengeance of the gods. It is nature's voice, the sweetest of all sounds, that inspires us with this pleasure.

CHAP. V.

Cases in which we may judge by the Principles of the Civil Law, in limiting the Principles of the Law of Nature.

AN Athenian law obliged^{*} children to provide for their fathers, when fallen into poverty; it excepted those who were born of a[†] courtezan, those whose chastity had been infamously prostituted by their father, and those to whom he[‡] had not given any means of gaining a livelihood.

The law considered, that, in the first case, the father being uncertain, he had rendered the natural obligation precarious; that in the second, he had sullied the life he had given, and done the greatest injury he could do to his children, in depriving them of their reputation; that in the third, he had rendered insupportable a life which had no means of subsistence. The law suspended the natural obligation of children, because the father had violated his; it looked upon the father and the son as no more than two citizens, and determined, in respect to them, only from civil and political views; ever considering, that a good republic ought to have a particular regard to manners. I am apt to think, that Solon's law was a wise regulation in the first two cases, whether that in which nature has lest the son in ignorance with regard to his father, or that in which she even seems to ordain he should not own him; but it cannot be approved with respect to the third, where the father had only violated a civil institution.

CHAP. VI.

That the Order of Succession or Inheritance depends on the Principles of Political or Civil Law, and not on those of the Law of Nature.

THE Voconian law ordained, that no woman should be left heiress to an estate, not even if she was an only child. Never was there a law, says St. Augustine^{*}, more unjust. A formula of Marculfus[†] treats that custom as impious. which deprives daughters of the

right of succeeding to the estate of their fathers. Justinian[†] gives the appellation of barbarous, to the right which the males had formerly of succeeding in prejudice to the daughters. These notions proceed from their having considered the right of children to succeed to their fathers possessions, as a consequence of the law of nature; which it is not.

The law of nature ordains, that fathers shall provide for their children; but it does not oblige them to make them their heirs. The division of property, the laws of this division, and the succession after the death of the person who has had this division, can be regulated only by the community, and consequently by political or civil laws.

True it is, that a political or civil order frequently demands that children should succeed to their father's estate; but it does not always make this necessary.

There may be some reasons given why the laws of our fiefs appoint that the eldest of the males, or the nearest relations of the male side, should have all, and the females nothing: and why by the laws of the Lombards^{*} the sisters, the natural children, the other relations; and, in their default, the treasury, might share the inheritance with the daughters.

It was regulated in some of the Dynasties of China, that the brothers of the emperor should succeed to the throne, and that the children should not. If they were willing that the prince should have a certain degree of experience, if they feared his being too young, and if it was become necessary to prevent eunuchs from placing children successively on the throne, they might very justly establish a like order of succession; and when some[†] writers have treated these brothers as usurpers, they have judged only by ideas received from the laws of their own countries.

According to the custom of Numidia[†], Desalces, brother of Gala, succeeded to the kingdom; not Massinissa, his son. And even to this day[¶], among the Arabs in Barbary, where each village has its chief, they adhere to this ancient custom, by chusing the uncle, or some other relation, to succeed.

There are monarchies merely elective; and since it is evident, that the order of succession ought to be derived from the political or civil laws, it is for these to decide in what cases it is agreeable to reason, that the succession be granted to children, and in what cases it ought to be given to others.

In countries where polygamy is established, the prince has many children; and the number of them is much greater in some of these countries than in others. There are[§] states, where it is impossible for the people to maintain the children of the king: they might therefore make it a law, that the crown shall devolve, not on the king's children, but on those of his sister.

A prodigious number of children would expose the state to the most dreadful civil wars. The order of succession which gives the crown to the children of the sister, the number of whom is not larger than those of a prince who has only one wife, must prevent these inconveniencies.

There are people, amongst whom reasons of state, or some maxims of religion, have made it necessary that the crown should be always fixed in a certain family: from hence, in India, proceeds the jealousy of their^{*} tribes, and the fear of losing the descent: they have there conceived, that never to want princes of the blood royal, they ought to take the children of the eldest sister of the king.

A general maxim: It is an obligation of the law of nature, to provide for our children; but to make them our successors, is an obligation of the civil or political law. From hence are derived the different regulations, with respect to bastards, in the different countries of the world; these are according to the civil or political laws of each country.

CHAP. VII.

That we ought not to decide by the Precepts of Religion, what belongs only to the Law of Nature.

THE Abassines have a most severe Lent of fifty days, which weakens them to such a degree, that for a long time they are incapable of business: the Turks^{*} do not fail to attack them after their Lent. Religion ought, in favour of the natural right of self-defence, to set bounds to these customs.

The Jews were obliged to keep the sabbath; but it was an instance of great stupidity in this nation, not to defend themselves when their enemies chose to attack them on this day.

Cambyses laying siege to Pelusium, set in the first rank a great number of those animals, which the Ægyptians regarded as sacred; the consequence was, that the soldiers of the garrison durst not molest them. Who does not see that self-defence is a duty superior to every precept?

CHAP. VIII.

That we ought not to regulate by the Principles of the Canon Law, Things which should be regulated by those of the Civil Law.

BY the[†] civil law of the Romans, he who took a thing privately from a sacred place, was punished only for the guilt of theft: by the[‡] canon law, he is punished for the crime of sacrilege. The canon law takes cognizance of the place; the civil laws of the fact. But to attend only to the place, is neither to reflect on the nature and definition of a theft, nor on the nature and definition of sacrilege.

As the husband may demand a separation, by reason of the infidelity of his wife; the wife might formerly^{||} demand it, on account of the infidelity of the husband. This custom, contrary to a regulation made in the^{*} Roman laws, was introduced into the ecclesiastic courts[†], where nothing was regarded but the maxims of canon law; and indeed, if we consider marriage as a thing merely spiritual, and as relating only to the things of another life, the violation is in both cases the same, but the political and civil laws of almost all nations, have, with reason, made a distinction between them. They have required from the women a degree of reserve and continency, which they have not exacted from the men; because, in women, a violation of chastity supposes a renunciation of all virtue; because women, by violating the laws of marriage, quit the state of their natural dependence; because nature has marked the infidelity of women with certain signs; and, in fine, because the children of the wife born in adultery necessarily belong, and are an expence to the husband, while the children produced by the adultery of the husband, are not the wife's, nor are an expence to the wife.

CHAP. IX.

That Things which ought to be regulated by the Principles of Civil Law, can seldom be regulated by those of Religion.

THE laws of religion have a greater sublimity; the civil laws a greater extent.

The laws of perfection drawn from religion have more in view the goodness of the person that observes them, than of the society in which they are observed; the civil laws, on the contrary, have more in view the moral goodness of men in general, than that of individuals.

Thus, venerable as those ideas are which immediately spring from religion, they ought not always to serve as a first principle to the civil laws; because these have another, the general welfare of society.

The Romans made regulations amongst themselves, to preserve the morals of their women; these were political institutions. Upon the establishment of monarchy, they made civil laws on this head, and formed them on the principles of their civil government. When the Christian religion became predominant, the new laws that were

then made, had less relation to the general rectitude of morals, than to the holiness of marriage; they had less regard to the union of the two sexes in a civil, than in a spiritual state.

At first, by the^{*} Roman law, a husband, who brought back his wife into his house, after she had been found guilty of adultery, was punished as an accomplice in her debauch.

Justinian[†], from other principles, ordained, that during the space of two years he might go and take her again out of the monastery.

Formerly, when a woman, whose husband was gone to war, heard no longer any tidings of him, she might easily marry again, because she had in her hands the power of making a divorce. The law of[‡] Constantine obliged the woman to wait four years, after which she might send the bill of divorce to the general; and, if her husband returned, he could not then charge her with adultery. But Justinian[¶] decreed, that let the time be never so long after the departure of her husband, she should not marry, unless by the deposition and oath of the general she could prove the death of her husband. Justinian had in view the indissolubility of marriage; but we may safely say, that he had it too much in view. He demanded a positive proof, when a negative one was sufficient; he required a thing extremely difficult, to give an account of the fate of a man at a great distance, and exposed to so many accidents; he presumed a crime, that is, a desertion of the husband, when it was so natural to presume his death. He injured the commonwealth, by obliging women to live out of marriage; he injured individuals, by exposing them to a thousand dangers.

The law of Justinian^{*}, which ranked amongst the causes of divorce the consent of the husband and wife to enter into a monastery, was entirely opposite to the principles of the civil laws. It is natural that the causes of divorce should have their origin in certain impediments, which could not be foreseen before marriage; but this desire of preserving chastity might be foreseen, since it is in ourselves. This law favours inconstancy in a state, which is by its very nature perpetual; it shook the fundamental principle of divorce, which permits the dissolution of one marriage only from the hope of another. In short, if we view it in a religious light, it is no more than giving victims to God without a sacrifice.

CHAP. X.

In what Case we ought to follow the Civil Law which permits, and not the Law of Religion which forbids.

WHEN a religion which prohibits polygamy is introduced into a country where it is permitted, we cannot believe, (speaking only as a politician) that the laws of the

country ought to suffer a man who has many wives to embrace this religion; unless the magistrate or the husband should indemnify them, by restoring them some way or other to their civil state. Without this, their condition would be deplorable; no sooner would they obey the laws, than they would find themselves deprived of the greatest advantages of society.

CHAP. XI.

That human Courts of Justice should not be regulated by the Maxims of those Tribunals which relate to the other Life.

THE tribunal of the inquisition, formed by the Christian monks on the idea of the tribunal of penitence, is contrary to all good policy. It has every where met with a general dislike, and must have sunk under the oppositions it met with, if those who were resolved to establish it had not drawn advantages even from these oppositions.

This tribunal is insupportable in all governments. In monarchies, it only makes informers and traitors; in republics, it only forms dishonest men; in a despotic state, it is as destructive as the government itself.

CHAP. XII.

The same Subject continued.

IT is one abuse of this tribunal, that of two persons accused of the same crime, he who denies is condemned to die; and he who confesses avoids the punishment. This has its source in monastic ideas, where he who denies seems in a state of impenitence and damnation; and he who confesses in a state of repentance and salvation. But a distinction of this kind can have no relation to human tribunals. Human justice, which sees only the actions, has but one compact with men, namely that of innocence; divine justice, which sees the thoughts, has two, that of innocence and repentance.

CHAP. XIII.

In what Cases, with regard to Marriage, we ought to follow the Laws of Religion; and in what Cases we should follow the Civil Laws.

IT has happened in all ages and countries, that religion has been blended with marriages. When certain things have been considered as impure or unlawful, and were nevertheless become necessary, they were obliged to call in religion, to legitimate in the one case, and to reprove in others.

On the other hand, as marriage is of all human actions that in which society is most interested, it became proper that this should be regulated by the civil laws.

Every thing which relates to the nature of marriage, its form, the manner of contracting it, the fruitfulness it occasions, which has made all nations consider it as the object of a particular benediction; a benediction which, not being always annexed to it, is supposed to depend on certain superior graces; all this, I say, is within the resort of religion.

The consequences of this union, with regard to property, the reciprocal advantages, every thing which has a relation to the new family, to that from which it sprung, and to that which is expected to arise; all this relates to the civil laws.

As one of the great objects of marriage is to take away that uncertainty which attends unlawful conjunctions, religion here stamps its seal, and the civil laws join theirs to it; to the end that it may be as authentic as possible. Thus, besides the conditions required by religion to make a marriage valid, the civil laws may still exact others.

The civil laws receive this power from their being additional obligations, and not contradictory ones. The law of religion insists upon certain ceremonies, the civil laws on the consent of fathers; in this case, they demand something more than that of religion, but they demand nothing contrary to it.

It follows from hence, that the religious law must decide whether the bond be indissoluble, or not; for if the laws of religion had made the bond indissoluble, and the civil laws had declared it might be broken, they would be contradictory to each other.

Sometimes the regulations made by the civil laws, with respect to marriage, are not absolutely necessary; such are those established by the laws, which, instead of annulling the marriage, only punish those who contract it.

Amongst the Romans, the Papian law declared those marriages illegal which had been prohibited, and yet only subjected them to a penalty^{*}; but a Senatus Consultum, made at the instance of the emperor Marcus Antoninus, declared them void; there then no longer subsisted[†] any such thing as a marriage, wife, dowry, or husband. The civil laws determine according to circumstances: sometimes they are most attentive to repair the evil; at others, to prevent it.

CHAP. XIV.

In what Instances Marriages between Relations should be regulated by the Laws of Nature; and in what Instances by the Civil Laws.

WITH regard to the prohibition of marriage between relations, it is a thing extremely delicate, to fix exactly the point at which the laws of nature stop, and where the civil laws begin. For this purpose, we must establish some principles.

The marriage of the son with the mother confounds the state of things: the son ought to have an unlimited respect to his mother, the wife an unlimited respect for her husband; therefore the marriage of the mother to her son would subvert the natural state of both.

Besides, nature has forwarded in women the time in which they are able to have children, but has retarded it in men; and, for the same reason, women sooner lose this ability, and men later. If the marriage between the mother and the son were permitted, it would almost always be the case, that when the husband was capable of entering into the views of nature, the wife would be incapable.

The marriage between the father and the daughter is contrary to nature, as well as the other; but it is not less contrary, because it has not these two obstacles. Thus the Tartars, who may marry their daughters^{*}, never marry their mothers, as we see in the accounts we have of that nation[†].

It has ever been the natural duty of fathers to watch over the chastity of their children. Intrusted with the care of their education, they are obliged to preserve the body in the greatest perfection, and the mind from the least corruption; to encourage whatever has a tendency to inspire them with virtuous desires, and to nourish a becoming tenderness. Fathers, always employed in preserving the morals of their children, must have a natural aversion to every thing that can render them corrupt. Marriage, you will say, is not a corruption: but before marriage they must speak, they must make their persons beloved, they must seduce: it is this seduction which ought to inspire us with horror.

There should be therefore an unsurmountable barrier between those who ought to give the education, and those who are to receive it; in order to prevent every kind of corruption, even though the motive be lawful. Why do fathers so carefully deprive those who are to marry their daughters, of their company and familiarity?

The horror that arises against the incest of the brother with the sister, should proceed from the same source. The desire of fathers and mothers to preserve the morals of their children and families untainted, is sufficient to inspire their offspring with a detestation

of every thing that can lead to the union of the two sexes.

The prohibition of marriage between cousin-germans, has the same original. In the early ages, that is, in the times of innocence; in the ages when luxury was unknown, it was customary for children^{*}, upon their marriage, not to remove from their parents, but to settle in the same house: as a small habitation was at that time sufficient for a large family: the children^{*} of two brothers, or cousin-germans, were considered both by others and themselves, as brothers. The estrangement then between the brothers and sisters, as to marriage[†], subsisted also between the cousin-germans.

These principles are so strong and so natural, that they have had their influence almost over all the earth, independently of any communication. It was not the Romans who taught the inhabitants of Formosa[‡], that the marriage of relations of the fourth degree was incestuous: it was not the Romans that communicated this sentiment to the Arabs[§]: it was not they who taught it to the inhabitants of the Maldivian islands[§].

But if some nations have not rejected marriages between fathers and children, sisters and brothers, we have seen in the first book, that intelligent beings do not always follow the law of nature. Who could have imagined it! Religious ideas have frequently made men fall into these mistakes. If the Assyrians and the Persians married their mothers, the first were influenced by a religious respect for Semiramis; and the second did it, because the religion of Zoroaster gave a preference^{**} to these marriages. If the Ægyptians married their sisters, it proceeded from the wildness of the Ægyptian religion, which consecrated these marriages in honour of Isis. As the spirit of religion leads us to attempt whatever is great and difficult, we cannot infer that a thing is natural, from its being consecrated by a false religion.

The principle which informs us that marriages between fathers and children, between brothers and sisters, are prohibited, in order to preserve natural modesty in families, will help us to the discovery of those marriages that are forbidden by the law of nature, and of those which can be so only by the civil law.

As children dwell, or are supposed to dwell in their father's house, and consequently the son-in-law with the mother-in-law, the father-in-law with the daughter-in-law, or wife's daughter; the marriage between them is forbidden by the law of nature. In this case the resemblance has the same effect as the reality, because it springs from the same cause: the civil law neither can, nor ought to permit these marriages.

There are nations, as we have already observed, amongst whom cousin germans are considered as brothers, because they commonly dwell in the same house: there are others, where this custom is not known. Among the first, the marriage of cousingermans ought to be regarded as contrary to nature; not so among the others.

But the laws of nature cannot be local. Therefore, when these marriages are forbidden,

or permitted, they are, according to the circumstances, permitted or forbidden by a civil law.

It is not a necessary custom for the brother-in-law and the sister-in-law to dwell in the same house. The marriage between them is not then prohibited to preserve chastity in the family; and the law which forbids or permits it, is not a law of nature, but a civil law, regulated by circumstances, and dependent on the customs of each country: these are cases in which the laws depend on the morals or customs of the inhabitants.

The civil laws forbid marriages, when by the customs received in a certain country they are found to be in the same circumstances as those forbidden by the law of nature; and they permit them when this is not the case. The prohibitions of the laws of nature are invariable, because the thing on which they depend is invariable; the father, the mother, and the children, necessarily dwell in the same house. But the prohibitions of the civil laws are accidental, because they depend on an accidental circumstance; cousin-germans and others dwelling in the house by accident.

This explains why the laws of Moses, those of the Ægyptians^{*}, and of many other nations, permitted the marriage of the brother-in-law with the sister-in-law; whilst these very marriages were disallowed by other nations.

In the Indies they have a very natural reason for admitting this sort of marriages. The uncle is there considered as the father, and is obliged to maintain and educate his nephew, as if he were his own child: this proceeds from the disposition of these people, which is good-natured and full of humanity. This law, or this custom, has produced another; if a husband has lost his wife, he does not fail to marry her sister: which is extremely natural, for his new consort becomes the mother of her sister's children, and not a cruel step-mother.

CHAP. XV.

That we should not regulate by the Principles of political Law, those Things which depend on the Principles of civil Law.

AS men have given up their natural independence to live under political laws, they have given up the natural community of goods to live under civil laws.

By the first, they acquired liberty; by the second, property. We should not decide by the laws of liberty, which, as we have already said, is only the government of the community, what ought to be decided by the laws concerning property. It is a paralogism to say, that the good of the individual should give way to that of the public:

this can never take place, but when the government of the community, or, in other words, the liberty of the subject, is concerned; this does not affect such cases as relate to private property, because the public good consists in every one's having their property, which was given him by the civil laws, invariably preserved.

Cicero maintains, that the Agrarian laws were unjust; because the community was established with no view, but that every one might be able to preserve his property.

Let us therefore lay down a certain maxim, that whenever the public good happens to be the matter in question, it is not for the advantage of the public to deprive an individual of his property, or even to retrench the least part of it by a law, or a political regulation. In this case we should follow the rigour of the civil law, which is the Palladium of property.

Thus when the public has occasion for the estate of an individual, it ought never to act by the rigour of political law: it is here that the civil law ought to triumph, who with the eyes of a mother regards every individual as the whole community.

If the political magistrate would erect a public edifice, or make a new road, he must indemnify those who are injured by it: the public is in this respect like an individual, who treats with an individual. It is full enough that it can oblige a citizen to sell his inheritance, and that it can strip him of this great privilege which he holds from the civil law, the not being forced to alienate his possessions.

After the nations which subverted the Roman empire had abused their very conquests, the spirit of liberty called them back to that of equity. They exercised the most barbarous laws with moderation: and if any one should doubt the truth of this, they need only read Beaumanoir's admirable work on jurisprudence, written in the twelfth century.

They mended the highways in his time, as we do at present. He says, that when a highway could not be repaired, they made a new one as near the old as possible; but indemnified the proprietors at the^{*} expence of those who reaped any advantage from the road. They determined at that time by the civil law; in our days, we determine by the law of politics.

CHAP. XVI.

That we ought not to decide by the Rules of the civil Law, when it is proper to decide by those of the political Law.

MOST difficulties on this subject may be easily solved, by not confounding the rules derived from property with those which spring from liberty.

Is the demesne of a state or government alienable, or is it not? This question ought to be decided by the political law, and not by the civil. It ought not to be decided by the civil law, because it is as necessary that there should be demesnes for the subsistence of a state, as that the state should have civil laws to regulate the disposal of property.

If then they alienate the demesne, the state will be forced to make a new fund for another. But this expedient overturns the political government, because, by the nature of the thing, for every demesne that shall be established, the subject will always be obliged to pay more, and the sovereign to receive less; in a word, the demesne is necessary, and the alienation is not.

The order of succession is, in monarchies, founded on the welfare of the state; this makes it necessary that such an order should be fixed, to avoid the misfortunes, which, I have said, must arise in a despotic kingdom, where all is uncertain, because all is arbitrary.

The order of succession is not fixed for the sake of the reigning family; but because it is the interest of the state, that it should have a reigning family. The law which regulates the succession of individuals, is a civil law, whose view is the interest of individuals; that which regulates the succession to monarchy, is a political law, which has in view the welfare and preservation of the kingdom.

It follows from hence, that when the political law has established an order of succession in government, and this order is at an end, it is absurd to reclaim the succession in virtue of the civil law of any nation whatsoever. One particular society does not make laws for another society. The civil laws of the Romans are no more applicable than any other civil laws. They themselves did not make use of them, when they proceeded against kings: and the maxims by which they judged kings are so abominable, that they ought never to be revived.

It follows also from hence, that when the political law has obliged a family to renounce the succession, it is absurd to insist upon the restitutions drawn from the civil law. Restitutions are in the law, and may be good against those who live in the law: but they are not proper for such as have been raised up for the law, and who live for the law.

It is ridiculous to pretend to decide the rights of kingdoms, of nations, and of the whole globe, by the same maxims on which (to make use of an expression of ^{*}Cicero) we should determine the right of a gutter between individuals.

CHAP. XVII.**The same Subject continued.**

OSTRACISM ought to be examined by the rules of politics, and not by those of the civil law; and so far is this custom from rendering a popular government odious, that it is, on the contrary, extremely well adapted to prove its lenity. We should be sensible of this ourselves, if, while banishment is always considered amongst us as a penalty, we are able to separate the idea of ostracism from that of punishment.

Aristotle^{*} tells us, it is universally allowed, that this practice has something in it both humane and popular. If in those times and places where this sentence was executed, they found nothing in it that appeared odious; is it for us, who see things at such a distance, to think otherwise than the accuser, the judges, and the accused themselves?

And if we consider that this judgment of the people loaded the person with glory on whom it was passed; that when at Athens it fell upon a man without[†] merit, from that very moment they ceased to[‡] use it; we shall find that numbers of people have entertained a false idea of it; for it was an admirable law that could prevent the ill consequences which the glory of a citizen might produce, by loading him with new glory.

CHAP. XVIII.**That it is necessary to enquire, whether the Laws which seem contradictory, are of the same Class.**

AT Rome the husband was permitted to lend his wife to another. Plutarch tells us this^{||} in express terms. We know that Cato lent his^S wife to Hortensius, and Cato was not a man to violate the laws of his country.

On the other hand, a husband who suffered his wife to be debauched, who did not bring her to justice, or who took her again after her^{*} condemnation, was punished. These laws seem to contradict each other, and yet are not contradictory. The law which permitted a Roman to lend his wife, was visibly a Lacedæmonian institution, established with a view of giving the republic children of a good species, if I may be allowed the term: the other had in view the preservation of morals. The first was a law of politics, the second a civil law.

CHAP. XIX.

That we should not decide those Things by the civil Law, which ought to be decided by domestic Laws.

THE law of the Visigoths enjoins, that the[†] slaves of the house shall be obliged to bind the man and woman they surprize in adultery, and to present them to the husband and to the judge: a terrible law, which puts into the hands of such mean persons the care of public, domestic, and private vengeance!

This law can be no where proper but in the seraglios of the East, where the slave who has the charge of the inclosure, is deemed an accomplice upon the discovery of the least infidelity. He seizes the criminals, not so much with a view to bring them to justice, as to do justice to himself, and to obtain a scrutiny into the circumstances of the action, in order to remove the suspicion of his negligence.

But, in countries where women are not guarded, it is ridiculous to subject those who govern the family, to the inquisition of their slaves.

This inquisition may, in certain cases, be at the most a particular domestic regulation, but never a civil law.

CHAP. XX.

That we ought not to decide by the Principles of the civil Law, those Things which belong to the Law of Nations.

LIBERTY consists principally in not being forced to do a thing, where the laws do not oblige: people are in this state, only as they are governed by civil laws; and because they live under those civil laws, they are free.

It follows from hence, that princes who live not among themselves under civil laws, are not free; they are governed by force; they may continually force, or be forced. From hence it follows, that treaties made by force, are as obligatory as those made by free consent. When we who live under civil laws, are, contrary to law, constrained to enter into a contract, we may, by the assistance of the law, recover from the effects of violence: but a prince, who is always in that state in which he forces, or is forced, cannot complain of a treaty which he has been compelled to sign. This would be to complain of his natural state; it would seem as if he would be a prince with respect to other princes, and as if other princes should be subjects with respect to him; that is, it would be contrary to the nature of things.

CHAP. XXI.

That we should not decide by political Laws, Things which belong to the Law of Nations.

POLITICAL laws demand, that every man be subject to the natural and civil courts of the country where he resides, and to the censure of the sovereign.

The law of nations requires, that princes shall send ambassadors; and a reason drawn from the nature of things does not permit these ambassadors to depend either on the sovereign to whom they are sent, or on his tribunals. They are the voice of the prince who sends them, and this voice ought to be free; no obstacle should hinder the execution of their office; they may frequently offend, because they speak for a man entirely independent; they might be wrongfully accused, if they were liable to be punished for crimes; if they could be arrested for debts, these might be forged. Thus a prince, who has naturally a bold and enterprising spirit, would speak by the mouth of a man who had every thing to fear. We must then be guided, with respect to ambassadors, by reasons drawn from the law of nations, and not by those derived from political law. But if they make an ill use of their representative character, a stop may be put to it by sending them back. They may even be accused before their master, who becomes either their judge or their accomplice.

CHAP. XXII.

The unhappy State of the Ynca Athualpa.

THE principles we have just been establishing, were cruelly violated by the Spaniards.

The Ynca Athualpa^{*} could not be tried by the law of nations; they tried him by political and civil laws; they accused him for putting to death some of his own subjects, for having many wives, &c. and to fill up the measure of their stupidity, they condemned him, not by the political and civil laws of his own country, but by the political and civil laws of theirs.

CHAP. XXIII.

That when, by some Circumstance, the political Law becomes destructive to the State, we ought to decide by such a political Law as

will preserve it, which sometimes becomes a Law of Nations.

WHEN that political law which has established in the kingdom a certain order of succession, becomes destructive to the body politic for whose sake it was established, there is not the least room to doubt but another political law may be made to change this order; and so far would this law be from opposing the first, it would in the main be entirely conformable to it, since both would depend on this principle, that, THE SAFETY OF THE PEOPLE IS THE SUPREME LAW.

I have said^{*}, that a great state becoming accessory to another, is itself weakened, and even weakens the principal. We know, that it is for the interest of the state to have the supreme magistrate within itself, that the public revenues be well administered, and that its specie be not sent abroad to enrich another country. It is of importance, that he who is to govern, has not imbibed foreign maxims: these are less agreeable than those already established. Besides, men have an extravagant fondness for their own laws and customs: these constitute the happiness of every community; and, as we learn from the histories of all nations, are rarely changed without violent commotions, and a great effusion of blood.

It follows from hence, that if a great state has to its heir the possessor of a great state, the former may reasonably exclude him, because a change in the order of succession must be of service to both countries. Thus a law of Russia, made in the beginning of the reign of Elizabeth, most wisely excluded from the possession of the crown, every heir who possessed another monarchy; thus the law of Portugal disqualifies every stranger, who lays claim to the crown by right of blood.

But if a nation may exclude, it may with greater reason be allowed a right to oblige a prince to renounce. If the people fear that a certain marriage will be attended with such consequences as shall rob the nation of its dependence, or dismember some of its provinces, it may very justly oblige the contractors and their descendants to renounce all right over them; while he who renounces, and those to whose prejudice he renounces, have the less reason to complain, as the state might originally have made a law to exclude them.

CHAP. XXIV.

That the Regulations of the Police are of a different Class from other civil Laws.

THERE are criminals, whom the magistrate punishes, there are others whom he reproveth. The former are subject to the power of the law, the latter to his authority:

those are cut off from society; these they oblige to live according to the rules of society.

In the exercise of the *police*, it is rather the magistrate who punishes, than the law; in the sentence past on crimes, it is rather the law which punishes, than the magistrate. The business of the *police* consists in affairs which arise every instant, and are commonly of a trifling nature: there is then but little need of formalities. The actions of the *police* are quick; they are exercised over things which return every day; it would be therefore improper for it to inflict severe punishments. It is continually employed about minute particulars; great examples are therefore not designed for its purpose. It is governed rather by regulations than laws; those who are subject to its jurisdiction, are incessantly under the eye of the magistrate: it is therefore his fault if they fall into excess. Thus we ought not to confound a flagrant violation of the laws, with a simple breach of the *police*; these things are of a different order.

From hence it follows, that the laws of an Italian ^{*}republic, where bearing fire-arms is punished as a capital crime, and where it is not more fatal to make an ill use of them, than to carry them, is not agreeable to the nature of things.

It follows, moreover, that the applauded action of that emperor, who caused a baker to be impaled whom he found guilty of a fraud, was the action of a sultan, who knew not how to be just without committing an outrage on justice.

CHAP. XXV.

That we should not follow the general Disposition of the civil Law, in Things which ought to be subject to particular Rules drawn from their own nature.

IS it a good law, that all civil obligations passed between sailors in a ship in the course of a voyage should be null? Francis Pirard[†] tells us, that in his time it was not observed by the Portuguese, though it was by the French. Men who are together only for a short time; who have no wants, since they are provided for by the prince; who have only one object in view, that of their voyage; who are no longer in society, but are only the inhabitants of a ship, ought not to contract obligations that were never introduced, but to support the burthen of civil society.

In the same spirit was the law of the Rhodians, made at a time when they always followed the coasts; it ordained, that those who during a tempest staid in a vessel, should have ship and cargo, and those who quitted it should have nothing.

Endnotes

[*] Lib. 9 on laws.

[*] Mr. Bayle, in his Criticism on the History of Calvinism, speaks of this law, page 263.

[†] See law 5. in the code de repudiis et judicio de moribus sublato.

[*] Law of the Burgundians, tit. 47.

[†] In the code of the Visigoths, lib. 3. tit. 4. sect. 13.

[*] Under pain of infamy, another under pain of imprisonment.

[†] Plutarch, life of Solon.

[‡] Plutarch life of Solon, and Gallienus in exhort. ad art. c. 8.

[*] De civitate Dei, lib. 4.

[†] Lib. ii. cap. 12.

[‡] Novell. 21.

[*] Lib. ii. tit. 14. sect. 6, 7, & 8.

[†] Du Halde on the second Dynasty.

[‡] Livy, decad. 3. lib. 9.

[||] Shaw's Travels, vol. 1. page 402.

[§] See the collection of voyages that contributed to the establishment of an East India company, vol. iv. part 1. page 114. And Mr. Smith's voyage to Guinea, part 2. page 150. concerning the kingdom of Judia.

[*] See Edifying Letters, let. 14. and the voyages that contributed to the establishment of the East-India company, vol. iii. part 2. page 644.

[*] Collection of voyages that contributed to the establishment of an East-India company, vol. iv. page 35, and 103.

[†] Leg. ff. ad leg. Juliam peculatus.

[‡] Capite quisquis 17. questione 4. Cujas observat. lib. xiii. cap. 19. tom. 3.

[||] Beausmanoir on the ancient customs of Beauvoisis, chap. 18.

[*] Law of the first code ad leg. Juliam de adulteriis.

[†] At present they do not take cognizance of these things in France.

[*] Leg. 11. sect. ult. ff. ad leg. Juliam de adulteriis.

[†] Nov. 134. col. 9. cap. 10. tit. 170.

[‡] Leg. 7. de repudiis & judicio de morib. sublato.

[||] Auth. hodie quantiscumque cod. de repudiis.

[*] Auth. quod hodie cod. de repudiis.

[*] See what has been said on this subject, in book xxiii. chap. 21. in the relation they bear to the number of inhabitants.

[†] See Law 16. ff. *de ritu nuptiarum*; and Law 3. sect. 1. also Digest. *de donationibus inter virum & uxorem*.

[*] This law is very ancient amongst them. Attila, says Priscus in his embassy, stopt in a certain place to marry Esca his daughter: a thing permitted, he adds, by the Laws of the Scythians, page 22.

[†] Hist. of the Tartars, part 3. page 236.

[*] It was thus amongst the ancient Romans.

[*] Amongst the Romans they had the same name, the cousin-germans were called brothers.

[†] It was thus at Rome in the first ages, till the people made a law to permit them; they were willing to favour a man extremely popular, who had married his cousin-german. Plutarch's Treatise, intituled, *Questions concerning the affairs of the Romans*.

[‡] Collection of Voyages to the Indies, vol. 5. part 1. An account of the state of the isle of Formosa.

[||] Koran, chap. of women.

[§] See Francis Pirrard.

[**] They were considered as more honourable. See Philo, *de specialibus legib. quæ pertinent ad præcepta decalogi*. Paris, 1640. page 778.

[*] See Law 8. of the Code *de incestis & inutilibus nuptiis*.

[*] The lord appointed collectors to receive the toll from the peasant, the gentlemen were obliged to contribute by the count, and the clergy by the bishop. *Beaumanoir*, chap. 22.

[*] Lib. 1. of Laws.

[*] Repub. lib. iii. cap. 13.

[†] Hyperbolus. See Plurarch, life of Aristides.

[‡] It was found opposite to the spirit of the legislator.

[||] Plutarch in his comparison between Lycurgus and Numa.

[§] Plutarch life of Cato.

[*] Leg. 11. sect. ult. ff. ad leg. Jul. de adulteriis.

[†] Law of the Visigoths, lib. iii. tit. 4. sect. 6.

[*] See Garcilasso de la Vega.

[*] See book 5. chap. 14. book 8. chap. 16, 17, 18, 19, and 20. book 9. chap. 4, 5, 6, and 7. and book 10. chap. 9 and 10.

[*] Venice.

[†] Chap. xiv. p. 12.

BOOK XXVII. OF THE ORIGIN AND REVOLUTIONS OF THE ROMAN LAWS ON SUCCESSIONS.

CHAP. I.

THIS affair derives its establishment from the most distant antiquity; and to penetrate to its foundation, permit me to search among the first laws of the Romans, for what, I believe, nobody yet has been so happy as to discover.

We know that Romulus^{*} divided the land of his little kinadom amona his subjects: it

seems to me, that from hence the laws of Rome on successions were derived.

The law of the division of lands made it necessary, that the property of one family should not pass into another: from hence it followed, that there were but two orders of heirs established by law^{*}, the children and all the descendants that lived under the power of the father, whom they called *sui hæredes*, or his natural heirs; and, in their default, the nearest relations on the male side, whom they called *agnati*.

It followed likewise, that the relations on the female side, whom they called *cognati*, ought not to succeed; they would have conveyed the estate into another family, which was not allowed.

From thence also it followed, that the children ought not to succeed to the mother, nor the mother to her children; for this might carry the estate of one family into another.

Thus we see them excluded[†] by the law of the Twelve Tables; it called none to the succession but the *agnati*, and there was no agnation between the son and the mother.

But it was indifferent whether the *suus hæres*, or, in default of such, the nearest by agnation, was male or female; because, as the relations on the mother's side could not succeed, though a woman who was an heiress should happen to marry, yet the estate always returned into the family from whence it came. On this account, the law of the Twelve Tables does not distinguish, whether the person[†] who succeeded was male or female.

This was the cause, that though the grand-children by the son succeeded to the grandfather, the grand-children by the daughter did not succeed; for, to prevent the estate from passing into another family, the *agnati* were preferred before them. Hence the daughter, and not her^{*} children, succeeded to the father.

Thus amongst the primitive Romans, the women succeeded, when this was agreeable to the law of the division of lands; and they did not succeed, when this law might suffer by it.

Such were the laws of succession among the primitive Romans; and as these had a natural dependence on the constitution, and were derived from the division of lands, it is easy to perceive, that they had not a foreign original, and were not of the number of those brought into the republic by the deputies sent into the cities of Greece.

Dionysius Halicarnasseus tells us[†], that Servius Tullius finding the laws of Romulus and Numa on the division of lands abolished, he restored them, and made new ones, to give the old a greater weight. We cannot therefore doubt, but that the laws we have been speaking of, made in consequence of this division, were the work of these three Roman legislators.

The order of succession having been established in consequence of a political law, no citizen was allowed to break in upon it by his private will; that is, in the first ages of Rome, he had not the power of making a testament. Yet it would have been hard to deprive him, in his last moments, of the friendly commerce of kind and beneficent actions.

They therefore found a method of reconciling, in this respect, the laws with the desires of the individual. He was permitted to dispose of his substance in an assembly of the people; and thus every testament was, in some sort, an act of the legislative power.

The law of the Twelve Tables permitted the person who made his will, to chuse which citizen he pleased for his heir. The reason that induced the Roman laws so strictly to restrain the number of those who might succeed *ab intestato*, was the law of the division of lands; and the reason why they extended so widely the power of the testator, was, that as the father might^{*} sell his children, he might with greater reason deprive them of his substance. These were therefore different effects, since they flowed from different principles; and such is, in this respect, the spirit of the Roman laws.

The ancient laws of Athens did not suffer a citizen to make a will. Solon[†] permitted it, with an exception to those who had children: and the legislators of Rome, filled with the idea of paternal power, allowed the making a will even to the prejudice of their children. It must be confessed, that the ancient laws of Athens were more consistent than those of Rome. The indefinite permission of making a will, which had been granted to the Romans, ruined by little and little the political regulation on the division of lands: it was the principal thing that introduced the fatal difference between riches and poverty: many shares were united in the same person; some citizens had too much, and a multitude of others had nothing. Thus the people being continually deprived of their shares, were incessantly calling out for a new distribution of lands. They demanded it in an age when the frugality, the parsimony, and the poverty of the Romans, were their distinguishing characteristic; as well as at a time when their luxury was become still more astonishing.

Testaments being properly a law made in the assembly of the people, those who were in the army were thereby deprived of a testamentary power. The people therefore gave the soldiers the privilege^{*} of making before their companions, the dispositions which[†] should have been made before them.

The great assembly of the people met but twice a year; besides, both the people and the affairs brought before them were increased: they therefore judged it convenient to permit all the citizens to make their[†] will before some Roman citizens of ripe age, who were to represent the body of the people: they took five^{||} citizens, in whose presence the inheritor[§] purchased his family. that is. his inheritance of the testator: another

citizen brought a pair of scales to weigh the value; for the Romans^{**}, as yet, had no money.

To all appearance these five citizens were to represent the five classes of the people; and they set no value on the sixth, as being composed of men who had no property.

We ought not to say, with Justinian, that these sales were merely imaginary; they became, indeed, imaginary in time, but were not so originally. Most of the laws which afterwards regulated wills, were built on the reality of these sales: we find sufficient proof of this in the fragments of Ulpian^{*}. The deaf, the dumb, the prodigal, could not make a will; the deaf, because he could not hear the words of the buyer of the inheritance; the dumb, because he could not pronounce the terms of nomination; the prodigal, because as he was excluded from the management of all affairs, he could not sell his inheritance. I omit any farther examples.

Wills being made in the assembly of the people, were rather the acts of political than of civil laws, a public rather than a private right; from whence it followed, that the father, while his son was under his authority, could not give him leave to make a will.

Amongst most nations, wills are not subject to greater formalities than ordinary contracts: because both the one and the other are only expressions of the will of him who makes the contract, and both are equally a private right. But, among the Romans, where testaments were derived from the public law, they were attended with much greater formalities[†], than other affairs; and this is still the case in those provinces of France, which are governed by the Roman law.

Testaments being, as I have said, a law of the people, they ought to be made with the force of a command, and in such terms as are called *direct and imperative*[‡]. Hence a rule was formed, that they could neither give nor transmit an inheritance, without making use of the imperative words: from whence it followed, that they might very justly in certain cases make a substitution[¶]; and ordain, that the inheritance should pass to another heir; but that they could never make a fiduciary bequest^{*}, that is, charge any one in terms of intreaty to restore an inheritance, or a part of it, to another.

When the father neither instituted his son his heir, nor disinherited him, the will was annulled; but it was valid, though he did not disinherit his daughter, nor instituted her his heiress. The reason is plain: when he neither instituted nor disinherited his son, he did an injury to his grandson, who might have succeeded *ab intestato* to his father; but in neither instituting nor disinheriting his daughter, he did no injury to his daughter's children, who could not succeed *ab intestato* to their mother[†], because they were neither *sui hæredes* nor *agnati*.

The laws of the ancient Romans concerning successions being formed with the same spirit which dictated the division of lands, did not sufficiently restrain the riches of

women; thus a door was left open to luxury, which is always inseparable from this sort of opulence. Between the second and third Punic war, they began to perceive the evil, and made the Voconian[†] law: but as they were induced to this by the most important considerations; as but few monuments have reached us that take notice of this law; and as it has hitherto been spoken of in a most confused manner, I shall endeavour to clear it up.

Cicero has preserved a fragment, which forbids the instituting a woman an^{*} heiress, whether she was married or unmarried.

The Epitome of Livy, where he speaks of this law, says[†] no more: it appears from[†] Cicero and St. Augustin, that the daughter, though an only child[‡], was comprehended in the prohibition.

Cato the elder[§] contributed all in his power to get this law passed. Aulus Gellius cites a fragment^{**} of a speech, which he made on this occasion. By preventing the succession of women, his intent was to take away the source of luxury: as by undertaking the defence of the Oppian law, he intended to put a stop to luxury itself.

In the Institutes of Justinian^{††} and Theophilus^{††}, mention is made of a chapter of the Voconian law, which limits the power of bequeathing. In reading these authors, every body would imagine, that this chapter was made to prevent the inheritance from being so exhausted by legacies, as to render it unworthy of the heir's acceptance. But this was not the spirit of the Voconian law. We have just seen, that they had in view the hindering women from inheriting an estate. The article of this law, which set bounds to the power of bequeathing, entered into this view: for if people had been possessed of the liberty to bequeath as much as they pleased, the women might have received as legacies, what they could not receive by succession.

The Voconian law was made to hinder the women from growing too wealthy; for this end it was necessary to deprive them of large inheritances, and not of such as were incapable of supporting luxury. The law fixed a certain sum, to be given to the women whom it deprived of the succession. Cicero^{*}, from whom we have this particular, does not tell us what was the sum; but by Dio[†] we are informed, it was a hundred thousand sesterces.

The Voconian law was made to regulate opulence, not to lay a restraint upon poverty; hence Cicero[†] informs us, that it related only to those whose names were registered in the censors books.

This furnished a pretence for eluding the law: it is well known that the Romans were extremely fond of set forms; and we have already taken notice, that it was the spirit of the republic to follow the letter of the law. There were fathers who would not give in their names to be enrolled by the censors, because they would have it in their power to

leave the succession to a daughter: and the prætors determined, that this was no violation of the Voconian law, since it was not contrary to the letter of it.

One Anius Asellus had appointed his daughter his sole heir and executrix. He had a right to make this disposition, says Cicero[¶]; he was not restrained by the Voconian law, since he was not included in the census. Verres, during the time of his prætorship, had deprived Anius's daughter of the succession; and Cicero maintains that Verres had been bribed, otherwise he would not have annulled a disposition which all the other prætors had confirmed.

What kind of citizens then must those have been, who were not registered in the census, in which all the freemen of Rome were included? According to the institution of Servius Tullius, mentioned by Dionysius of Halicarnassus^{*}, every citizen not enrolled in the census became a slave: even Cicero himself[†] observes, that such a man forfeited his liberty: and the same thing is affirmed by Zonaras. There must have been therefore a difference between not being in the census according to the spirit of the Voconian law, and not being in it according to the spirit of Servius Tullius's Institutions.

They whose names were not registered in the five first classes, in which the inhabitants ranked in proportion to their fortunes, were not comprized in the census[‡] according to the spirit of the Voconian law: they who were not enrolled in one of these six classes, or who were not ranked by the censors among such as were called *ærarîi*, were not included in the census, according to the spirit of Servius's Institutions. Such was the force of nature, that to elude the Voconian law, fathers submitted to the disgrace of being confounded in the sixth class with the *proletarii* and *capite censi*, or perhaps to have their names entered in the *Cærites tabulæ*[¶].

We have elsewhere observed, that the Roman laws did not admit of fiduciary bequests. The hopes of evading the Voconian law were the cause of their being introduced: they instituted an heir qualified by the law, and they begged he would resign the succession to a person whom the law had excluded: this new method of disposition was productive of very different effects. Some resigned the inheritance; and the conduct of Sextus Peducus^{*} on an occasion of this nature was very remarkable. A considerable succession was left him, and nobody living knew that he was desired to resign it to another; when he waited upon the widow of the testator, and made over to her the whole fortune belonging to her late husband.

Others kept possession of the inheritance; and here the example of P. Sextilius Rufus is also famous, having been made use of by Cicero[†] in his disputations against the Epicureans. "In my younger days, says he, I was desired by Sextilius to accompany him to his friends, in order to know whether he ought to restore the inheritance of Quintus Fadius Gallus to his daughter Fadia. There were several young people present, with others of more maturity and judgment; and not one of them was of opinion that he

should give more to Fadia, than the lady was intitled to by the Voconian law. In consequence of this, Sextilius kept possession of a fine estate, of which he would not have retained a single sestercius, had he preferred justice to utility. It is possible, added he, that you would have resigned the inheritance: nay, it is possible that Epicurus himself would have resigned it; but you would not have acted according to your own principles." Here I shall pause a little to reflect.

It is a misfortune inherent to humanity, that legislators should be sometimes obliged to enact laws repugnant to the dictates of nature: such was the Voconian law. The reason is, the legislature considers the society rather than the citizen, and the citizen rather than the man. The law sacrificed both the citizen and the man, and directed its views to the prosperity of the republic. Suppose a person made a fiduciary bequest in favour of his daughter; the law paid no regard to the sentiments of nature in the father, nor to the filial piety of the daughter; all it had an eye to, was the person to whom the bequest was made in trust, and who on such an occasion found himself in a terrible dilemma. If he restored the estate, he was a bad citizen; if he kept it, he was a bad man. None but good-natured people thought of eluding the law; and they could pitch upon none but honest men to help them to elude it; for a trust of this kind requires a triumph over avarice and inordinate pleasure, which none but honest men are like to obtain. Perhaps in this light to look upon them as bad citizens, would have favoured too much of severity. It is not impossible but the legislator carried his point in a great measure, since his law was of such a nature, as obliged none but honest men to elude it.

At the time when the Voconian law was passed, the Romans still preserved some remains of their ancient purity of manners. Their conscience was sometimes engaged in favour of the law; and they were made to swear they would observe it^{*}: so that honesty, in some measure, was set in opposition against itself. But latterly their morals were corrupted to such a degree, that the fiduciary bequests must have had less efficacy to elude the Voconian law, than that very legislator had to enforce its observance.

The civil laws were the destruction of an infinite number of citizens. Under Augustus, Rome was almost deserted: it was necessary to repeople it. They made the Papian laws, which omitted nothing that could encourage^{*} the citizens to marry, and procreate children. One of the principal means was to increase[†], in favour of those who gave into the views of the law, the hopes of being heirs, and to diminish the expectations of those who refused; and as the Voconian law had rendered women incapable of succeeding, the Papian law, in certain cases, dispensed with this prohibition.

Women[‡], especially those who had children, were rendered capable of receiving in virtue of the will of their husbands; they even might, when they had children, receive in virtue of the will of strangers. All this was in direct opposition to the regulations of the

Voconian law: and yet it is remarkable, that the spirit of this law was not entirely abandoned. For example, the Papian law, which permitted a man who had one child[¶], to receive an entire inheritance by the will of a stranger, granted the same savour to the wife only when she had three children[§].

It must be remarked, that the Papian law did not render the women who had three children capable of succeeding, except in virtue of the will of strangers; and that with respect to the succession of relations, it left the ancient laws, and particularly^{**} the Voconian, in all their force. But this did not long subsist.

Rome, corrupted by the riches of every nation, had changed her manners; the putting a stop to the luxury of women was no longer minded. Aulus Gellius, who lived under^{*} Adrian, tells us, that in his time the Voconian law was almost abolished; it was buried under the opulence of the city. Thus we find in the sentences of Paulus[†], who lived under Niger, and in the fragments of Ulpian[‡], who was in the time of Alexander Severus, that the sisters on the father's side might succeed, and that none but the relations of a more distant degree were in the case of those prohibited by the Voconian law.

The ancient laws of Rome began to be thought severe. The prætors were no longer moved but by reasons of equity, moderation, and decorum.

We have seen, that by the ancient laws of Rome mothers had no share in the inheritance of their children. The Voconian law afforded a new reason for their exclusion. But the emperor Claudius gave the mother the succession of her children as a consolation for her loss. The Tertullian senatus consultum, made under Adrian[¶], gave it them when they had three children, if free women; or four, if they were freed women. It is evident, that this decree of the senate was only an extension of the Papian law, which in the same case had granted to women the inheritances left them by strangers.

At length Justinian[§] favoured them with the succession independently of the number of their children.

The same causes which had debilitated the law against the succession of women, subverted that by degrees which had limited the succession of the relations on the woman's side. These laws were extremely conformable to the spirit of a good republic, where they ought to have such an influence, as to prevent this sex from rendering either the possession, or the expectation of wealth, an instrument of luxury. On the contrary, the luxury of a monarchy rendering marriage expensive and costly, it ought to be there encouraged, both by the riches which women may bestow, and by the hope of the inheritances it is in their power to procure. Thus when monarchy was established at Rome, the whole system of successions was changed. The prætors called the relations of the woman's fide in default of those of the male side; though by the ancient laws, the relations of the woman's side were never called. The Orphitian senatus consultum called

children to the succession of their mother; and the emperors Valentinian^{*}, Theodosius, and Arcadius, called the grandchildren by the daughter, to the succession of the grandfather. In short, the emperor Justinian[†] left not the least vestige of the ancient right of successions: he established three orders of heirs, the descendants, the ascendants, and the collaterals, without any distinction between the males and females; between the relations on the woman's side, and those on the male side; and abrogated all of this kind, which were still in force: he believed, that he followed nature even in deviating from what he called the embarrassments of the ancient jurisprudence.

Endnotes

[*] Dionys. Halicar. lib. ii. c. 3. Plutarch's comparison between Numa and Lycurgus.

[*] Ast si intestatò moritur cui suus hæres nec exabit, agnatus proximus familiam habeto. *Fragment of the law of the Twelve Tables in Ulpian, the last title.*

[†] See the Fragm. of Ulpian, sect. 8. tit. 26. Inst. tit. 3. in proœmio ad S. C. Tertullianum.

[‡] Paulus, lib. iv. sent. tit. 8. sect. 3.

[*] Inst. tit. lib. 3.

[†] Lib. iv. page 276.

[*] Dionysius Halicarnasseus proves, by a law of Numa, that the law which permitted a father to sell his son three times, was made by Romulus, and not by the Decemvirs, lib. 2.

[‡] See Plutarch's life of Solon.

[*] This testament, called *in procinctu*, was different from that which they stiled military, which was established only by the constitutions of the emperors. Leg. 1. ff. *de militari testamento*. This was one of the artifices by which they cajoled the soldiers.

[†] This testament was not in writing, and it was without formality, *sine libra & tabulis*, as Cicero says, lib. 1. *de Oratore*.

[‡] Institut. lib. 2. tit. 10. sect. 1. Aulus Gellius, lib. 15. cap. 27. They called this form of testament *per æs & libram*.

[||] Ulpian, tit. x. sect. 2.

[§] Theoph. inst. lib. ii. tit. 10.

[**] T. Livy. lib. 4. *nondum argentum signatum erat*. He speaks of the time of the fiege of Veii.

[*] Tit. xx. sect. 13.

[†] Instit. lib. ii. tit. 10. sect. 1.

[‡] Let Titius be my heir.

[‖] Vulgar, pupillary, and exemplary.

[*] Augustus, for particular reasons, first began to authorise the fiduciary bequest, which in the Roman law was called *fidei commissum*. Inst. lib. ii. tit. 23, *in proœmio*.

[†] Ad liberos matris intestatæ hæreditas, lib. 12. tab. non pertinebat, quia fæminæ suos hæredes non habent. *Ulpian, fragm. tit. 26. sect. 7.*

[‡] It was proposed by Quintus Voconius, tribune of the people. See Cicero's second oration against Verres. In the Epitome of T. Livy, lib 41. we should read Voconius, instead of Volumnius.

[*] Sanxit ne quis hæredem virginem neve mulierem faceret. *Cicero's second oration against Verres.*

[†] Legem tulit, ne quis hæredem mulierem institueret, lib. 41.

[‡] Second Oration against Verres.

[‖] Of the city of God, lib. 3.

[§] Epitome of Livy, lib. 40.

[**] Lib. xxvii. cap. 6.

[††] Instit. lib. iii. tit. 22.

[‡‡] Ibid.

[*] Nemo censuit, plus Fadiæ dandum, quam posset ad eam lege Voconia pervenire. *De finibus boni & mali*, lib. 6.

[†] Cum lege Voconia mulieribus prohiberetur, ne qua majorem centum millibus nummum hæreditatem posset adire, lib. 56.

[‡] Qui census esset. *Second Oration against Verres*.

[||] Census non erat. Ibid.

[*] Lib. iv.

[†] In oratione pro Cæcina.

[‡] These five first classes were so considerable, that authors sometimes mention no more than five.

[||] In Cæritum tabulas referri; ærarius fieri.

[*] Cicero, de finib, boni et mali, lib. 2.

[†] Ibid.

[*] Sextilius said he had sworn to observe it *Cic. de finibus boni & mali*, bib. 2.

[*] See what has been said in book xxiii. chap. 21.

[†] The same difference occurs in several regulations of the Papian law. See the Fragments of Ulpian, sect. 4, 5, and 6.

[‡] See Fragm. of Ulpian, tit. 15. sect. 16.

[||] Quod tibi filiulus, vel filia nascitur ex me, Jura Parentis habes; propter me scriberis hæres. *Juvenal. Sat. 9*.

[§] See law 9. C. Theod. de bonis proscriptorum, & Dio, lib. 5. See the Fragm. of Ulpian, tit. last, sect. 6. and tit. 29. sect. 3.

[**] Frag. of Ulpian, tit. 16. sect. 1. Sozomenus, lib. 1. cap. 9.

[*] Lib. xx. cap. 1.

[†] Lib. iv. tit. 8. sect. 3.

[‡] Tit. 26. sect. 6.

[||] That is, the emperor Pius, who changed his name to that of Adrian by adoption.

[§] Lib. ii. cod. de jure liberorum. Instit. tit. 3. sect. 4. de senatus consult.

[*] Lib. ix. cod. de suis & legitimis hæredibus.

[†] Lib. xiv. cod. de suis & legitimis hæredibus, & Nov. 118, & 127.

BOOK XXVIII. OF THE ORIGIN AND REVOLUTIONS OF THE CIVIL LAWS AMONG THE FRENCH.

In nova fert animus mutatas dicere formas

Corpora—

Ovid Metam.

CHAP. I.

Different Character of the Laws of the several People of Germany.

AFTER the Franks had quitted their own country, they made a compilement of the Salic laws, with the assistance of^{*} the sages of their own nation. The tribe of the Ripuarian Franks having joined itself under *Clovis*[†] to that of the Salians, preserved its own customs; and *Theodoric*[‡] king of Austrasia ordered them to be reduced into writing. He collected likewise[§] the customs of those Bavarians and Germans who were dependent on his kingdom. For Germany having been weakened by the migration of such a multitude of people, the Franks, after conquering all before them, made a retrograde march, and extended their dominion into the forests of their ancestors. Very likely the Thuringian code[§] was given by the same Theodoric, since the Thuringians were also his subjects. As the Frisians were subdued by Charles Martel and Pepin, their^{*} law cannot be prior to those princes. Charlemain, the first that reduced the Saxons, gave them the law still extant; and we need only read these two last codes, to be convinced they came from the hands of conquerors. As soon as the Visigoths, the Burgundians, and the Lombards, had founded their respective kingdoms, they reduced their laws into writing, not with an intent of obliging the vanquished nations to conform to their customs, but with a design of following them themselves.

There is an admirable simplicity in the Salic and Ripuarian laws, as well as in those of the Alemans, Bavarians, Thuringians, and Frisians. They breathe an original coarseness, and a spirit which no change or corruption of manners had weakened. They received but very few alterations, because all those people, except the Franks, remained in Germany. Even the Franks themselves laid there the foundation of a great part of their empire; so that they had none but German laws. The same cannot be said of the laws of the Visigoths, of the Lombards and the Burgundians; their character considerably altered from the great change which happened in the character of those people, after they had settled in their new habitations.

The kingdom of the Burgundians did not last long enough to admit of great changes in

the laws of the conquering nation. Gundebald and Sigismond, who collected their customs, were almost the last of their kings. The laws of the Lombards received additions rather than changes. The laws of Rotharis were followed by those of Grimoaldus, Luitprandus, Rachis and Astulphus; but did not assume a new form. It was not so with the laws of the Visigoths^{*}; their kings new-moulded them, and had them also new-moulded by the clergy.

The kings indeed of the first race struck out of[†] the Salic and Ripuarian laws, whatever was absolutely inconsistent with Christianity; but left the main part untouched. This cannot be said of the laws of the Visigoths.

The laws of the Burgundians, and especially those of the Visigoths, admitted of corporal punishments: these were not tolerated[‡] by the Salic and Ripuarian laws; they preserved their character much better.

The Burgundians and Visigoths, whose provinces were greatly exposed, endeavoured to conciliate the affections of the ancient inhabitants, and to give them the most impartial civil laws[¶]; but as the kings of the Franks had established their power, they had no such[§] considerations.

The Saxons, who lived under the dominion of the Franks, were of an intractable temper, and prone to revolt. Hence we find in their^{**} laws the severities of a conqueror, which are not to be met with in the other codes of the laws of the Barbarians.

We see the spirit of the German laws in the pecuniary punishments, and the spirit of a conqueror in those of an afflictive nature.

The crimes they commit in their own country are subject to corporal punishment; and the spirit of the German laws is followed only in the punishment of crimes committed beyond the extent of their own territory.

They are plainly told, that their crimes shall meet with no mercy, and they are refused even the asylum of churches.

The bishops had an immense authority at the court of the Visigoth kings; the most important affairs being debated in councils. All the maxims, principles, and views of the present inquisition, are owing to the code of the Visigoths; and the monks have only copied against the Jews, the laws formerly enacted by bishops.

In other respects the laws of Gundebald for the Burgundians seem pretty judicious; and those of Rotharis, and of the other Lombard princes, are still more so. But the laws of the Visigoths, those, for instance, of Recessuinthus, Chindasuinthus, and Egigas, are puerile, ridiculous, and foolish; they attain not their end; they are stuff with rhetoric, and void of sense; frivolous in the substance, and bombastic in the stile.

CHAP. II.

That the laws of the Barbarians were all personal.

IT is a distinguishing character of these laws of the Barbarians, that they were not confined to a certain district; the Frank was tried by the law of the Franks, the Aleman by that of the Alemans, the Burgundian by that of the Burgundians, and the Roman by the Roman law: nay, so far were the conquerors in those days from reducing their laws to an uniform system or body, that they did not even think of becoming legislators to the people they had conquered.

The original of this I find in the manners of the Germans. These people were parted afunder by marshes, lakes, and forests; and Cæsar^{*} observes, they were fond of such separations. Their dread of the Romans brought about their reunion; and yet each individual among these mixt people was still to be tried by the established customs of his own nation. Each tribe apart was free and independent; and when they came to be intermixt, the independency still continued; the country was common, the government peculiar; the territory the same, and the nations different. The spirit of personal laws prevailed therefore among those people before ever they set out from their own homes, and they carried it with them into the conquered provinces.

We find this custom established in the formula's of Marculfus[†], in the codes of the laws of the barbarians, but chiefly in the law of the Ripuarians[‡] and the decrees of the kings of the first race[¶], from whence the capitularies on that subject in the second[§] race were derived. The children^{††} followed the laws of their father, the wife^{‡‡} that of her husband, the widow^{¶¶} came back to her own original law, and the freedman^{§§} was under that of his patron. Besides, every man could make choice of what laws he pleased; but the constitution of^{*} Lotharius I. required this choice should be made public.

CHAP. III.

Capital Difference between the Salic Laws and those of the Visigoths and Burgundians.

WE have already observed, that the laws of the Burgundians and Visigoths were impartial; but it was otherwise with regard to the Salic law, for it established between the Franks and Romans the most mortifying distinctions. When a Frank, a Barbarian, or one living under the Salic law, happened to be killed, a composition of 200 sols was to

be paid to his relations[†]; only 100 upon the killing of a Roman proprietor[‡], and no more than 45 for a Roman tributary. The composition for the murder of one of the king's vassals, if a Frank[¶], was 600 sols; if a Roman, though the king's guest[§], only 300^{††}. The Salic law made therefore a cruel distinction between the Frank and Roman lord, and the Frank and Roman commoner.

Farther, if a number of people were got together to assault a Frank in his house^{‡‡}, and he happened to be killed, the Salic law ordained a composition of 600 sols; but if a Roman or a freedman^{*} was assaulted, only half that composition. By the same law[†], if a Roman put a Frank in irons, he was liable to a composition of 30 sols; but if a Frank had thus used a Roman, he paid only 15. A Frank, stript by a Roman, was intitled to the composition of 62½ sols, and a Roman stript by a Frank, received only 30. Such unequal treatment must needs have been very grievous to a Roman.

And yet a celebrated author[‡] forms a system of *the establishment of the Franks in Gaul*, on a supposition that they were the best friends of the Romans. The Franks then the best friends of the Romans, they who did, and they who suffered[¶] from, the Romans such an infinite deal of mischief! The Franks, the friends of the Romans, they who, after subduing them by their arms, oppressed them in cold blood by their laws! They were exactly the friends of the Romans, as the Tartars, who conquered China, were the friends of the Chinese.

If some Catholic bishops thought fit to make use of the Franks in destroying the Arian kings, does it follow, that they had a desire of living under those barbarous people? And can we from hence conclude, that the Franks had any particular regard to the Romans? I should draw quite different consequences; the less the Franks had to fear from the Romans, the less indulgence they shewed them.

The Abbé du Bos has consulted but indifferent authorities for his history, such as poets and orators: works of parade and ostentation are improper foundations for building systems.

CHAP. IV.

In what Manner the Roman Law came to be lost in the Country subject to the Franks, and preserved in that subject to the Goths and Burgundians.

WHAT has been above said, will throw some light upon other things, which have hitherto been involved in great obscurity.

The country at this day called France, was, under the first race, governed by the Roman law, or the Theodosian code, and by the different laws of the Barbarians^{*}, who settled in those parts.

In the country subject to the Franks, the Salic law was established for the Franks, and the[†] Theodosian code for the Romans. In that subject to the Visigoths, a compilement of the Theodosian code, made by order of Alaric[‡], regulated disputes among the Romans; and the national customs which Euric^{||} caused to be reduced into writing, determined those among the Visigoths. But how comes it, some will say, that the Salic laws gained almost a general authority in the country of the Franks, and the Roman law gradually declined: whilst in the jurisdiction of the Visigoths the Roman law spread itself, and obtained, at last, a general sway.

My answer is, that the Roman law came to be disused among the Franks, because of the great advantages accruing from being a Frank, a Barbarian[§], or a person living under the Salic law; every one, in that case, readily quitting the Roman, to live under the Salic law. The^{*} clergy alone retained it, as a change would be of no advantage to them. The difference of conditions and ranks consisted only in the largeness of the composition, as I shall shew in another place. Now[†] particular laws allowed the clergy as favourable compositions, as those of the Franks; for which reason they retained the Roman law. This law brought no hardships upon them; and in other respects it was properest for them, as it was the work of Christian emperors.

On the other hand, in the patrimony of the Visigoths, as the Visigoth law[‡] gave no civil advantages to the Visigoths over the Romans, the latter had no reason to discontinue living under their own law, in order to embrace another. They retained therefore their own laws, without adopting those of the Visigoths.

This is still farther confirmed, in proportion as we proceed in our enquiry. The law of Gundebald was extremely impartial, not favouring the Burgundians more than the Romans. It appears by the preamble to that law, that it was made for the Burgundians, and to regulate the disputes which might arise between them and the Romans; and in the latter case, the judges were equally divided of a side. This was necessary for particular reasons, drawn from the political regulations of those times^{*}. The Roman law was continued in Burgundy, in order to regulate the disputes of Romans among themselves. The latter had no inducement to quit their own law, as in the country of the Franks; and the rather, as the Salic law was not established in Burgundy, as appears by the famous letter which Agobard wrote to Lewis the Pious.

Agobard[†] desired that prince to establish the Salic law in Burgundy: consequently it had not been established there at that time. Thus the Roman law did, and still does, subsist in so many provinces, which formerly depended on this kingdom.

The Roman and Gothic laws continued likewise in the country of the establishment of the Goths; where the Salic law was never received. When Pepin and Charles Martel expelled the Saracens, the towns and provinces, which submitted to these princes[†], petitioned for a continuance of their own laws, and obtained it; this, in spite of the usages of those times when all laws were personal, soon made the Roman law to be considered as a real and territorial law in those countries.

This appears by the edict of Charles the Bald, given at Pistes in the year 864, which[‡] distinguishes the countries where causes were decided by the Roman law, from where it was otherwise.

The edict of Pistes shews two things; one, that there were countries where causes were decided by the Roman law, and others where they were not; and the other, that those countries where the Roman law obtained, were precisely^{*} the same where it is still followed at this very day, as appears by the said edict: thus the distinction of the provinces of France *under custom*, and those *under written law*, was already established at the time of the edict of Pistes.

I have observed, that in the beginning of the monarchy, all laws were personal; and thus when the edict of Pistes distinguishes the countries of the Roman law, from those which were otherwise; the meaning is, that in countries which were not of the Roman law, such a multitude of people had chosen to live under some or other of the laws of the Barbarians, that there were scarce any who would be subject to the Roman law; and that in the countries of the Roman law there were few who would chuse to live under the laws of the Barbarians.

I am not ignorant, that what is here advanced will be reckoned new; but if the things which I assert be true, surely they are very ancient. After all, what great matter is it, whether they come from me, from the Valesius's, or from the Bignons?

CHAP. V.

The same Subject continued.

THE law of Gundebald subsisted a long time among the Burgundians, in conjunction with the Roman law: it was still in use under Lewis the Pious, as Agobard's letter plainly evinces. In like manner, though the edict of Pistes calls the country occupied by the Visigoths the country of the Roman law, yet the law of the Visigoths was always in force there; as appears by the synod of Troyes held under Lewis the Stammerer, in the year 878, that is, fourteen years after the edict of Pistes.

In process of time the Gothic and Burgundian laws fell into disuse even in their own

country; which was owing to those general causes that every where suppressed the personal laws of the Barbarians.

CHAP. VI.

How the Roman Law kept its Ground in the Demesne of the Lombards.

THE facts all coincide with my principles. The law of the Lombards was impartial, and the Romans were under no temptation to quit their own for it. The motive which prevailed with the Romans under the Franks to make choice of the Salic law, did not take place in Italy; hence the Roman law maintained itself there, together with that of the Lombards.

It even fell out, that the latter gave way to the Roman institutes, and ceased to be the law of the ruling nation; and though it continued to be that of the principal nobility, yet the greatest part of the cities formed themselves into republics, and the nobility mouldered away of themselves, or were destroyed^{*}. The citizens of the new republics had no inclination to adopt a law, which established the custom of judiciary combats, and whose institutions retained much of the customs and usages of chivalry. As the clergy of those days, a clergy even then so powerful in Italy, lived almost all under the Roman law, the number of those who followed the institutions of the Lombards must have daily diminished.

Besides, the institutions of the Lombards had not that extent, that majesty of the Roman law, by which Italy was reminded of her universal dominion. The institutions of the Lombards and the Roman law could be then of no other use than to furnish out statutes for those cities that were erected into republics. Now which could better furnish them, the institutions of the Lombards that determined on some particular cases, or the Roman law which embraced them all?

CHAP. VII.

How the Roman Law came to be lost in Spain.

THINGS happened otherwise in Spain. The law of the Visigoths prevailed, and the Roman law was lost. Chindasuinthus^{*} and Recessuinthus[†] proscribed the Roman laws, and even forbid citing them in their courts of judicature. Recessuinthus was likewise author[‡] of the law which took off the prohibition of marriages between the Goths and Romans. It is evident that these two laws had the same spirit: this king wanted to

remove the principal causes of separation, which subsisted between the Goths and the Romans. Now it was thought, that nothing made a wider separation than the prohibition of intermarriages, and the liberty of living under different institutions.

But though the kings of the Visigoths had proscribed the Roman law, it still subsisted in the demesnes they possessed in South Gaul. These countries being distant from the center of the monarchy, lived in a state of great independence. We see from the history of Vamba, who ascended the throne in 672, that the natives of the country were become the prevailing party^{*}. Hence the Roman law had greater authority, and the Gothic less. The Spanish laws neither suited their manners, nor their actual situation; the people might likewise be obstinately attached to the Roman law, because they had annexed to it the idea of liberty. Besides, the laws of Chaindasuinthus, and of Recessuinthus, contained most severe regulations against the Jews; but these Jews had a vast deal of power in South Gaul. The author of the history of king Vamba calls these provinces the brothel of the Jews. When the Saracens invaded these provinces, it was by invitation; and who could have invited them but the Jews or the Romans? The Goths were the first that were oppressed, because they were the ruling nation. We see in Procopius[†], that during their calamities they withdrew out of Narbonne Gaul into Spain. Doubtless, under this misfortune, they took refuge in those provinces of Spain, which still held out; and the number of those, who in South Gaul lived under the law of the Visigoths, was thereby greatly diminished.

CHAP. VIII.

A false Capitulary.

DID not that wretched compiler Benedictus Levita attempt to transform this Visigoth establishment, which prohibited the use of the Roman law, into a capitulary^{*}, ascribed since to Charlemaign? He made of this particular institution a general one, as if he intended to exterminate the Roman law throughout the universe.

CHAP. IX.

In what Manner the Codes of Barbarian Laws, and the Capitularies came to be lost.

THE Salic, the Ripuarian, Burgundian, and Visigoth laws, came by degrees to be disused among the French in the following manner:

As fiefs were become hereditary, and arriere-fiefs extended, many usages were introduced, to which these laws were no longer applicable. Their spirit indeed was continued, which was to regulate most disputes by fines. But as the value of money was, doubtless, subject to change, the fines were also changed; and we see several charters[†], where the lords fixed the fines, that were payable in their petty courts. Thus the spirit of the law was followed, without adhering to the law itself.

Besides, as France was divided into a number of petty lordships, which acknowledged rather a feudal than a political dependence, it was very difficult for only one law to be authorised. And indeed, it would be impossible to see it observed. The custom no longer prevailed of sending extraordinary^{*} officers into the provinces, to inspect into the administration of justice, and political affairs; it appears, even by the charters, that when new fiefs were established, our kings divested themselves of the right of sending those officers. Thus, when almost every thing was become a fief, these officers could not be employed; there was no longer a common law, because no one could enforce the observance of it.

The Salic, Burgundian, and Visigoth laws, were therefore extremely neglected at the end of the second race; and at the beginning of the third, they were scarce ever mentioned.

Under the first and second race, the nation was often assembled; that is, the lords and bishops; the commons were not yet thought on. In these assemblies, attempts were made to regulate the clergy, a body which formed itself, if I may so speak, under the conquerors, and established its privileges. The laws made in these assemblies, are what we call the capitularies. Hence four things ensued; the feudal laws were established, and a great part of the church revenues was administered by those laws; the clergy affected a wider separation, and neglected[†] those decrees of reformation, where they themselves were not the only reformers; a collection[‡] was made of the canons of councils and of the decretals of popes; and these the clergy received, as coming from a purer source. Ever since the erection of the grand fiefs, our kings, as we have already observed, had no longer any deputies in the provinces to enforce the observance of their laws; and hence it is, that under the third race, we find no more mention made of capitularies.

CHAP. X.

The same Subject continued.

SEVERAL capitularies were added to the law of the Lombards, as well as to the Salic and Bavarian laws. The reason of this has been a matter of enquiry: but it must be sought

for in the thing itself. There were several sorts of capitularies. Some had relation to political government, others to œconomical, most of them to ecclesiastical polity, and some few to civil government. Those of the last species were added to the civil law, that is, to the personal laws of each nation; for which reason it is said in the capitularies, that there is nothing stipulated^{*} therein contrary to the Roman law. In effect, those capitularies regarding œconomical, ecclesiastical, or political government, had no relation to that law; and those concerning civil government had reference only to the laws of the barbarous people, which were explained, amended, enlarged, or abridged. But the adding of these capitularies to the personal laws, occasioned, I imagine, the neglect of the very body of the capitularies themselves: in times of ignorance, the abridgement of a work often causes the loss of the work itself.

CHAP. XI.

Other Causes of the Disuse of the Codes of Barbarian Laws, as well as of the Roman Law, and of the Capitularies.

WHEN the German nations subdued the Roman empire, they learnt the use of writing; and, in imitation of the Romans, they wrote down their own usages^{*}, and digested them into codes. The unhappy reigns which followed that of Charlemaign, the invasions of the Normans, and the civil wars, plunged the conquering nations again into the darkness out of which they had emerged: so that reading and writing were quite neglected. Hence it is, that in France and Germany, the written laws of the Barbarians, as well as the Roman law, and the capitularies, fell into oblivion. The use of writing was better preserved in Italy, where reigned the popes and the Greek emperors, and where there were flourishing cities, which enjoyed almost the only commerce in those days. To this neighbourhood of Italy it was owing, that the Roman law was better preserved in the provinces of Gaul, formerly subject to the Goths and Burgundians; and so much the more, as this law was there a territorial institution, and a kind of privilege. It is probable, that the disuse of the Visigoth laws in Spain proceeded from the want of writing; and by the loss of so many laws, customs were every where established.

Personal laws fell to the ground. Compositions, and what they call *Fredd*^{*}, were regulated more by custom than by the text of these laws. Thus, as in the establishment of the monarchy they had passed from German customs to written laws; some ages after, they came back from written laws to unwritten customs.

CHAP. XII.

Of local Customs. Revolution of the Laws of barbarous Nations, as well as of the Roman Law.

BY several monuments it appears, that there were local customs, so early as the first and second race. We find mention made of the *custom of the place*[†], of the *ancient usage*[‡], of the *custom*[¶], of the *laws*[§], and of the *customs*. It has been the opinion of some authors, that what went by the name of customs were the laws of the barbarous nations, and what had the appellation of law were the Roman institutes. This cannot possibly be. King Pepin^{**} ordained, that wherever there should happen to be no law, custom should be complied with; but that it should never be preferred to the law. Now, to pretend that the Roman law was preferred to the codes of the laws of the Barbarians, is subverting all monuments of antiquity, and especially those codes of Barbarian laws, which constantly affirm the contrary.

So far were the laws of the barbarous nations from being those customs, that it was these very laws, as personal institutions, which introduced them. The Salic law, for instance, was a personal law; but generally, or almost generally, in places inhabited by the Salian Franks, this Salic law, how personal soever, became, in respect to those Salian Franks, a territorial institution, and was personal only in regard to those Franks who lived elsewhere. Now, if several Burgundians, Alemans, or even Romans, should happen to have frequent disputes, in a place where the Salic law was territorial, they must have been determined by the laws of those people; and a great number of decisions agreeable to some of those laws must have introduced new customs into the country. This explains the constitution of Pepin. It was natural that those customs should affect even the Franks, who lived on the spot, in cases not decided by the Salic law; but it was not natural that they should prevail over the Salic law itself.

Thus there were in each place an established law, and received customs, which served as a supplement to that law when they did not contradict it.

They might even happen to supply a law that was no way territorial: and to continue the same example, if a Burgundian was judged by the law of his own nation, in a place where the Salic law was territorial, and the case happened not to be explicitly mentioned in the very text of this law, there is no manner of doubt but judgment would have been passed upon him according to the custom of the place.

In the reign of king Pepin, the customs then established had not the same force as the laws; but it was not long before the laws gave way to the customs. And as new regulations are generally remedies that imply a present evil, it may well be imagined that so early as Pepin's time, they began to prefer the customs to the established laws.

What has been said, sufficiently explains the manner in which the Roman law began so very early to become territorial, as may be seen in the edict of Pistes; and how the

Gothic law continued still in force, as appears by the synod of Troyes^{*} above-mentioned. The Roman was become the general personal law, and the Gothic the particular personal law; consequently the Roman law was territorial. But how came it, some will ask, that the personal laws of the Barbarians fell every where into disuse, while the Roman law was continued as a territorial institution in the Visigoth and Burgundian provinces? I answer, that even the Roman law had very near the same fate as the other personal institutions: otherwise we should still have the Theodosian code in those provinces where the Roman law was territorial, whereas we have the institutes of Justinian. Those provinces retained scarce any thing more than the name of the country under the Roman, or written law; than the natural affection which people have for their own institutions, especially when they consider them as privileges; and a few regulations of the Roman law which were not yet forgotten. This was however sufficient to produce such an effect, that when Justinian's complement appeared, it was received in the provinces of the Gothic and Burgundian demesne as a written law, whereas it was admitted only as written reason in the ancient demesne of the Franks.

CHAP. XIII.

Difference between the Salic Law, or that of the Salian Franks, and that of the Ripuarian Franks, and other barbarous Nations.

THE Salic law did not allow of the custom of negative proofs; that is, if a person brought a demand or charge against another, he was obliged by the Salic law to prove it, and it was not sufficient for the accused to deny it; which is agreeable to the laws of almost all nations.

The law of the Ripuarian Franks had quite a different spirit^{*}; it was contented with negative proofs, and the person against whom a demand or accusation was brought, might clear himself, in most cases, by swearing, in conjunction with a certain number of witnesses, that he had not committed the crime laid to his charge. The number[†] of witnesses who were obliged to swear, increased in proportion to the importance of the affair; sometimes it amounted to[‡] seventy-two. The laws of the Alemans, Bavarians, Thuringians, Frisians, Saxons, Lombards, and Burgundians, were formed on the same plan as those of the Ripuarians.

I observed, that the Salic law did not allow of negative proofs. There was^{||} one case, however, in which they were allowed; but even then they were not admitted alone, and without the concurrence of positive proofs. The plaintiff^{*} caused witnesses to be heard, in order to ground his action; the defendant produced also witnesses of his side; and the judge was to come at the truth, by comparing those testimonies[†]. This practice was vastly different from that of the Ripuarian, and other barbarous laws, where it was

customary for the party accused to clear himself, by swearing he was not guilty, and by making his relations also swear that he had told the truth. These laws could be suitable only to a people remarkable for their natural simplicity and candour; we shall see presently that the legislators were obliged to take proper methods to prevent their being abused.

CHAP. XIV.

Another Difference.

THE Salic law did not admit of the trial by combat; though it had been received by the laws of the Ripuarians[‡], and of almost all[¶] the barbarous nations. To me it seems, that the law of combat was a natural consequence, and a remedy of the law which established negative proofs. When an action was brought, and it appeared that the defendant was going to elude it by an oath, what other remedy was left to a military man[§], who saw himself upon the point of being confounded, than to demand satisfaction for the injury done to him; and even for the attempt of perjury? The Salic law, which did not allow the custom of negative proofs, neither admitted nor had any need of the trial by combat: but the laws of the Ripuarians^{*} and of the other barbarous nations[‡], who had adopted the practice of negative proofs, were obliged to establish the trial by combat.

Whoever will please to examine the two famous regulations[‡] of Gundebald king of Burgundy concerning this subject, will find they are derived from the very nature of the thing. It was necessary, according to the language of the Barbarian laws, to rescue the oath out of the hands of a person who was going to abuse it.

Among the Lombards, the laws of Rotharis admitted of cases, in which a man who had made his defence by oath, should not be suffered to undergo the fatigue of a duel. This custom spread itself farther:[¶] we shall presently see the mischiefs that arose from it, and how they were obliged to return to the ancient practice.

CHAP. XV.

A Reflection.

I DO not pretend to deny, but that in the changes made in the code of the Barbarian laws, in the regulations added to that code, and in the body of the capitularies, it is possible to find some passages where the trial by combat is not a consequence of the

negative proof. Particular circumstances might, in the course of many ages, give rise to particular laws. I speak only of the general spirit of the laws of the Germans, of their nature and origin; I speak of the ancient customs of those people, that were either hinted at or established by those laws; and this is the only matter in question.

CHAP. XVI.

Of the Ordeal, or Trial by boiling Water, established by the Salic Law.

THE Salic law^{*} allowed of the ordeal or trial by boiling water; and as this trial was excessively cruel, the law[†] found an expedient to soften its rigour. It permitted the person who had been summoned to make the trial with boiling water, to ransom his hand, with the consent of the adverse party. The accuser, for a particular sum determined by the law, might be satisfied with the oath of a few witnesses, declaring that the accused had not committed the crime. This was a particular case, in which the Salic law admitted of the negative proof.

This trial was a thing privately agreed upon, which the law permitted only, but did not ordain. The law gave a particular indemnity to the accuser, who would allow the accused to make his defence by a negative proof: the plaintiff was at liberty to be satisfied with the oath of the defendant, as he was at liberty to forgive him the injury.

The law[‡] contrived a medium, that before sentence passed, both parties, the one through fear of a terrible trial, the other for the sake of a small indemnity, should terminate their disputes, and put an end to their animosities. It is plain, that when once this negative proof was over, nothing more was requisite; and, therefore, that the practice of legal duels could not be a consequence of this particular regulation of the Salic law.

CHAP. XVII.

Particular Notions of our Ancestors.

IT is astonishing that our ancestors should rest the honour, fortune, and life of the subject, on things that depended less on reason than on hazard; and that they should incessantly make use of proofs incapable of convicting, and that had no manner of connexion either with innocence or guilt.

The Germans who had never been subdued^{*}, enjoyed an excessive independence.

Different families waged war[†] with each other, to obtain satisfaction for murders, robberies, or affronts. This custom was moderated, by subjecting these hostilities to rules; it was ordained that they should be no longer committed but by the direction and under the eye[‡] of the magistrate. This was far preferable to a general licence of annoying each other.

As the Turks in their civil wars look upon the first victory as a decision of heaven in favour of the victor; so the inhabitants of Germany in their private quarrels, considered the event of a combat as a decree of Providence, ever attentive to punish the criminal or the usurper.

Tacitus informs us, that when one German nation intended to declare war against another, they looked out for a prisoner who was to fight with one of their people, and by the event they judged of the success of the war. A nation who believed that public quarrels could be determined by a single combat, might very well think that it was proper also for deciding the disputes of individuals.

Gundebald^{*}, king of Burgundy, gave the greatest sanction to the custom of legal duels. The reason he assigns for this sanguinary law, is mentioned in his edict. "It is, says he, in order to prevent our subjects from attesting by oath, what they are not certain of, nay, what they know to be false." Thus, while the clergy[†] declared that an impious law which permitted combats; the Burgundian kings looked upon that as a sacrilegious law, which authorized the taking of an oath.

The trial by combat had some reason for it founded on experience. In a military nation, cowardice supposes other vices; it is an argument of a person's having deviated from the principles of his education, of his being insensible of honour, and of having refused to be directed by those maxims which govern other men; it shews, that he neither fears their contempt, nor sets any value upon their esteem. Men of any tolerable extraction seldom want either the dexterity requisite to co-operate with strength, or the strength necessary to concur with courage; for as they set a value upon honour, they are practised in matters, without which this honour cannot be obtained. Besides, in a military nation, where strength, courage, and prowess are esteemed, crimes really odious are those which arise from fraud, artifice, and cunning, that is, from cowardice.

With regard to the trial by fire, after the party accused had put his hand on a hot iron, or in boiling water, they wrapped the hand in a bag, and sealed it up: if after three days there appeared no mark, he was acquitted. Is it not plain, that amongst people inured to the handling of arms, the impression made on a rough or callous skin by the hot iron, or by boiling water, could not be so great, as to be seen three days afterwards? And if there appeared any mark, it shewed that the person who had undergone the trial was an esseminate fellow. Our peasants are not afraid to handle hot iron, with their callous hands; and, with regard to the women, the hands of those who worked hard, might be

very well able to resist hot iron. The ladies^{*} did not want champions to defend their cause; and in a nation where there was no luxury, there was no middle state.

By the law of the[†] Thuringians, a woman accused of adultery was condemned to the trial by boiling water, only when there was no champion to defend her; and the law of the[†] Ripuarians admits of this trial, only when a person had no witnesses to appear in his justification. Now a woman, that could not prevail upon any one relation to defend her cause, or a man that could not produce one single witness to attest his honesty, were, from those very circumstances, sufficiently convicted.

I conclude, therefore, that under the circumstances of time in which the trial by combat and the trial by hot iron and boiling water obtained, there was such an agreement between those laws and the manners of the people, that the laws were rather unjust in themselves than productive of injustice, that the effects were more innocent than the cause, that they were more contrary to equity than prejudicial to its rights, more unreasonable than tyrannical.

CHAP. XVIII.

In what Manner the Custom of judicial Combats gained Ground.

FROM Agobard's letter to Lewis the Debonnaire, it might be inferred, that the custom of judicial combats was not established among the Franks; for after having represented to that prince the abuses of the law of Gundebald, he desires^{*} that private disputes should be decided in Burgundy by the law of the Franks. But as it is well known from other quarters, that the trial by combat prevailed at that time in France, this has been the cause of some perplexity. However, the difficulty may be solved by what I have said; the law of the Salian Franks did not allow of this kind of trial, and that of the Ripuarian Franks[†] did.

But, notwithstanding the clamours of the clergy, the custom of judicial combats gained ground continually in France; and I shall presently make it appear, that the clergy themselves were in a great measure the occasion of it.

It is the Law of the Lombards that furnishes us with this proof. *There has been long since a detestable custom introduced*, says the preamble to the constitution of^{*} Otho II. This is, that if the title to an estate was said to be false, the person who claimed under that title made oath upon the gospels that it was genuine; and without any farther judgment he took possession of the estate: so that they who would perjure themselves, were sure of gaining their point. The emperor Otho I. having caused himself to be crowned at Rome[†] at the very time that a council was held there under pope John XII.

all the lords[†] of Italy represented to that prince the necessity of enacting a law to reform this horrid abuse. The pope and the emperor were of opinion, that the affair should be referred to the council, which was to be shortly held[‡] at Ravenna. There the lords made the same representations, and repeated their instances; but the affair was put off once more, under pretence of the absence of particular persons. When Otho II. and Conrad[§] king of Burgundy arrived in Italy, they had a conference at Verona^{††} with the Italian lords^{††}; and at their repeated remonstrances, the emperor, with their unanimous consent, made a law, that whenever there happened any disputes about inheritances, and one of the parties insisted upon the legality of his title, and the other maintained its being false, the affair should be decided by combat; that the same rule should be observed in contests relating to fiefs; and that the clergy should be subject to the same law, but should fight by their champions. Here we see, that the nobility insisted on the trial by combat, because of the inconveniency of the proof introduced by the clergy; that notwithstanding the clamours of the nobility, the notoriousness of the abuse which called out loudly for redress, and the authority of Otho who came into Italy to speak and act as master, still the clergy held out in two councils; in fine, that the joint concurrence of the nobility and princes having obliged the clergy to submit, the custom of judicial combats must have been considered as a privilege of the nobility, as a barrier against injustice, and as a security of property, and from that very moment this custom must have gained ground. This was effected at a time when the power of the emperors was great, and that of the popes inconsiderable; at a time when the Othos came to revive the dignity of the empire in Italy.

I shall make one reflection, which will corroborate what has been above said, namely, that the custom of negative proofs produced that of judicial combats. The abuse complained of to the Othos, was, that a person who was charged with having a false title to an estate, defended himself by a negative proof, declaring upon the gospels it was not false. What was it they did to reform this abuse? They revived the custom of judicial combats.

I was in a hurry to speak of the constitution of Otho II. in order to give a clear idea of the disputes between the clergy and the laity of those times. There had been indeed a constitution of^{*} Lotharius I. of an earlier date, who, upon the same complaints and disputes, being desirous of securing the just possession of property, had ordained, that the notary should make oath that the deed or title was not forged; and if the notary should happen to die, the witnesses should be sworn who had signed it. The evil however still continued, till they were obliged at length to have recourse to the remedy above-mentioned.

Before that time, I find, that in the general assemblies held by Charlemaign, the nation represented to him^{*}, that in the actual stare of things it was extremely difficult, but that either the accuser or the accused must forswear themselves; and that for this reason it was much better to revive the judicial combat; which was accordingly done.

The usage of judicial combats gained ground among the Burgundians, and that of an oath was limited. Theodoric king of Italy suppressed the single combat among the Ostrogoths; and the laws of Chindasuinthus and Recessuinthus seemed as if they would abolish the very idea of it. But these laws were so little respected in Narbonne Gaul, that they looked upon the legal duel as a privilege of the Goths[†].

The Lombards who conquered Italy, after the Ostrogoths had been destroyed by the Greeks, introduced the custom of judicial combat into that country; but their first laws gave a check to it[‡]. Charlemaign[¶], Lewis the Debonnaire, and the Othos, made diverse general constitutions, which we find inserted in the laws of the Lombards, and added to the Salic laws, whereby the practice of legal duels, at first in criminal, and afterwards in civil cases, obtained a greater extent. They knew not what to do. The negative proof by oath had its inconveniencies; that of legal duels had its inconveniencies also; hence they often changed, according as the one or the other affected them most.

On the one hand, the clergy were pleased to see, that in all secular affairs, people were obliged to have recourse to the altar^{*}; and on the other, a haughty nobility were fond of maintaining their rights by the sword.

I would not have it inferred, that it was the clergy who introduced the custom so much complained of by the nobility. This custom was derived from the spirit of the Barbarian laws, and from the establishment of negative proofs. But a practice that contributed to the impunity of such a number of criminals, having given some people reason to think it was proper to make use of the sanctity of the churches, in order to strike terror into the guilty, and to intimidate perjurers, the clergy maintained this usage, and the practice which attended it; for in other respects they were absolutely averse to negative proofs.

We find in Beaumanoir[†], that this kind of proof was never allowed in ecclesiastic courts; which contributed greatly, without doubt, to its suppression, and to weaken, in this respect, the regulation of the codes of the Barbarian laws.

This will convince us more strongly of the connection between the usage of negative proofs, and that of judicial combats, of which I have said so much. The lay tribunals admitted of both; and both were rejected by the ecclesiastic courts.

In chusing the trial by duel, the nation followed its military spirit; for while this was established as a divine decision, the trials by the cross, by cold or boiling waters, which had been also regarded in the same light, were abolished.

Charlemaign ordained, that if any differences should arise between his children, they should be terminated by the judgment of the cross. Lewis the Debonnaire^{*} confined this judgment to ecclesiastic affairs; his son Lotharius abolished it in all cases: nay, he suppressed[†] even the trial by cold water.

I do not pretend to say, that at a time when so few usages were universally received,

these trials were not revived in some churches; especially as they are mentioned in a charter[†] of Philip Augustus: but I affirm, they were very seldom practised. Beaumanoir[‡], who lived at the time of St. Lewis, and a little after, enumerating the different kinds of trial, mentions that of judicial combat, but not a word of the others.

CHAP. XIX.

A new Reason of the Disuse of the Salic and Roman Laws, as also of the Capitularies.

I HAVE already mentioned the reasons that occasioned the disuse of the Salic and Roman laws, as also of the Capitularies; here I shall add, that the principal cause was the great extent given to judiciary combats.

As the Salic laws did not admit of this custom, they became in some measure useless, and fell into oblivion. In like manner, the Roman laws, which also rejected this custom, were laid aside: their whole attention was then taken up in establishing the law of judicial combats, and in forming a proper digest of the several cases that might happen on those occasions. The regulations of the Capitularies became likewise of no manner of service. Thus it is, that such a number of laws lost all their authority, without our being able to tell the precise time in which it was lost; they fell into oblivion, and we cannot find any others that were substituted in their place.

Such a nation had no need of written laws; hence its written laws might very easily fall into disuse.

If there happened to be any disputes between two parties, they had only to order a single combat. For this no great knowledge or abilities were requisite.

All civil and criminal actions are reduced to facts. It is upon these facts they fought; and not only the substance of the affair, but likewise the incidents and imparlances were decided by combat, as Beaumanoir observes,^{*} who produces several instances.

I find that towards the commencement of the third race, the jurisprudence of those times related entirely to personal quarrels, and was governed by the point of honour. If the judge was not obeyed, he insisted upon satisfaction from the person that contemned his authority. At Bourges, if[†] the provost had summoned a person and he refused to come: his way of proceeding was, to tell him, "I sent for thee, and thou didst not think it worth thy while to come; I demand therefore satisfaction for this thy contempt." Upon which they fought. Lewis the Fat reformed this custom.[‡]

The custom of legal duels prevailed at[¶] Orleans, even in all demands of debt. Lewis the Young declared, that this custom should take place only when the demand exceeded five sous. This ordinance was a local law; for in St. Lewis's time^{*} it was sufficient that the value was more than twelve deniers. Beaumanoir[§] heard a gentleman of the law affirm, that formerly there had been a bad custom in France, of hiring a champion for a certain time, to fight their battles in all causes. This shews that the usage of judiciary combats must have had, at that time, a prodigious extent.

CHAP. XX.

Origin of the Point of Honour.

WE meet with inexplicable enigmas in the codes of the laws of the Barbarians. The law of^{¶¶} the Frisians allows only half a sou in composition to a person that had been beaten with a stick; and yet for ever so small a wound it allows more. By the Salic law, if a freeman gave three blows with a stick to another freeman, he paid three sous; if he drew blood, he was punished as if he had wounded him with steel, and he paid fifteen sous: thus the punishment was proportioned to the greatness of the wound. The law of the Lombards[‡] established different compositions for one, two, three, four blows; and so on. At present, a single blow is equivalent to a hundred thousand.

The constitution of Charlemaign inserted in the law of the[§] Lombards, ordains, that those who were allowed the trial by combat, should fight with bastons. Perhaps this was out of regard to the clergy; or probably, as the usage of legal duels gained ground, they wanted to render them less sanguinary. The capitulary of^{*} Lewis the Debonnaire, allows the liberty of chusing to fight either with the sword or baston. In process of time none but bondmen fought with the baston.[‡]

Here I see the first rise and formation of the particular articles of our point of honour. The accuser began with declaring, in the presence of the judge, that such a person had committed such an action; and the accused made answer, that he lied[‡]; upon which the judge gave orders for the duel. It became then an established rule, that whenever a person had the lie given him, it was incumbent on him to fight.

Upon a man's declaring he would[¶] fight, he could not afterwards depart from his word; if he did, he was condemned to a penalty. Hence this rule ensued, that whenever a person had engaged his word, honour sorbade him to recal it.

Gentlemen^{‡‡} fought one another on horseback, and armed at all points; villains^{*} fought on foot, and with bastons. Hence it followed, that the baston was looked upon as the instrument of insults and affronts:[‡] because to strike a man with it. was treating him

like a villain.

None but villains fought with their[†] faces uncovered; so that none but they could receive a blow on the face. Therefore a box on the ear became an injury that must be expiated with blood, because the person who received it, had been treated as a villain.

The several people of Germany were no less sensible than we of the point of honour; nay, they were more so. Thus the most distant relations took a very considerable share to themselves in every affront, and on this all their codes are founded. The law[‡] of the Lombards ordains, that, whosoever goes attended with servants to beat a man by surprise, in order to load him with shame, and to render him ridiculous, should pay half the composition which he would owe if he had killed him[§]; and if through the same motive he tied or bound him, he would pay three quarters of the same composition.

Let us then conclude that our forefathers were extremely sensible of affronts; but that affronts of a particular kind, such as being struck with a certain instrument on a certain part of the body, and in a certain manner, were as yet unknown to them. All this was included in the affront of being beaten, and in this case the proportion of the excess constituted the greatness of the outrage.

CHAP. XXI.

A new Reflection upon the Point of Honour among the Germans.

"IT was a great infamy," says Tacitus^{*}, "among the Germans for a person to leave his buckler behind him in battle; for which reason many after a misfortune of this kind have destroyed themselves." Thus the ancient Salic law[†] allows a composition of fifteen sous to any person that had been injuriously reproached with having left his buckler behind him.

When Charlemaign[‡] amended the Salic law, he allowed in this case no more than three sous in composition. As this prince cannot be suspected of having had a design to enervate the military discipline; it is manifest that such a change was owing to that of arms, and that from this change of arms a great number of usages derive their origin.

CHAP. XXII.

Of the Manners relative to judicial Combats.

OUR connexions with the fair sex are founded on the pleasure of enjoyment; on the

happiness of loving and being beloved; and likewise on the ambition of pleasing the ladies, because they are the best judges of some of those things which constitute personal merit. This general desire of pleasing produces gallantry, which is not love itself, but the delicate, the volatile, the perpetual dissembler of love.

According to the different circumstances of every country and age, love inclines more to one of those three things than to the other two. Now I maintain, that the prevailing spirit at the time of our judicial combats, must naturally have been that of gallantry.

I find in the law of the Lombards^{*}, that if one of the two champions was found to have any magic herbs about him, the judge ordered them to be taken from him, and obliged him to swear he had no more. This law could be founded only on the vulgar opinion; it was fear, the supposed contriver of such a number of inventions, that made them imagine this kind of prestiges. As in the single combats, the champions were armed at all points; and as with heavy arms, both of the offensive and defensive kind, those of a particular temper and force were of infinite advantage; the notion of some champions having enchanted arms, must certainly have turned the brains of a great many people.

Hence arose the marvellous system of chivalry. The minds of all sorts of people quickly imbibed these extravagant ideas. Then it was they had the romantic notions of knight-errants, necromancers, and of fairies, of winged or intelligent horses, of invisible or invulnerable men, of magicians who concerned themselves in the birth and education of great personages, of enchanted and disenchanted palaces, of a new world in the midst of the old one, the usual course of nature being left only to the lower class of mankind.

Knight-errants ever in armour, in a part of the world abounding with castles, forts, and robbers, placed all their glory in punishing injustice, and in protecting weakness. Hence our romances are full of gallantry founded on the idea of love joined to that of strength and protection.

Such was the original of gallantry, when they formed the notion of an extraordinary race of men, who at the sight of a virtuous and beautiful lady in distress, were inclined to expose themselves to all hazards for her sake, and to endeavour to please her in the common actions of life.

Our romances flattered this desire of pleasing, and communicated to a part of Europe that spirit of gallantry, which we may venture to affirm was very little known to the ancients.

The prodigious luxury of that immense city Rome encouraged sensible pleasures. The tranquility of the plains of Greece gave rise to tender^{*} and amorous sentiments. The idea of knight-errants, protectors of the virtue and beauty of the fair-sex, was productive of gallantry.

This spirit was continued by the custom of tournaments, which uniting the rights of valour and love, added still a considerable importance to gallantry.

CHAP. XXIII.

Of the Code of Laws on judicial Combats.

SOME perhaps will have a curiosity to see this abominable custom of judiciary combat reduced to principle, and to find a code of such extraordinary laws. Men, though reasonable in the main, reduce their very prejudices to rule. Nothing was more contrary to good sense, than those combats: and yet when once this point was laid down, a kind of prudential management was used in carrying it into execution.

In order to be thoroughly acquainted with the jurisprudence of those times, it is necessary to read with attention the regulations of St. Lewis, who made such great changes in the judiciary order. Défontaines was contemporary with that prince:

Beaumanoir wrote after^{*} him; and the rest lived since his time. We must therefore look for the ancient practice in the amendments that have been made of it.

CHAP. XXIV.

Rules established in the judicial Combat.

WHEN there happened[†] to be several accusers, they were obliged to agree among themselves that the action might be carried on by a single prosecutor; and if they could not agree, the person before whom the action was brought, appointed one of them to prosecute the quarrel.

When[‡] a gentleman challenged a villain, he was obliged to present himself on foot with buckler and baston; but if he came on horseback, and armed like a gentleman, they took his horse and his arms from him; and stripping him to his shirt, they compelled him to fight in that condition with the villain.

Before the combat the^{||} magistrates ordered three banns to be published. By the first the relations of the parties were commanded to retire; by the second the people were warned to be silent; and the third prohibited the giving any assistance to either of the parties, under severe penalties; nay, even on pain of death, if by this assistance either of the combatants should happen to be vanquished.

The officers belonging to the civil magistrat^{*}e⁻ guarded the list or inclosure where the

battle was fought; and in case either of the parties declared himself desirous of peace, they took particular notice of the actual state in which things stood at that very moment, to the end that they might be restored to the same situation, in case they did not come to an accommodation[†].

When the pledges were received either for a crime or for false judgment, the parties could not make up the matter without the consent of the lord: and when one of the parties was overcome, there could be no accommodation without the permission of the count[†], which had some analogy to our letters of grace.

But if it happened to be a capital crime, and the lord, corrupted by presents, consented to an accommodation; he was obliged to pay a fine of sixty livres, and the right[‡] he had of punishing the malefactor devolved to the count.

There were a great many people incapable either of offering, or of accepting battle. But liberty was given them in trial of the cause to chuse a champion; and that he might have a stronger interest in defending the party, in whose behalf he appeared, his hand was cut off if he lost the battle[§].

When capital laws were made in the last century against duels, perhaps it would have been sufficient to have deprived a warrior of his military capacity, by the loss of his hand; nothing in general being a greater mortification to mankind, than to survive the loss of their character.

When[§] in capital cases the duel was fought by champions, the parties were placed where they could not behold the battle; each was bound with the cord that was to be used at his execution, in case his champion was overcome.

The person overcome in battle, did not always lose the point contested; if, for instance,[‡] they fought on an imparlance, he lost only the imparlance.

CHAP. XXV.

Of the Bounds prescribed to the Custom of judicial Combats.

WHEN pledges of battle had been received upon a civil affair of small importance, the lord obliged the parties to withdraw them.

If a fact was notorious;^{*} for instance, if a man had been assassinated in the open market-place, then there was neither a trial by witnesses, nor by combat; the judge gave his decision from the notoriety of the fact.

When the court of a lord had often determined after the same manner, and the usage was thus known,[†] the lord refused to grant the parties the privilege of duelling, to the end that the usages might not be altered by the different success of the combats.

They were not allowed to insist upon duelling but for[†] themselves, for some one belonging to their family, or for their liege lord.

When the accused had been acquitted,[§] another relation could not insist on fighting him; otherwise disputes would never be terminated.

If a person appeared again in public, whose relations, upon a supposition of his being murdered, wanted to revenge his death, there was then no room for a combat: the same may be said[¶] if by a notorious absence the fact was proved to be impossible.

If a man^{*} who had been mortally wounded, had disculpated before his death the person accused, and named another, they did not proceed to a duel; but if he had mentioned nobody, his declaration was only looked upon as a forgiveness on his death-bed; the prosecution was continued, and even among gentlemen they could make war against each other.

When there was a war, and one of their relations had given or received pledges of battle, the right of war ceased; for then it was thought that the parties wanted to pursue the ordinary course of justice; therefore he that continued the war would have been sentenced to repair all damages.

Thus the practice of judiciary combat had this advantage, that it was apt to change a general into a particular quarrel, to restore the courts of judicature to their authority, and to reduce to a civil state those who were no longer governed but by the law of nations.

As there are an infinite number of wise things that are managed in a very foolish manner; so there are many foolish things that are very wisely conducted.

When a man[†] who was appealed of a crime, visibly shewed, that it had been committed by the appellatant himself, there could be then no pledges of battle; for there is no criminal but would prefer a duel of uncertain event to a certain punishment.

There were no duels[†] in affairs decided by arbiters, nor by ecclesiastic courts: nor in cases relating to women's dowries.

A "woman," says Beaumanoir, "cannot fight." If a woman appealed a person without naming her champion, the pledges of battle were not accepted. It was also requisite that a woman should be authorized[§] by her baron, that is, by her husband, to appeal, but she might be appealed without this authority.

If either the appellant, or the[¶] appellee were under fifteen years of age, there could be no combat. They might order it, indeed, in disputes relating to orphans, when their guardians or trustees were willing to run the risk of this procedure.

The cases in which a bondman was allowed to fight, are, I think, as follows. He was allowed to fight another bondman; to fight a freedman, or even a gentleman, in case they were appellants; but if he was the appellant^{*} himself, the others might refuse to fight; and even the bondman's lord had a right to take him out of the court. The bondman might by his lord's charter[†] or by usage, fight with any freeman; and the church[‡] pretended this right for her bondmen, as a mark of respect^{§§} due to her by the laity.

CHAP. XXVI.

Of the judiciary Combat between one of the Parties, and one of the Witnesses.

BEAUMANOIR informs us^{¶¶} that a person who saw a witness going to swear against him, might elude the second, by telling the judges, that his adversaries produced a false and slandering witness; and if the witness was willing to maintain the quarrel, he gave pledges of battle. They troubled themselves no farther about the inquest; for if the witness was overcome, it was decided, that the party had produced a false witness, and he lost his cause.

It was necessary the second witness should be prevented from swearing; for if he had made his attestation, the affair would have been decided by the deposition of two witnesses. But by staying the second, the deposition of the first witness was of no manner of use.

The second witness being thus rejected, the party was not allowed to produce any others, but he lost his cause; in case, however, there had been no pledges of battle, he might produce other witnesses.

Beaumanoir observes,[†] that the witness might say to the party he appeared for, before he made his deposition: "I do not care to fight for your quarrel, nor to enter into any debate; but if you are willing to stand by me, I am ready to tell the truth." The party was then obliged to fight for the witness, and if he happened to be overcome, he did not lose his cause,[‡] but the witness was rejected.

This, I believe, was a limitation of the antient custom; and what makes me think so, is, that we find this usage of appealing the witnesses. established in the laws of the[§]

Bavarians and[¶] Burgundians without any restrictions.

I have already made mention of the constitution of Gundebald, against which Agobard^{*} and St. Avitus^{††} made such loud complaints. "When the accused," says this prince, "produces witnesses to swear that he has not committed the crime, the accuser may challenge one of the witnesses to a combat; for it is very just, that the person who has offered to swear, and has declared that he was certain of the truth, should make no difficulty to maintain it." Thus the witnesses were deprived by this king of every kind of subterfuge to avoid the judiciary combat.

CHAP. XXVII.

Of the judicial Combat between one of the Parties, and one of the Lord's Peers. Appeal of false Judgment.

AS the nature of judicial combats was to terminate the affair for ever, and was incompatible with^{*} a new judgment, and new prosecutions; an appeal, such as is established by the Roman and Canon laws, that is, to a superior court, in order to re-judge the proceedings of an inferior, was a thing unknown in France.

This is a form of proceeding to which a warlike nation, entirely governed by the point of honour, was quite a stranger; and agreeably to this very spirit, the same methods[†] were used against the judges, as was allowed against the parties.

An appeal among the people of this nation was a challenge to fight with arms, a challenge decided by blood, and not by an invitation to a paper quarrel, the knowledge of which was deferred to succeeding ages.[‡]

Thus St. Lewis in his institutions, says, that an appeal includes both felony and iniquity. Thus Beaumanoir tells us, that if a vassal[§] wanted to make his complaint of an outrage committed against him by his lord, he was first obliged to denounce that he quitted his fief; after which he appealed to his lord paramount, and offered pledges of battle. In like manner the lord renounced the homage of his vassal, if he appealed him before the count.

A vassal to appeal his lord of false judgment, was telling him, that his sentence was unjust and malicious: now, to utter such words against his lord, was in some measure committing the crime of felony.

Hence, instead of bringing an appeal of false judgment against the lord, who appointed and directed the court, they appealed the peers of whom the court itself was formed: by

which means they avoided the crime of felony; for they insulted only their peers, with whom they could always account for the affront.

It was a very[¶] dangerous thing to appeal the peers of false judgment. If the party waited till judgment was pronounced, he was obliged to fight them all,^{*} when they offered to make good their judgment. If the appeal was made before all the judges had given their opinion, he was obliged to fight all who had agreed in their judgment. To avoid this danger, it was usual to petition the lord[†] to direct that each peer should give his opinion out loud; and when the first had pronounced, and the second was going to do the same, the party told him that he was a liar, a knave, and a slanderer, and then he had to fight only with that peer.

Défontaines[‡] would have it, that before an appeal was made of false judgment, it was customary to let three judges pronounce; and he does not say, that it was necessary to fight them all three, much less that there was any obligation to fight all those who had declared themselves of the same opinion. These differences arise from this, that there are few usages exactly in all parts the same; Beaumanoir gives an account of what passed in the county of Clermont; and Défontaines of what was practised in Vermandois.

When^{*} one of the peers had declared that he would maintain the judgment, the judge ordered pledges of battle to be given, and likewise took security of the appellant, that he would maintain his appeal. But the peer who was appealed gave no security, because he was the lord's vassal, and was obliged to defend the appeal, or to pay the lord a fine of sixty livres.

If the[†] appellant did not prove that the judgment was false, he paid the lord a fine of sixty livres, the same fine[‡] to the peer whom he had appealed, and as much to every one of those who had openly consented to the judgment.

When a person violently suspected of a capital crime, had been taken and condemned, he could make no appeal[¶] of false judgment: for he would always appeal either to prolong his life, or to get an absolute discharge.

If a person[§] said that the judgment was false and bad, and did not offer to make his words good, that is to fight, he was condemned to a fine of six sous, if a gentleman, and to five sous, if a bondman, for the injurious expressions he had uttered.

The judges or peers^{‡‡} who were overcome, forfeited neither life nor limbs; but the person who appealed them was punished with death, if it happened to be a capital crime.^{¶¶}

This manner of appealing the peers of false judgment, was to avoid appealing to the lord himself. If the lord^{§§} had no peers, or had not a sufficient number, he might, at his

own expence, hire[†] peers of his lord paramount; but these peers were not obliged to pronounce judgment if they did not like it; they might declare, that they were come only to give their opinion: in that particular case[‡] the lord himself pronounced sentence as judge; and if an appeal of false judgment was made against him, it was his business to stand the appeal.

If the lord happened^{*} to be so very poor as not to be able to hire peers of his paramount, or if he neglected to ask for them, or the paramount refused to give them, then the lord could not judge by himself, and as nobody was obliged to plead before a tribunal where judgment could not be given, the affair was brought before the lord paramount.

This, I believe, was one of the principal causes of the separation between the jurisdiction and the fief, from whence arose that maxim of the French lawyers, "The fief is one thing, and the jurisdiction another." For as there was a vast number of peers who had no subordinate vassals under them, they were incapable of holding their court; all affairs were then brought before their lord paramount, and they lost the privilege of pronouncing judgment, because they had neither power nor will to claim it.

All the peers[†] who had agreed to the judgment, were obliged to be present when it was pronounced, that they might follow one another, and say YES to the person who, wanting to make an appeal of false judgment, asked them whether they followed; for Défontaines says,[†] "that it is an affair of courtesy and loyalty, and there is no such thing as evasion or delay." From hence, I imagine, arose the custom still followed in England, of obliging the jury to be all unanimous in their verdict in cases relating to life and death.

Judgment was therefore given according to the opinion of the majority: and if there was an equal division, sentence was pronounced, in criminal cases, in favour of the accused; in cases of debt, in favour of the debtor; and in cases of inheritance, in favour of the defendant.

Défontaines observes[‡], that a peer could not excuse himself by saying that he would not sit in court if there were only four^S, or if the whole number, or at least the wisest part, were not present. This is just as if he were to say in the heat of an engagement, that he would not assist his lord, because he had not all his vassals with him. But it was the lord's business to cause his court to be respected, and to chuse the bravest and most knowing of his tenants. This I mention in order to shew the duty of vassals, which was to fight and to give judgment; and such indeed was this duty, that to give judgment was all the same as to fight.

It was lawful for a lord who went to law with his vassal in his own court, and was cast, to appeal one of his tenants of false judgment. But as the latter owed a respect to his

lord for the fealty he had vowed, and the lord on the other hand owed benevolence to his vassal for the fealty accepted; it was customary to make a distinction between the lord's affirming in general, that the judgment^{*} was false and unjust, and imputing personal[†] prevarications to his tenant. In the former case, he affronted his own court, and in some measure himself, so that there was no room for pledges of battle. But there was room in the latter, because he attacked his vassal's honour; and the person overcome was deprived of life and property, in order to maintain the public tranquility.

This distinction, which was necessary in that particular case, had afterwards a greater extent. Beaumanoir says, that when the appellant of false judgment attacked one of the peers by personal imputation, battle ensued; but if he attacked only the judgment, the peer appealed was at liberty[‡] to determine the dispute either by battle, or by law. But as the prevailing spirit in Beaumanoir's time was to restrain the usage of judicial combats, and as this liberty which had been granted to the peer appealed, of defending the judgment by combat or not, is equally contrary to the ideas of honour established in those days, and to the obligation the vassal lay under of defending his lord's jurisdiction; I am apt to think that this distinction of Beaumanoir's was owing to a new regulation among the French.

I would not have it thought, that all appeals of false judgment were decided by battle; it fared with this appeal as with all others. The reader may recollect the exceptions mentioned in the 25th chapter. Here it was the business of the superior court to examine whether it was proper to withdraw the pledges of battle or not.

There could be no appeal of false judgment against the king's court; because as there was no one equal to the king, no one could appeal him; and as the king had no superior, none could appeal from his court.

This fundamental regulation, which was necessary as a political law, diminished also as a civil law the abuses of the judicial proceedings of those times. When a lord was afraid^{*} that his court would be appealed of false judgment, or perceived that they were determined to appeal; if justice required there should be no appeal, he might petition for peers from the king's court, who could not be appealed of false judgment. Thus king Philip, says Défontaines[‡], sent his whole council to judge an affair in the court of the Abbot of Corbey.

If the lord could not have judges from the king, he might remove his court into the king's, if he held immediately of him: but if there were intermediate lords, he had recourse to his paramount, removing from one lord to another, till he came to the sovereign.

Thus, notwithstanding they had not in those days neither the practice or even the idea of our modern appeals, yet they had recourse to the king, who was the source from

whence all those rivers flowed, and the sea into which they returned.

CHAP. XXVIII.

Of the Appeal of Default of Justice.

THE appeal of default of justice was when the court of a particular lord deferred, evaded, or refused to do justice to the parties.

During the time of our princes of the second race, though the count had several offices under him, their person was subordinate, but not their jurisdiction. These officers in their court-days, assizes, or *placita*, gave judgment in the last resort as the count himself; all the difference consisted in the division of the jurisdiction. For instance, the count had^{*} the power of condemning to death, of judging of liberty, and of the restitution of goods, which the *centenarii* had not.

For the same reason there were higher causes[†] reserved to the king; namely, those which directly concerned the political order of the state. Such were the disputes between bishops, abbots, counts, and other grandees, which were determined by the king, together with the great vassals[‡].

What some authors have advanced; namely, that an appeal lay from the count to the king's commissary or *missus dominicus*, is not well grounded. The count and the *missus* had an equal jurisdiction[¶] independent of each other: The whole difference[§] was that the *missus* held his *placita* or assizes four months in the year, and the count the other eight.

If a person who had been condemned at an assize^{**}, demanded to have his cause tried over again, and was afterwards cast, he paid a fine of fifteen sous, or received fifteen blows from the judges who had decided the affair.

When the counts or the king's commissaries did not find themselves able to bring the great lords to reason, they made them give bail or security[†], that they would appear in the king's court: this was to try the cause, and not to rejudge it. I find in the capitulary of Metz[‡], a law by which the appeal of false judgment to the king's court is established, and all other kinds of appeal are proscribed and punished.

If they refused to submit to the judgment of the sheriffs[¶], and made no complaint, they were imprisoned till they had submitted: but if they complained, they were conducted under a proper guard before the king, and the affair was examined in his court.

There could be hardly any room then for an appeal of default of justice. For instead of

its being usual in those days to complain, that the counts and others who had a right of holding assizes, were not exact in discharging this duty^S; it was a general complaint that they were too exact. Hence we find such numbers of ordinances, by which the counts and all other officers of justice are forbid to hold their assizes above thrice a year. It was not so necessary to chastise their indolence, as to check their activity.

But, after an infinite number of petty lordships had been formed, and different degrees of vassalage established, the neglect of certain vassals in holding their courts gave rise to this kind of appeal^{*}; especially as very considerable profits accrued to the lord paramount from the several fines.

As the custom of judicial combats gained every day more ground, there were places, cases, and times, in which it was difficult to assemble the peers, and consequently in which justice was delayed. The appeal of default of justice was therefore introduced, an appeal that has been often a remarkable æra in our history; because most of the wars of those days were imputed to a violation of the political law; as the cause, or at least the pretence of our modern wars, is the infringement of the law of nations.

Beaumanoir[†] says, that in case of default of justice, battle was not allowed: the reasons are these, 1. they could not challenge the lord, because of the respect due to his person; neither could they challenge the lord's peers, because the case was clear, and they had only to reckon the days of the summons, or of the other delays; there had been no judgment passed, consequently there could be no appeal of false judgement: in fine, the crime of the peers offended the lord as well as the party, and it was against rule that there should be battle between the lord and his peers.

But[‡] as the default was proved by witnesses before the superior court; the witnesses might be challenged, and then neither the lord nor his court were offended.

In case the default was owing to the lord's tenants or peers by deferring justice or by evading judgment after past delays, then these peers were appealed of default of justice before the paramount; and if they were cast, they[¶] paid a fine to their lord. The latter could not give them any assistance; on the contrary, he seized their fief till they had each paid a fine of sixty livres.

2. When the default was owing to the lord, which was the case whenever there happened not to be a sufficient number of peers in his court to pass judgment, or when he had not assembled his tenants or appointed somebody in his room to assemble them, an appeal might be made of the default before the lord paramount; but then the party[‡] and not the lord was summoned, because of the respect due to the latter.

The lord demanded to be tried before the paramount, and if he was acquitted of the default, the cause was remanded to him, and he was likewise paid a fine of[¶] sixty livres. But if the default was proved. the penalty^S inflicted on him was to lose the trial of the

cause, which was to be then determined in the superior court. And indeed, the complaint of default was made with no other view.

3. If the lord was sued^{*} in his own court, which never happened but upon disputes relative to the fief; after letting all the delays pass, the lord himself[†] was summoned before the peers in the sovereign's name, whose permission was necessary on that occasion. The peers did not make the summons in their own name, because they could not summon their lord, but they could summon^{**} for their lord.

Sometimes^{††} the appeal of default of justice was followed by an appeal of false judgment, when the lord had caused judgment to be passed, notwithstanding the default.

The vassal[§] who had wrongfully appealed his lord of default of justice, was sentenced to pay a fine according to his lord's pleasure.

The inhabitants of Gaunt^{††} had appealed the earl of Flanders of default of justice before the king, for having delayed to give judgment in his own court. Upon examination it was found, that he had used fewer delays than even the custom of the country allowed. They were therefore remanded to him; upon which their effects to the value of sixty thousand livres were seized. They returned to the king's court in order to have the fine moderated; but it was decided that the earl might insist upon the fine, and even upon more if he pleased. Beaumanoir was present at those judgments.

4. In other disputes which the lord might have with his vassal, in respect to the body or honour of the latter, or to goods that did not belong to the fief, there was no room for an appeal of default of justice; because the cause was not tried in the lord's court, but in that of the paramount: vassals, says Défontaines^{*}, having no power to give judgment on the body of their lord.

I have been at some trouble to give a clear idea of those things, which are so obscure and confused in ancient authors, that to disentangle them from the chaos in which they were involved, may be reckoned a new discovery.

CHAP. XXIX.

Epoch of the Reign of St. Lewis.

ST. LEWIS abolished the judicial combats in all the courts of his demesne, as appears by the ordinance[†] he published on that account, and[‡] by the *institutions*.

But he did not suppress them in the courts of his^{‡‡} barons. except in the case of appeal

of false judgment.

A vassal could not appeal the court of his lord of false judgment, without demanding a judicial combat against the judges who had pronounced sentence. But St. Lewis^S introduced the practice of appealing of false judgment without fighting, a change that may be reckoned a kind of revolution.

He declared^{††}, that there should be no appeal of false judgment in the lordships of his demesne, because it was a crime of felony. If it was a kind of felony against the lord, by a much stronger reason it was felony against the king. But he consented they might demand an amendment^{††} of the judgments passed in his courts; not because they were false or iniquitous, but because they did some prejudice^{‡‡‡}. On the contrary, he ordained, that they should be obliged to make an appeal of false judgment against the courts of the barons^{§§}, in case of any complaint.

It was not allowed by the institutions, as we have already observed, to bring an appeal of false judgment against the courts in the king's demesnes. They were obliged to demand an amendment before the same court: and in case the bailiff refused the amendment demanded, the king gave leave to make an appeal^{*} to his court; or rather interpreting the institutions by themselves, to present him[†] a request or petition.

With regard to the courts of the lords, St. Lewis by permitting them to be appealed of false judgment, would have the cause brought[†] before the royal tribunal, or that of the lord paramount, not^{‡‡} to be decided by duel, but by witnesses pursuant to a certain form of proceeding, the rules of which he laid down in the institutions^S.

Thus, whether they could falsify the judgment, as in the court of the barons; or whether they could not falsify, as in the court of his demesne, he ordained, that they might appeal, without the hazard of a duel.

Défontaines^{**} gives us the two first examples he ever saw, in which they proceeded thus without a legal duel: one, in a cause tried at the court of St. Quintin, which belonged to the king's demesne; and the other, in the court of Ponthieu, where the count, who was present, opposed the ancient jurisprudence: but these two causes were decided by law.

Here, perhaps, it will be asked, why St. Lewis ordained for the courts of his barons a different form of proceeding from that which he had established in the courts of his demesne? The reason is this: when St. Lewis made the regulation for the courts of his demesnes, he was not checked or confined in his views: but he had measures to keep with the lords who enjoyed this ancient prerogative, that causes should not be removed from their courts, unless the party was willing to expose himself to the dangers of an appeal of false judgment. St. Lewis preserved the usage of this appeal; but he ordained, that it should be made without a judicial combat, that is, in order to render

the change more insensible, he suppressed the thing and continued the terms.

This regulation was not universally received in the courts of the lords. Beaumanoir^{*} says, that in his time there were two ways of trying causes; one according to the king's establishment, and the other pursuant to the ancient practice; that the lords were at liberty to follow which way they pleased; but when they had pitched upon one in any cause, they could not afterwards have recourse to the other. He adds[†], that the count of Clermont followed the new practice, whilst his vassals kept to the old one; but that it was in his power to re-establish the ancient practice whenever he pleased, otherwise he would have less authority than his vassals.

It is proper here to observe, that France was at that time[‡] divided into the country of the king's demesne, and that which was called the country of the barons, or the baronies; and, to make use of the terms of St. Lewis's institutions, into the country under obedience to the king, and the country out of his obedience. When the king made ordinances for the country of his demesne, he employed his own single authority. But when he published any ordinances that concerned also the country of his barons, these were^{*} made in concert with them, or sealed and subscribed by them: otherwise the barons received or refused them, according as they seemed conducive to the good of their baronies. The rear-vassals were upon the same terms with the great-vassals. Now the institutions were not made with the consent of the lords, though they regulated matters which to them were of great importance: but they were received only by those who believed they would redound to their advantage. Robert, son of St. Lewis, received them in his county of Clermont; yet his vassals did not think proper to conform to this practice.

CHAP. XXX.

Observations on Appeals.

I apprehend that appeals, which were challenges to a combat, must have been made immediately on the spot. "If the party leaves the court without appealing," says Beaumanoir[†], "he loses his appeal, and the judgment stands good." This continued still in force, even after all the restrictions of[‡] judicial combat.

CHAP. XXXI.

The same Subject continued.

THE villain could not bring an appeal of false judgment against the court of his lord. This we learn from Défontaines^{*}, and is confirmed moreover by the institutions[†]. Hence Défontaines[‡] says, "between the lord and his villain there is no other judge but God."

It was the custom of judicial combats that deprived the villains of the privilege of appealing their lord's court of false judgment. And so true is this, that those villains[¶], who by charter or custom had a right to sight, had also the privilege of appealing their lord's court of false judgment, even though the peers who tried them were[§] gentlemen: and Défontaines^{**} proposes expedients to gentlemen, in order to avoid the scandal of fighting with a villain, by whom they had been appealed of false judgment.

As the practice of judicial combats began to decline, and the usage of new appeals to be introduced, it was reckoned unfair that freemen should have a remedy against the injustice of the court of their lords, and the villains should not; hence the parliament received their appeals all the same as those of freemen.

CHAP. XXXII.

The same Subject continued.

WHEN an appeal of false judgment was brought against the lord's court, the lord appeared in person before his paramount, to defend the judgment of his court, In like manner,^{*} in the appeal of default of justice, the party summoned before the lord paramount, brought his lord along with him, to the end that if the default was not proved, he might recover his jurisdiction.

In process of time, as the practice observed in those two particular cases was become general, by the introduction of all sorts of appeals, it seemed very extraordinary that the lord should be obliged to spend his whole life in strange tribunals, and for other people's affairs. Philip of Valois[†] ordained, that none but the bailiffs should be summoned; and when the usage of appeals became still more frequent, the parties were obliged to defend the appeal: the fact[‡] of the judge became that of the party.

I took notice that in the[¶] appeal of default of justice, the lord lost only the privilege of having the cause tried in his own court. But if the lord himself was sued as a party,[§] which was become a very common practice,^{**} he paid a fine of sixty livres to the king, or to the paramount, before whom the appeal was brought. From thence arose the usage, after appeals had been generally received, of fining the lord upon the amendment of the sentence of his judge; an usage which lasted a long time, and was confirmed by the ordinance of Rousillon, but fell, at length, to the ground, through its own absurdity.

CHAP. XXXIII.

The same Subject continued.

IN the practice of judicial combats, the person who had appealed one of the judges of false judgment, might lose his[†] cause by the combat, but could not possibly gain it. And indeed the party who had a judgment in his favour, ought not to have been deprived of it by another man's act. The appellant, therefore, who had gained the battle, was obliged to fight likewise against the adverse party: not in order to know whether the judgment was good or bad (for this judgment was out of the case, being reversed by the combat) but to determine whether the demand was just or not; and it was on this new point they fought. From thence proceeds our manner of pronouncing decrees, "The court annuls the appeal; the court annuls the appeal, and the judgment against which the appeal was brought." In effect, when the person who had made the appeal of false judgment, happened to be overcome, the appeal was reversed; when he proved victorious, both the judgment and the appeal were reversed: then they were obliged to proceed to a new judgment.

This is so far true, that when the cause was tried by inquests, this manner of pronouncing did not take place: witness what M. de la Roche Flavin^{*} says, namely, that the chamber of inquests could not use this form at the beginning of its creation.

CHAP. XXXIV.

In what Manner the Proceedings at Law became secret.

DUELS had introduced a public form of proceeding, so that both the attack and the defence were equally known. "The witnesses," says Beaumanoir,[†] "ought to give their testimony in open court."

Boutillier's commentator says, he had learnt of ancient practitioners, and from some old manuscript law books, that criminal processes were anciently carried on in public, and in a form not very different from the public judgments of the Romans. This was owing to their not knowing how to write; a thing in those days very common. The usage of writing fixes the ideas, and preserves the secret; but when this usage is laid aside, nothing but the notoriety of the proceeding is capable of fixing those ideas.

And as uncertainty[†] might easily arise in respect to what had been tried by vassals, they could therefore refresh their memory every time they held a court, by what was

called proceedings on record.[‡] In that case it was not allowed to challenge the witnesses to combat; for then there would be no end of disputes.

In process of time a secret form of proceeding was introduced. Every thing before had been public; every thing now became secret; the interrogatories, the informations, the re-examinations, the confronting of witnesses, the opinion of the attorney general; and this is the present practice. The first form of proceeding was suitable to the government of that time, as the new form was proper to the government since established.

Boutillier's commentator fixes the epoch of this change to the ordinance in the year 1539. I am apt to believe that the change was made insensibly, and passed from one lordship to another, in proportion as the lords renounced the ancient form of judging, and that derived from the institutions of St. Lewis was improved. And indeed,

Beaumanoir says,^{*} that witnesses were publicly heard only in cases in which it was allowed to give pledges of battle: in others, they were heard in secret, and their depositions were reduced to writing. The proceedings became therefore secret, when they ceased to give pledges of battle.

CHAP. XXXV.

Of the Costs.

IN former times no one was condemned in the temporal courts of France to the payment of costs[†]. The party cast was sufficiently punished by pecuniary fines to the lord and his peers. From the manner of proceeding by judicial combat, it followed that the party condemned and deprived of life and fortune, was punished as much as he could be: and in the other cases of the judicial combat, there were fines sometimes fixed and sometimes dependent on the disposition of the lord, which were sufficient to make people dread the consequences of suits. The same may be said of causes that were not decided by combat. As the lord had the chief profits, so he was also at the chief expence, either to assemble his peers, or to enable them to proceed to judgment. Besides, as disputes were generally determined on the spot, and without that infinite multitude of writings which afterwards followed, there was no necessity of allowing costs to the parties.

The custom of appeals naturally introduced that of giving costs. Thus Défontaines^{*} says, that when they appealed by written law, that is when they followed the new laws of St. Lewis, they gave costs; but that in the usual custom, which did not permit them to appeal without falsifying the judgment, no costs were allowed. They obtained only a fine, and the possession for a year and a day of the thing contested, if the cause was remanded to the lord.

But when the number of appeals increased from the new facility of appealing[†]; when by the frequent usage of those appeals from one court to another, the parties were continually removed from the place of their residence; when the new method of proceeding multiplied and perpetuated the suits; when the art of eluding the very justest demands was refined; when the parties at law knew how to fly only in order to be followed; when actions proved destructive, and pleas easy; when the arguments were lost in whole volumes of writings; when the kingdom was filled with members of the law, who were strangers to justice; when knavery found encouragement from mean practitioners, though discountenanced by the law; then it was necessary to deter litigious people by the fear of costs. They were obliged to pay costs for the judgment, and for the means they had employed to elude it. Charles the Fair made a general ordinance on that subject[‡].

CHAP. XXXVI.

Of the public Prosecutor.

AS by the Salic, Ripuarian, and other barbarous laws, crimes were punished with pecuniary fines; they had not in those days, as we have at present, a public officer who has the care of criminal prosecutions. And indeed the issue of all causes being reduced to the reparation of damages, every prosecution was in some measure civil, and might be managed by any one. On the other hand, the Roman law had popular form for the prosecution of crimes, which were inconsistent with the office of a public prosecutor.

The custom of judicial combats was no less opposite to this idea; for who is it that would chuse to make himself every man's champion against all the world?

I find, in the collection of formulas, inserted by Muratori in the laws of the Lombards, that under the princes of the second race there was an advocate for the public^{*} prosecutor. But whoever pleases to read the entire collection of these formulas, will find that there was a total difference between such officers and those we now call the public prosecutor, our attorney-generals, our king's solicitors, or our solicitors for the nobility. The former were rather agents to the public for the management of political and domestic affairs, than for the civil. And indeed we did not find in those formulas that they were intrusted with criminal prosecutions, or with causes relating to minors, to churches, or to the condition of persons.

I said that the establishment of a public prosecutor was repugnant to the usage of judicial combats. I find notwithstanding, in one of those formulas, an advocate for the public prosecutor, who had the liberty to fight. Muratori has placed it just after the constitution^{*} of Henry I. for which it was made. In this constitution. it is said. "That if

any man kills his father, his brother, or any of his other relations, he shall lose their succession, which shall pass to the other relations, and his own shall go to the exchequer." Now it was in suing for the succession which had devolved to the exchequer, that the advocate for the public prosecutor, by whom its rights were defended, had the privilege of fighting: This case fell within the general rule.

We see in those formulas the advocate for the public prosecutor proceeding against[†] a person who had taken a robber, but had not brought him before the count; against another[†] who had raised an insurrection or tumult against the count; against[§] another who had saved a man's life whom the count had ordered to be put to death; against[‡] the advocate of some churches, whom the count had commanded to bring a robber before him, but had not obeyed; against^{**} another who had revealed the king's secret to strangers; against^{††} another who with open violence had attacked the emperor's commissary; against^{‡‡} another who had been guilty of contempt to the emperor's rescripts, and he was prosecuted either by the emperor's advocate, or by the emperor himself; against^{§§} another who refused to accept of the prince's coin; in fine, this advocate sued for things, which by the law were adjudged to the exchequer.^{‡‡‡}

But, in criminal causes, we never meet with the advocate for the public prosecutor; not even where duels are used;^{*} not even in the case of incendiaries;[†] not even when the judge is killed[‡] on his bench; not even in causes relating to the conditions of persons[§], to liberty and slavery.[‡]

These formulas are made, not only for the laws of the Lombards, but likewise for the capitularies added to them; so that we have no reason to doubt of their giving us the practice observed, with regard to this subject, under our princes of the second race.

It is obvious that these advocates for a public prosecutor must have ended with our second race of kings, in the same manner as the king's commissioners in the provinces; because there were no longer any counts in the provinces to hold the affizes, and of course there were no more of those officers, whose principal function was to support the authority of the counts.

As the usage of combats was become more frequent under the third race, it did not allow of any such thing as a public prosecutor. Hence Boutillier, in his *Somme Rurale*, speaking of the officers of justice, takes notice only of the bailiffs, the peers and serjeants. See the institutions^{**} and Beaumanoir^{††} concerning the manner in which prosecutions were managed in those days.

I find in the laws^{§§} of James II. king of Majorca, a creation of the king's^{‡‡‡} attorney-general, with the very same functions as are exercised at present by the officers of that name amongst us. It is manifest that this office was not instituted till we had changed the form of our judiciary proceedings.

CHAP. XXXVII.

In what Manner the Institutions of St. Lewis fell into Oblivion.

IT was the fate of the institutions, that their origin, progress, and decline, were comprised within a very short period.

I shall make a few reflections upon this subject. The code we have now under the name of St. Lewis's institutions, was never designed as a law for the whole kingdom, though such a design is mentioned in the preface. This compilation is a general code, which determines all points relating to civil affairs, to the disposal of property by will or otherwise, the dowries and advantages of women, and emoluments and privileges of fiefs, with the affairs relative to the police, &c. Now to give a general body of civil laws, at a time when each city, town or village had its customs, was attempting to subvert in one moment all the particular laws then in force in every part of the kingdom. To reduce all the particular customs to a general one, would be a very inconsiderate thing, even at present, when our princes find every where the most passive obedience. But if it be a rule that we ought not to change when the inconveniences are equal to the advantages, much less should we change when the advantages are small and the inconveniences immense. Now if we attentively consider the situation which the kingdom was in at that time, when every lord was puffed up with the notion of his sovereignty and power, we shall find that to attempt a general alteration of the received laws and customs, must be a thing that could never enter into the heads of those who were then in the administration.

What I have been saying, proves likewise that this code of institutions was not confirmed in parliament by the barons and magistrates of the kingdom, as is mentioned in a manuscript of the town-house of Amiens, quoted by Mons. Ducange^{*}. We find in other manuscripts that this code was given by St. Lewis in the year 1270, before he set out for Tunis. But this fact is not truer than the other; for St. Lewis set out upon that expedition in 1269, as Mons. Ducange observes: from whence he concludes, that this code might have been published in his absence. But this, I say, is impossible. How can St. Lewis be imagined to have pitched upon the time of his absence for transacting an affair which would have been the seed of troubles, and might have produced not only changes, but revolutions? An enterprise of that kind had need, more than any other, of being closely pursued, and could not be the work of a feeble regency, composed moreover of lords, whose interest it was that it should not succeed. These were Matthew abbot of St. Denis, Simon of Clermont count of Nelle, and in case of death Philip bishop of Evreux, and John count of Ponthieu. We have seen above[†] that the count of Ponthieu opposed the execution of a new judiciary order in his lordship.

Thirdly, I affirm it to be very probable, that the code now extant is quite a different thing from St. Lewis's institutions. It cites the institutions, therefore it is a comment upon the institutions, and not the institutions themselves. Besides, Beaumanoir, who frequently makes mention of St. Lewis's institutions, quotes only some particular laws of that prince, and not this compilement. Défontaines^{*}, who wrote in that prince's reign, makes mention of the two first times that his institutions on judicial proceedings were put in execution, as of a thing long since elapsed. The institutions of St. Lewis were prior therefore to the compilement I am now speaking of, which in rigor, and adopting the erroneous prefaces inserted by some ignorant persons in that work, could not have been published before the last year of St. Lewis, or even not till after his death.

CHAP. XXXVIII.

The same Subject continued.

WHAT is this compilement then which goes at present under the name of St. Lewis's institutions? What is this obscure, confused, and ambiguous code, where the French law is continually mixed with the Roman, where the legislator speaks and yet we see a civilian, where we find a complete digest of all cases and points of the civil law? To understand this thoroughly, we must transfer ourselves in imagination to those times.

St. Lewis seeing the abuses in the jurisprudence of his time, endeavoured to give the people a dislike to it: with this view he made several regulations for the court of his demesnes and for those of his barons. And such was his success, that Beaumanoir[†], who wrote a little after the death of that prince, informs us, that the manner of trying causes which had been established by St. Lewis, obtained in a great number of the courts of the barons.

Thus this prince attained his end, though his regulations for the courts of the lords were not designed as a general law for the kingdom, but as a model which every one might follow, and would even find his advantage in it. He removed the bad practice by shewing them a better. When it appeared that his courts, and those of some lords, had chosen a form of proceeding more natural, more reasonable, more conformable to morality, to religion, to the public tranquility, and to the security of person and property; this form was soon adopted, and the other rejected.

To allure when it is rash to constrain, to win by pleasing means when it is improper to exert authority, shews the man of abilities. Reason has a natural, and even a tyrannical sway; it meets with resistance, but this very resistance constitutes its triumph; for after a short struggle it commands an intire submission.

St. Lewis, in order to give a distaste of the French jurisprudence, caused the books of the Roman law to be translated; by which means they were made known to the lawyers of those times. Défontaines, who is the oldest^{*} law writer we have, made great use of those Roman laws. His work is in some measure a result of the ancient French jurisprudence, of the laws or institutions of St. Lewis, and of the Roman law. Beaumanoir made very little use of the latter; but he reconciled the ancient French laws to the regulations of St. Lewis.

I have a notion therefore that the law book, known by the name of the institutions, was compiled by some bailiffs, with the same design as that of the authors of those two works, and especially of Défontaines. The title of this work mentions, that it is written according to the usage of Paris, Orleans, and the court of Barony; and the preamble says that it treats of the usages of the whole kingdom, and of Anjou, and of the court of Barony. It is plain, that this work was made for Paris, Orleans, and Anjou, as the works of Beaumanoir and Défontaines were framed for the counties of Clermont and Vermandois; and as it appears from Beaumanoir, that divers laws of St. Lewis had been received in the courts of Barony, the compiler was in the right to say, that his work^{*} related also to those courts.

It is manifest, that the person who composed this work, compiled the customs of the country, together with the laws and institutions of St. Lewis. This is a very valuable work, because it contains the ancient customs of Anjou, the institutions of St. Lewis, as they were then in use; and, in fine, the whole practice of the ancient French law.

The difference between this work, and those of Défontaines and Beaumanoir, is, its speaking in imperative terms as a legislator; and this might be right, since it was a medley of written customs and laws.

There was an intrinsic defect in this complement: it formed an amphibious code, in which the French and Roman laws were mixed, and where things were joined that were no way relative, but often contradictory to each other.

I am not ignorant, that the French courts of vassals or peers, the judgments without power of appealing to another tribunal, the manner of pronouncing sentence by these words, *I condemn*^{*}, or, *I absolve*, had some conformity to the popular judgments of the Romans. But they made very little use of that ancient jurisprudence; they rather chose that which was afterwards introduced by the emperor, in order to regulate, limit, correct, and extend the French jurisprudence,

CHAP. XXXIX.

The same Subject continued.

THE judiciary forms introduced by St. Lewis fell into disuse. This prince had not so much in view the thing itself, that is, the best manner of trying causes, as the best manner of supplying the ancient practice of trial. The principal intent was to give a disrelish of the ancient jurisprudence, and the next to form a new one. But when the inconveniencies of the latter appeared, another soon succeeded.

The institutions of St. Lewis did not therefore so much change the French jurisprudence, as they afforded the means of changing it; they opened new tribunals, or rather ways to come at them. And when once the public had easy access to the superior courts, the judgments which before constituted only the usages of a particular lordship, formed an universal digest. By means of the institutions, they had obtained general decisions, which were entirely wanting in the kingdom: when the building was finished, they let the scaffold fall to the ground.

Thus the institutions produced effects which could hardly be expected from a masterpiece of legislation. To prepare great changes, sometimes whole ages are requisite; the events ripen, and the revolutions follow.

The parliament judged in the last resort of almost all the affairs of the kingdom.

Before^{*}, it took cognizance only of disputes between the dukes, counts, barons, bishops, abbots, or between the king and his vassals[†], rather in the relation they had to the political, than to the civil order. They were soon obliged to render it permanent, whereas it used to be held only a few times in a year: and, in fine, a great number were created, in order to be sufficient for the decision of all manner of causes.

No sooner was the parliament become a fixed body, than they began to compile its decrees. *John de Monluc*, under the reign of Philip the Fair, made a collection, which, at present, is known by the name of the *Olim*[‡] registers.

CHAP. XL.

In what Manner the Judiciary Forms were borrowed from the Decretals.

But how comes it, some will say, that when the institutions were laid aside, the judicial forms of the canon law should be preferred to those of the Roman? It was because they had constantly before their eyes the ecclesiastic courts, which followed the forms of the canon law, and they knew of no court that followed those of the Roman law. Besides, the limits of the spiritual and temporal jurisdiction were at that time very little

understood; there were^{*} people[†] who sued indifferently, and causes that were tried indifferently, in either court. It seems[‡] as if the temporal jurisdiction reserved no other cases exclusively to itself than the judgment of feudal matters[¶], and of such crimes committed by laymen as did not relate to religion. For[§] if on the account of conventions and contracts, they had occasion to sue in a temporal court, the parties might of their own accord, proceed before the spiritual tribunals; and as the latter had not a power to oblige the temporal court to execute the sentence, they commanded submission by means of excommunications. Under those circumstances, when they wanted to change the course of proceedings in the temporal court, they took that of the spiritual tribunals, because they knew it; but did not meddle with that of the Roman law, by reason, they were strangers to it: for in point of practice, people know only what is really practised.

CHAP. XLI.

Fiux and Reflux of the ecclesiastic and temporal Jurisdiction.

THE civil power being in the hands of an infinite number of lords, it was an easy matter for the ecclesiastic jurisdiction to gain daily a greater extent. But as the ecclesiastic courts weakened those of the lords, and contributed thereby to give strength to the royal jurisdiction, the latter gradually checked the jurisdiction of the clergy. The parliament, which in its form of proceedings had adopted whatever was good and useful in the spiritual courts, soon perceived nothing else but the abuses which had crept into those tribunals; and as the royal jurisdiction gained ground every day, it grew every day more capable of correcting those abuses. And indeed, they were intolerable:

without enumerating them, I shall refer^{*} the reader to Beaumanoir, to Boutillier, and to the ordinances of our kings. I shall mention only two, in which, the public interest was more directly concerned. These abuses we know by the decrees that reformed them; they had been introduced in the times of the darkest ignorance, and upon the breaking out of the first gleam of light, they vanished. From the silence of the clergy it may be presumed, that they forwarded this reformation: which, considering the nature of the human mind, deserves commendation. Every man that died without bequeathing a part of his estate to the church, which was called dying *without confession*, was deprived of the sacrament, and of christian burial. If he died intestate, his relations were obliged to prevail upon the bishop, that he would, jointly with them, name proper arbiters, to determine what sum the deceased ought to have given, in case he had made a will. People could not lie together the first night of their nuptials, or even the two following nights, without having previously purchased leave: these, indeed, were the best three nights to chuse; for as to the others, they were not worth much. All this was redressed by the parlement: we find in the^{*} glossary of the French Law, by Ragau, the decree which it published[†] against the bishop of Amiens.

I return to the beginning of my chapter. Whenever we observe in any age or government, the different bodies of the state endeavouring to increase their authority, and to take particular advantages of each other, we should be often mistaken were we to consider their encroachments as an evident mark of their corruption. Through a fatality inseparable from human nature, moderation in great men is very rare: and as it is always much easier to push on force in the direction in which it moves, than to stop its moment, so in the superior class of the people, it is less difficult, perhaps, to find men extremely virtuous, than extremely prudent.

The human mind feels such an exquisite pleasure in the exercise of power; even those who are lovers of virtue are so excessively fond of themselves, that there is no man so happy, as not to have still reason to mistrust his honest intentions; and, indeed, our actions depend on so many things, that it is infinitely more easy to do good, than to do it well.

CHAP. XLII.

The Revival of the Roman Law, and the Result thereof. Change in the Tribunals.

UPON the discovery of Justinian's digest towards the year 1137, the Roman law seemed to rise out of its ashes. Schools were then established in Italy, where it was publicly taught; they had already the Justinian code, and the *Novellæ*. I mentioned before, that this code had been so favourably received in that country, as to eclipse the law of the Lombards.

The Italian doctors brought the law of Justinian into France, where they had only^{*} the Theodosian code; because Justinian's laws were not made[†] till after the settlement of the Barbarians in Gaul. This law met with some opposition: but it stood its ground notwithstanding the excommunications of the popes, who supported[‡] their own canons. St. Lewis endeavoured to bring it into repute by the translations of Justinian's works, made according to his orders, which are still in manuscript in our libraries; and I have already observed, that they made great use of them in compiling the Institutions. Philip the Fair[§] ordered the laws of Justinian to be taught, only as written reason, in those provinces of France that were governed by customs; and they were adopted as a law in those provinces where the Roman law had been received.

I have already taken notice, that the manner of proceeding by judicial combat, required very little knowledge in the judges: disputes were decided according to the usage of each place, and to a few simple customs received by tradition. In Beaumanoir's time[§] there were two different ways of administering justice; in some places they tried by

peers,[†] in others by bailiffs: in following the former way, the peers gave judgment according to the practice of their court; in the latter, it was the *prodes homines*, or old men, who pointed out this same practice to the bailiff.[‡] This whole proceeding required neither learning, capacity, nor study. But when the dark code of the institutions made its appearance; when the Roman law was translated and taught in public schools; when a certain art of procedure and jurisprudence began to be formed; when practitioners and civilians were seen to rise; the peers and the *prodes homines* were no longer capable of judging: the peers began to withdraw from the lords tribunals; and the lords were very little inclined to assemble them; especially as the new form of trial, instead of being a solemn proceeding, agreeable to the nobility, and interesting to a warlike people, was become a course of pleading. which they neither understood, nor cared to learn. The custom of trying by peers began[¶] to be less used; that of trying by bailiffs to be more so; the bailiffs did not give[§] judgment themselves, they summoned up the evidence and pronounced the judgment of the *prodes homines*; but the latter being no longer capable of judging, the bailiffs themselves gave judgment.

This was effected so much the easier, as they had before their eyes the practice of the ecclesiastic courts; the canon and new civil law both concurred alike to abolish the peers.

Thus fell the usage hitherto constantly observed in the French monarchy, that judgment should not be pronounced by a single person, as may be seen in the Salic laws, the capitularies, and in the first^{*} law-writers under the third race. The contrary abuse, which obtains only in local jurisdictions, has been moderated, and in some measure redressed, by introducing in many places a judge's deputy, whom he consults, and who represents the ancient *prodes homines* by the obligation the judge is under of taking two graduates, in cases that deserve a corporal punishment; and, in fine, it is become of no manner of effect by the extreme facility of appeals.

CHAP. XLIII.

The same subject continued.

THUS there was no law to prohibit the lords from holding their courts themselves; none to abolish the functions of their peers; none to ordain the creation of bailiffs; none to give them the power of judging. All this was effected insensibly, and by the very necessity of the thing. The knowledge of the Roman law, the decrees of the courts, the new digest of the customs, required a study of which the nobility and illiterate people were incapable.

The only[†] ordinance we have upon this subject. is that which obliged the lords to chuse

their bailiffs from among the laity. It is a mistake to look upon this as a law of their creation; for it says no such thing. Besides, the intention of the legislator is determined by the reasons assigned in the ordinance: "to the end that the bailiffs may be punished[†] for their prevarications, it is necessary they be taken from the order of the laity." The immunities of the clergy in those days are very well known.

We must not imagine that the privileges which the nobility formerly enjoyed, and of which they are now divested, were taken from them as usurpations: no, many of those privileges were lost through neglect, and others were given up, because as various changes had been introduced in the course of so many ages, they were inconsistent with those changes.

CHAP. XLIV.

Of the Proof by Witnesses.

THE judges, who had no other rule to go by than the usages, inquired very often by witnesses into every cause that was brought before them.

The usage of judicial combats beginning to decline, they made their inquests in writing. But a verbal proof committed to writing, is never more than a verbal proof; so that this only increased the expences of law proceedings. Regulations were then made which rendered most of those inquests[‡] useless; public registers were established, which ascertained most facts, as nobility, age, legitimacy and marriage. Writing is a witness very hard to corrupt; the customs were therefore reduced to writing. All this is very reasonable; it is much easier to go and see in the baptismal register, whether Peter is the son of Paul, than to prove this fact by a tedious inquest. When there are a great number of usages in a country, it is much easier to write them all down in a code, than to oblige individuals to prove every usage. At length the famous ordinance was made, which prohibited the admitting of the proof by witnesses, for a debt exceeding an hundred livres, except there was the beginning of a proof in writing.

CHAP. XLV.

Of the Customs of France.

FRANCE, as we have already observed, was governed by written customs; and the particular usages of each lordship constituted the civil law. Every lordship had its civil law. according to Beaumanoir.^{*} and so particular a law. that this author who is looked

upon as a luminary, and a very great luminary, of those times, says, he does not believe that throughout the whole kingdom there were two lordships intirely governed by the same law.

This prodigious diversity had a two-fold origin. With regard to the first, the reader may recollect what has been already said concerning it in the ^I chapter of local customs: and as to the second we meet with it in the different events of legal duels; it being natural that a continual series of fortuitous cases must have been productive of new usages.

These customs were preserved in the memory of old men; but insensibly laws or written customs were formed.

1. At the commencement of ^{*} the third race, the kings gave not only particular charters, but likewise general ones, in the manner above explained; such are the institutions of Philip Augustus, and those made by St. Lewis. In like manner the great vassals, in concurrence with the lords who held under them, granted certain charters or establishments, according to particular circumstances at the assizes of their duchies or counties: such were the assize of Godfrey count of Brittany, on the division of the nobles; the customs of Normandy granted by duke Ralph; the customs of Champagne, given by king Theobald; the laws of Simon count of Montfort, and others. This produced some written laws, and even more general ones than those they had before.

2. At the beginning of the third race, almost all the common people were bondmen; but there were several reasons which afterwards determined the kings and lords to enfranchise them.

The lords by enfranchising their bondmen, gave them property; it was necessary therefore to give them civil laws, in order to regulate the disposal of that property. But by enfranchising their bondmen, they likewise deprived themselves of their property; there was a necessity therefore of regulating the rights which they reserved to themselves, as an equivalent for that property. Both these things were regulated by the charters of enfranchisement; those charters formed a part of our customs, and this part was reduced to writing.

3. Under the reign of St. Lewis and of the succeeding princes, some able practitioners, such as Défontaines, Beaumanoir, and others, committed the customs of their bailiwics to writing. Their design was rather to give the course of judicial proceedings, than the usages of their time in respect to the disposal of property. But the whole is there, and though these particular authors have no authority but what they derive from the truth and notoriety of the things they speak of, yet there is no manner of doubt but they contributed greatly to the restoration of our ancient French jurisprudence. Such was in those days our common law.

We are come now to the grand epocha. Charles VII. and his successors caused the

different local customs throughout the kingdom to be reduced to writing, and prescribed set forms to be observed to their digesting. Now as this digesting was made through all the provinces, and as people came from each lordship to declare in the general assembly of the province the written or unwritten usages of each place, endeavours were used to render the customs more general, as much as possible, without injuring the interests of individuals, which were carefully^{*} preserved. Thus our customs were characterized in a three-fold manner; they were committed to writing, they were made more general, and they received the stamp of the royal authority.

Many of these customs having been digested anew, several changes were made, either in suppressing whatever was incompatible with the actual practice of the law, or in adding several things drawn from this practice.

Though the common law is considered amongst us as in some measure opposite to the Roman, insomuch that these two laws divide the different territories; it is notwithstanding true, that several regulations of the Roman law entered into our customs, especially when they made the new digests, at a time not very distant from ours, when this law was the principal study of those who were designed for civil employments; at a time when it was not usual for people to boast of not knowing what it was their duty to know, and of knowing what they ought not to know; at a time when a quickness of understanding was made more subservient towards learning, than pretending to, a profession; and when a continual pursuit of amusements was not even the characteristic of women.

I should have been more diffuse at the end of this book; and entering into the several details, should have traced all the insensible changes, which from the opening of appeals, have formed the great Corpus of our French Jurisprudence. But this would have been ingrafting one large work upon another. I am like that antiquarian^{*} who set out from his own country, arrived in Egypt, cast an eye on the pyramids, and returned home.

Endnotes

[*] See the prologue to the Salic law. Mr. Leibnitz says, in his treatise of the origin of the Franks, that this law was made before the reign of Clovis: but it could not be before the Franks had quitted Germany, for at that time they did not understand the Latin tongue.

[†] See Gregory of Tours.

[‡] See the prologue to the law of the Bavarians, and that to the Salic law.

[] Ibid.

[§] Lex Angliorum Werinorum, hoc est Thuringorum.

[*] They did not know how to write.

[*] They were made by Euric, and amended by Leovigildus. See Isidorus's chronicle. Chaindasuinthus and Recessuinthus reformed them. Egigas ordered the code now extant to be made, and commissioned bishops for that purpose; nevertheless, the laws of Chaindasuinthus and Recessuinthus were preserved, as appears by the sixth council of Toledo.

[†] See the prologue to the law of the Bavarians.

[‡] We find a few only in Childebert's decree.

[] See the prologue to the code of the Burgundians, and the code itself, especially the 12th. tit. sect. 5. and tit. 38. See also Gregory of Tours, book ii. chap. 33. and the code of the Visigoths.

[§] See lower down, chap. 3.

[**] See ch. 2. sect. 8. and 9. and ch. 4. sect. 2 and 7.

[*] De bello Gallice, lib. 6.

[†] Lib. i. formul. 8.

[‡] Chap. 31.

[] That of Clotarius in the year 560, in the edition of the Capitularies of Balufius, vol. i. art. 4. ib. in fine.

[§] Capitul. added to the law of the Lombards, lib. i. tit. 25. cap. 71. lib. 2. tit. 41. cap. 7. and tit. 56. cap. 1. and 2.

[††] Ibid.

[‡‡] Ibid. lib. vi. tit. 7. cap. 1.

[] Ibid. cap. 2.

[§§] Ibid. lib. ii. tit. 35. c. 2.

[*] In the law of the Lombards, lib. ii. tit. 57.

[†] Salic law, tit. 44. sect. 1.

[‡] Qui res in pago ubi remanet proprias habet. Salic law, tit. 44. sect. 15.

[‖] Qui in trustee dominicâ est. Ibid. tit. 41. sect. 4.

[§] Si Romanus homo conviva regis fuerit. Ibid. sect. 6.

[††] The principal Romans followed the court, as may be seen by the lives of several bishops, who were there educated; there were hardly any but Romans that knew how to write.

[‡‡] Salic law, tit. 45.

[*] Lidus, whose condition was better than that of a bondman. Law of the Alemans, chap. 95.

[†] Tit. xxxv. sect. 3. and 4.

[‡] The Abbé du Bos.

[‖] Witness the expedition of Arbogastes in Gregory of Tours, Hist. lib. 2.

[*] The Franks, Visigoths, and Burgundians.

[†] It was finished in 438.

[‡] The 20th year of the reign of this prince, and published two years after by Anian, as appears from the preface to that code.

[‖] The year 504 of the Spanish æra, the Chronicle of Isidorus.

[§] Francum, aut Barbarum, aut hominum qui Salica lege vivit. *Salic law* tit. 44. sect. 1.

[*] According to the Roman law, under which the church lives, as is said in the law of the Ripuarians, tit. 58. sect. 1. See also the numberless authorities on this head pronounced by Du Cange, under the word *Lex Romana*.

[†] See the Capitularies added to the Salic law in Lindembrock, at the end of that law, and the different codes of the laws of the Barbarians, concerning the privileges of ecclesiastics in this respect. See also the letter of Charlemain to his son Pepin king of Italy, in the year 807, in the edition of Baluzius, tom. i. page 462. where it is said, that an ecclesiastic should receive a triple composition; and the Collection of the

Capitularies, lib. v. art. 302. tom. 1. Edition of Baluzius.

[‡] See that law.

[*] Of this I shall speak in another place, book xxx. chap. 6, 7, 8, and 9.

[†] Agob. opera.

[‡] See Gervais de Tilbury, in Duchesne's collection, tom. iii. page 366. Facta pactione cum Francis, quod illic Gothi patriis legibus, moribus paternis vivant. Et sic Narbonensis provincia Pippino subjicitur. And a chronicle of the year 759. produced by Catel. hist. of Languedoc. And the uncertain author of the life of Lewis the Debonnaire, upon the demand made by the people of Septimania, at the assembly in Carifiaco, in Duchesne's collection, tom. ii. page 316.

[‖] In illa terra in qua judicia secundum legem Romanum terminantur, secundum ipsam legem judicetur; & in illa terra in qua, &c. Art. 16. See also Art. 20.

[*] See Art. 12. and 16. of the edict of Pistes in Cavilono in Narbona, &c.

[*] See what Machiavel says of the ruin of the ancient nobility of Florence.

[*] He began to reign in the year 642.

[†] We will no longer be harrassed either by foreign or by the Roman laws. *Law of the Visigoths, lib. ii. tit. 1. sect. 9. and 10.*

[‡] Ut tam Gotho-Romanam, quem Romano-Gotham matrimonio liceat fociari. *Law of the Visigoths, lib. iii. tit. 1. cap. 1.*

[*] The revolt of these provinces was a general defection, as appears by the sentence in the sequel of the history. Paulus and his adherents were Romans: they were even favoured by the bishops. Vamba durst not put to death the rebels whom he had quelled. The author of the history calls Narbonne Gaul the nursery of treason.

[†] Gothi, qui cladi superfuerant, ex Gallia cum uxoribus liberisque egressi, in Hispaniam ad Teudim jam palam tyrannum se receperunt. *De Bello Gothorum lib. i. cap. 13.*

[*] Capitularies, lib. vi. cap. 269. of the year 1613, edition of Baluzius, page 1021.

[†] M. de la Thaumassiere has collected many of them. See, for instance, chap. 61, 66, and others.

[*] Missi Domini.

[†] Let not the bishop, says Charles the Bald, in the capitulary of 844. art. 8. under pretence of the authority of making canons, oppose this constitution, or neglect the observance of it. It seems he already foresaw the fall thereof.

[‡] In the collection of canons, a vast number of the decretals of popes were inserted; there were very few in the ancient collection. Dionysius Exiguus put a great many into his: but that of Isidorus Mercator was stuffed with genuine and spurious decretals. The old collection obtained in France till Charlemaign. This prince received from the hands of pope Adrian I. the collection of Dionysius Exiguus, and caused it to be accepted. The collection of Isidorus Mercator appeared in France about the reign of Charlemaign; people grew passionately fond of it: to this succeeded what we now call the course of canon law.

[*] See the edict of Pistes, art. 20.

[*] This is expressly set down in some preambles to these codes: we even find in the laws of the Saxons and Frisians different regulations, according to the different districts. To these usages were added some particular regulations, suitable to the exigency of circumstances; such were the severe laws against the Saxons.

[*] Of this I shall speak elsewhere.

[†] Pref. to Marculfus's Formulæ.

[‡] Law of the Lombards, book ii. tit. 58. sect. 3.

[||] Law of the Lombards, book ii. tit. 41. sect. 6.

[§] Life of St. Leger.

[**] Law of the Lombards, book ii. tit. 41. sect. 6.

[*] See chap. 5.

[*] This relates to what Tacitus says, that the Germans had general and particular customs.

[†] Law of the Ripuarians, tit. 6, 7, 8, and others.

[‡] Ibid. tit. 11, 12, and 17.

[||] It was when an accusation was brought against an Antrustio, that is, the king's

vassal, who was supposed to be possessed of a greater degree of liberty. See tit. 76. of the Pactus legis Salicæ.

[*] See the 76th tit. of the Pactus legis Salicæ.

[†] According to the practice now followed in England.

[‡] Tit. 32. tit. 57. sect. 2. tit. 59. sect. 4.

[||] See the note underneath.

[§] This spirit appears in the law of the Ripuarians, tit. 59. sect. 4. and tit. 67. sect. 5. and in the Capitulary of Lewis the Debonnaire, added to the law of the Ripuarians in the year 803, art. 22.

[*] See that law.

[†] This law of the Frisians, Lombards, Bavarians, Saxons, Thuringians, and Burgundians.

[‡] In the law of the Burgundians, tit. 8. sect. 1 and 2. on criminal affairs; and tit. 45. which extends also to civil affairs. See also the law of the Thuringians, tit. 1. sect. 31. tit. 7. sect. 6. and tit. 8. and the law of the Alemans, tit. 89. the law of the Bavarians, tit. 8. chap. 2. sect. 6. and chap. 2. sect 1. and tit. 9. chap. 4. sect. 4. the law of the Frisians, tit. 11. sect. 3. and tit. 14. sect. 4. the law of the Lombards, book 1. tit. 32. sect. 3. and tit. 35. sect. 1. and book 2. tit. 35. sect. 2.

[||] See chap. 18. towards the end.

[*] As also some other laws of the Barbarians.

[†] Tit. 56.

[‡] Ibid. tit. 56.

[*] This appears by what Tacitus says, *omnibus idem babitus*.

[†] Velleius Paterculus, lib. ii. cap. 18. says, that the Germans decided all their disputes by the sword.

[‡] See the codes of Barbarian laws, and in respect to less ancient times. Beaumanoir on the custom of Beauvoisis.

[*] Law of the Burgundians, chap. 45.

[†] See the Works of Agobard.

[*] See Beaumanoir on the custom of Beauvoisis, chap. 61. See also the law of the Angli, chap. 14. where the trial by boiling water is only a subsidiary proof.

[†] Tit. 14.

[‡] Chap. 31. sect. 5.

[*] Si placeret Domino nostro ut eos transferret ad legem Francorum.

[†] See this law, tit. 59. sect. 4. and tit. 67. sect. 5.

[*] Law of the Lombards, book ii. tit. 55. chap. 34.

[†] The year 962.

[‡] Ab Italiæ proceribus est proclamatum, ut imperator sanctus, mutatâ lege, facinus indignum destrueret. Law of the Lombards, book ii. tit. 55. chap. 34.

[||] It was held in the year 967, in the presence of pope John XIII. and of the Emperor Otho I.

[§] Otho the Second's uncle, son to Rodolphus, and king of Transjuran Burgundy.

[††] In the year 988.

[‡‡] Cum in hoc ab omnibus imperiales aures pulsarentur. Law of the Lombards, book ii. tit. 55. chap. 34.

[*] In the law of the Lombards, book ii. tit. 55. sect. 33. In the copy which Muratori made use of, it is attributed to the emperor Guido.

[*] In the law of the Lombards, book ii. tit. 55. sect. 23.

[†] In palatio quoque, Bera comes Barcinonensis, cum impeteretur a quoquam Sunila, & infidelitatis argueretur, cum eodem secundum legem propriam, utpote quia uterque Gothus erat, equestri prælio congressus est & victus. The anonymous author of the life of Lewis the Debonnaire.

[‡] See in the law of the Lombards, book i. tit. 4. and tit. 9. sect. 23. and book 2. tit. 35. sect. 4. and 5. and tit. 55. sect. 1, 2, and 3. The regulations of Rotharis; and in sect. 15. that of Luitprandus.

[||] Ibid. book ii. tit. 55. sect. 23.

[*] The judicial oaths were made at that time in the churches, and during the first race of our kings there was a chapel set apart in the royal palace for the affairs that were to be thus decided. See the Formulas of Marculfus, book i. chap. 38. The laws of the Ripuarians, tit. 59. sect. 4. tit. 65. sect. 5. The history of Gregory of Tours; and the Capitulary of the year 803. added to the Salic Law.

[†] Chap. 39. page 212.

[*] We find his constitutions inserted in the law of the Lombards, and at the end of the Salic laws.

[†] In a constitution inserted in the law of the Lombards, book ii. tit. 55. sect. 31.

[‡] In the year 1200.

[||] Custom of Beauvoisis, chap. 39.

[*] Chap. 61. pag. 309 and 310.

[†] Charter of Lewis the Fat, in the year 1145, in the collection of Ordinances.

[‡] Ibid.

[||] Charter of Lewis the Young, in 1188, in the Collection of Ordinances,

[*] See Beaumanoir, chap. 63, pag. 325.

[§] See the custom of Beauvoisis, cap. 28, pag. 203.

[|||] Additio sapientum Wilemari tit. 5.

[‡] Book 1. tit. 6. sect. 3.

[§] Book 2. tit. 5. sect. 23.

[*] Added to the Salic law, in 819.

[†] See Beaumanoir, chap. 64, pag. 328.

[‡] Ibid.

[||] Ibid. chap. 3. pag. 25. and 329.

[††] See, in regard to the arms of the combatants, Beaumanoir, chap. 61. pag. 308. and chap. 64. pag. 328.

[*] Ibid. chap. 64. page 328. See also the charters of S. Aubin of Anjou, quoted by Galland, page 263.

[†] Among the Romans it was not infamous to be beaten with a stick, *lege ictus fustium*. *De iis qui notantur infamia*.

[‡] They had only the baston and buckler. Beaumanoir, chap. 64. p. 328.

[||] Book i. tit. 6. sect. 1.

[§] Book i. tit. 6. sect. 2.

[*] De moribus Germanorum.

[†] In the Pactus legis Salicæ.

[‡] We have both the ancient law and that which was amended by this prince.

[*] Book ii. tit. 55. sect. 11,

[*] See the Greek romances of the middle age.

[*] In the year 1283.

[†] Beaumanoir, chap. vi. page 40. and 41.

[‡] Ibid. chap. 64. page 328.

[||] Ibid. page 330.

[*] Beaumanoir, chap. 64. page 330.

[†] Ibid.

[‡] The great vassals had particular privileges.

[||] Beaumanoir, chap. 64. page 330. says, he lost his jurisdiction: these words in the authors of those days have not a general signification, but a signification limited to the affair in question. *Défontaines, chap. 21. art. 29*.

[§] This custom, which we meet with in the capitularies, was still subsisting at the time of Beaumanoir. See chap. 61. page 315.

[§] Beaumanoir, chap. 64, p. 330.

[] Ibid. chap. 61, p. 309.

[*] Ibid. chap. 61, p. 308. Ibid. chap. 43, p. 239.

[†] Beaumanoir, chap. 61, p. 314. See also Défontaines, chap. 22, art. 24.

[‡] Ibid. chap. 63, p. 322.

[§] Défontaines, chap. 63, p. 322.

[] Ibid.

[*] Ibid. p. 323.

[†] Beaumanoir, chap. 63, p. 324.

[‡] Beaumanoir, p. 325.

[§] Ibid. p. 325.

[] Ibid. chap. 63, p. 323. See also what I have said in the 18th book.

[*] Ibid. chap. 63, p. 322.

[†] Défontaines, chap. 22, art. 7.

[‡‡] Habeant bellandi et testificandi licentiam. *Charter of Lewis the Fat, in the year 1118.*

[§§] Ibid.

[] Chap. 61, p. 315.

[†] Chap. 6, p. 39 and 40.

[‡] But if the battle was fought by champions, the champion that was overcome had his hand cut off.

[§] Tit. 16, sect. 2.

[] Tit. 45.

[*] Letter to Lewis the Debonnaire.

[††] Life of St. Avitus.

[*] Beaumanoir, chap. 2, p. 22.

[†] Ibid. chap. 61, p. 312, and chap. 67, p. 338.

[‡] Book 2, chap. 15.

[§] Beaumanoir, chap. 61, p. 310 and 311, and chap. 67, p. 337.

[||] Beaumanoir, chap. 61, p. 313.

[*] Ibid. p. 314.

[†] Ibid. chap. 61, p. 314.

[‡] Chap. 22, art. 1, 10 and 11, he says only, that each of them was allowed a small fine.

[*] Beaumanoir, chap. 61. page 314.

[†] Ibid. Défontaines, chap. 22. art. 9.

[‡] Défontaines, chap. 22. art. 9.

[||] Beaumanoir, chap. 61. page 316.

[§] Ibid. chap. 16. page 314. and Défontaines, chap. 22. art. 21.

[‡‡] Défontaines, chap. 22. art. 7.

[||||] See Défontaines, chap. 21. art. 11 and 12. and following, who distinguishes the cases in which the appellant of false judgment loses his life, the point contested, or only the imparlance.

[§§] Beaumanoir, chap. 62. page 322. Défontaines, chap. 22.

[‡] The count was not obliged to lend any. Beaumanoir, chap. 67. p. 337.

[||] Nobody can pass judgment in his court, says Beaumanoir, chap. 67. p. 336 and 337.

[*] Ibid. chap. 62. page 322.

[†] Défontaines, chap. 21. art. 27 and 28.

[‡] Défontaines chap. 21. art. 28.

[||] Chap. 21. art. 37.

[§] This number at least was necessary. Défontaines, chap. 21. art. 36.

[*] Beaumanoir, chap. 67. page 337.

[†] Ibid.

[‡] Ibid. chap. 67. page 337 and 338.

[*] Défontaines, chap. 22.

[†] Ibid.

[*] Third capitulary of the year 812. art. 3. edition of Baluzius, p. 497. and of Charles the Bald, added to the law of the Lombards, book ii. art. 3.

[†] Third capitulary of the year 812. art. 3. edition of Baluzius, p. 497.

[‡] Cum fidelibus. Capitulary of Lewis the Pious, edition of Baluzius, page 667.

[||] See the capitulary of Charles the Bald, added to the law of the Lombards, book ii. art. 3.

[§] Third capitulary of the year 812. art. 8.

[**] Placitum.

[†] This appears by the formulas, charters, and the capitularies.

[‡] In the year 757, edition of Baluzius, page 180. art. 9 and 10. and the synod apud Vernas in the year 755. art. 59. edition of Baluzius, page 175. These two capitularies were made under king Pepin.

[||] The officers under the count Scabini.

[§] See the law of the Lombards, book ii. tit. 52. art. 22.

[*] There are instances of appeals of default of justice so early as the time of Philip Augustus.

[†] Chap. 61. page 315.

[‡] Beaumanoir, chap. 61. page 315.

[] Défontaines, chap. 21. art. 24.

[†] Défontaines, chap. 21. art. 31.

[] Beaumanoir, chap. 61. page 312.

[§] Défontaines, chap. 21. art. 29.

[*] This was the case in the famous difference between the lord of Nele and Joan countess of Flanders, under the reign of Lewis VIII. He sued her in her own court of Flanders, and summoned her to give judgment within forty days, and afterwards appealed in default of justice to the king's court. She answered, he should be judged by his peers in Flanders. The king's court determined that he should not be remanded, and that the countess should be summoned.

[†] Beaumanoir, chap. 34.

[* *] Défontaines, chap. 21. art. 9.

[† †] Beaumanoir, chap. 61. page 318.

[§] Beaumanoir, chap. 61. page 312. But he that was neither tenant nor vassal to the lord, paid only a fine of sixty livres. Ibid.

[† †] Beaumanoir, chap. 61. page 318.

[*] Chap. 21. art. 35.

[†] In the year 1260.

[†] Book i. chap. 2. and 7. and book ii. chap. 10. and 11.

[] As appears every where in the institutions, &c. and Beaumanoir, chap. 61. page 309.

[§] Institutions, book i. chap. 6. and book ii. chap. 15.

[† †] Ibid. book ii. chap. 15.

[† †] Ibid. book i. chap. 78. and book ii. chap. 15.

[] Ibid. book i. chap. 78.

[§ §] Ibid. book ii. chap. 15.

[*] Institutions, book ii. chap. 78.

[†] Ibid. chap. 15.

[‡] But if they wanted to appeal without falsifying the judgment, the appeal was not admitted. Institutions, book ii. chap. 15.

[‖] Book i. chap. 6. and 47. and book ii. chap. 15. and Beaumanoir, chap. 11. page 58.

[§] Book i. chap. 1, 2, and 3.

[**] Chap. 22. art. 16. and 17.

[*] Chap. 61. page 309.

[†] Ibid.

[‡] See Beaumanoir Défontaines, and the Institutions, book ii. chap. 10, 11, 15, and others.

[*] See the ordinances at the beginning of the third race, in the collection of Lauriere, especially those of Philip Augustus, on ecclesiastic jurisdiction; that of Lewis VIII. concerning the Jews; and the charters related by Mr. Bressel; particularly that of St. Lewis, on the lease and recovery of lands, and the feudal majority of young women, tom. ii. book 3. page 35. and ibid. The ordinance of Philip Augustus, page 7.

[†] Chap. 33. page 627. Ibid. chap. 63. page 312.

[‡] See the Institutions of St. Lewis, book ii. chap. 15. the ordinance of Charles VII. in the year 1453.

[*] Chap. 21. art. 21. and 22.

[†] Book i. chap. 136.

[‡] Chap. 2. art. 8.

[‖] Défontaines, chap. 22. art. 7. This article and the 21st of the 22d chapter of the same author, have been hitherto very ill explained. Défontaines does not oppose the judgment of the lord to that of the gentleman, because it was the same thing; but he opposes the common villain to him who had the privilege of fighting.

[§] Gentlemen may be always appointed judges. *Défontaines*, chap. 21. art. 48.

[**] Chap. 22. art. 14.

[*] Défontaines, chap. 21. art. 33.

[†] In the year 1332.

[‡] See the situation of things in Boutillier's time, who lived in the year 1402. *Somme rurale*, book 1. p. 19 and 20.

[||] See chap. 30.

[§] Beaumanoir, chap. 61. pag. 312, and 318.

[**] Ib.

[†] Défontaines, chap. 21. art. 14.

[*] Of the parliaments of France, book 11, chap. 16.

[†] Chap. 61. pag. 315.

[‡] As Beaumanoir says, chap. 39. pag. 209.

[||] They proved by witnesses what had been already done, said, or decreed in court.

[*] Chap. 39. page 218.

[†] Défontaines in his Conseil chap. 22. art. 3. and 8. and Beaumanoir, chap. 35. Institutions, book 1. chap. 90.

[*] Chap. 22. art. 8.

[†] At present when they are so inclined to appeal, says Boutillier, *Somme rurale*, book. i. tit. 3. page 16.

[‡] In the year 1324.

[*] *Advocatus de parte publica*.

[*] See this constitution and this formula in the second volume of the historians of Italy, p. 175.

[†] Collection of Muratori, page 104, on the 88th law of Charlemagne, book 1, tit. 26. sect. 78.

[‡] Another formula, *ibid.* page 87.

[§] Ibid. page 104.

[||] Ibid. page 95.

[**] Ibid. page 88.

[††] Ibid. page 98.

[‡‡] Ibid. page 132.

[§§] Ibid.

[||||] Ibid. page 137.

[*] Ibid. page. 147.

[†] Ibid.

[‡] Ibid. page 168.

[§] Ibid. page 134.

[||] Ibid. page 107.

[**] Book 1, chap. 1, and book 2, chap. 11 and 13.

[††] Cap. 1, &c. 61.

[§§] See these laws in the lives of the saints of the month of June, tom. 3, page 26.

[||||] Qui continuè nostram sacram curiam sequi teneatur, instituatur qui facta & causas in ipsa curia promoveat atque prosequatur.

[*] Preface to the institutions.

[†] Chap. 29.

[*] See above, chap. 30.

[†] Chap 61. page 309.

[*] He says of himself, in his prologue, *Nus lui en prit onques mais cette chose dont j'ay.*

[*] Nothing so vague as the title and prologue. At first they are the customs of Paris,

Orleans, and the court of Barony; then they are the customs of all the lay courts of the kingdom, and of the provostships of France; at length, they are the custom, of the whole kingdom, Anjou, and the court of Barony.

[*] Institutions, book. ii. chap. 15.

[*] See Du Tillet on the court of peers. See also Laroche, Flavin, book i. chap. 3. Budeus and Paulus Emilius.

[†] Other causes were decided by the ordinary tribunals.

[‡] See the president Henault's excellent abridgment of the history of France in the year 1313.

[*] Beaumanoir, chap. 11. page 458.

[†] Widows, croises, &c. *Beaumanoir*, chap. 11. page 58.

[‡] See the whole eleventh chapter of Beaumanoir.

[||] The spiritual tribunals had even laid hold of these, under the pretext of the oath, as may be seen by the famous Concordat between Philip Augustus, the clergy, and the barons, which is to be found in the ordinances of Lauriere.

[§] Beaumanoir, chap. 11. page 60.

[*] See Boutillier, *Somme rurale*, tit. 9. what persons are incapable of suing in a temporal court; and Beaumanoir, chap. 11. page 56. and the regulations of Philip Augustus upon this subject; as also the regulation between Philip Augustus, the clergy, and the barons.

[*] In the word testamentary executors.

[†] The 19th of March, 1409.

[*] In Italy they followed Justinian's code; hence Pope John VIII. in his constitution published after the synod of Troyes, makes mention of this code, not because it was known in France, but because he knew it himself: and his constitution was general.

[†] This emperor's code was published towards the year 530.

[‡] Decretals, book 5. tit. de privilegiis capite super specula.

[||] By a charter in the year 1312, in favour of the university of Orleans, quoted by Du

Tillet.

[§] Customs of Beauvoisis, chap. 1. of the office of bailiffs.

[†] Among the common people the burghers were tried by burghers, as the feudatory tenants were tried by one another. See La Thaumassiere, chap. 19.

[‡] Thus all requests began with these words: "My lord judge, it is customary that in your court," &c. as appears from the formula quoted by Boutillier, Somme rurale, book 4. tit. 21.

[||] The change was insensible: we meet with trials by peers even in Boutillier's time, who lived in the year 1402, which is the date of his will. He gives this formula, book 1. tit. 21. "Sire Juge, en ma justice haute, moyenne & basse, que j'ai en tel lieu, cour, plaids, *baillis*, *homme* feodaux & sergens." Yet nothing but feudal matters were tried any longer by the peers. Ibid. book 1. tit. 1. pag. 16.

[§] As appears by the formula of the letters which their lord used to give them, quoted by Boutillier, Somme rurale, book 1. tit. 14. which is proved likewise by Beaumanoir, Custom of Beauvoisis, chap. 1. of the bailiffs; they only directed the proceedings. "The bailiff is obliged, in the presence of the peers, to take down the words of those who plead, and to ask the parties whether they are willing to have judgment given according to the reasons alledged; and if they say, Yes, my lord; the bailiff ought to oblige the peers to give judgment." See also the Institutions of St. Lewis, book 1. chap. 105. and book 2. chap. 15. "Li Juge, si ne doit pas faire le jugement."

[*] Beaumanoir, chap. 67. page 336. and chap. 61. page 315. and 316. The Institutions, book 2. chap. 15.

[†] It was published in the year 1287.

[‡] Ut si ibi delinquant, superiores sui possint animadvertere in eosdem.

[||] See in what manner age and parentage were proved, Institutions, book 1. chap. 71. and 72.

[*] Prologue to the custom of Beauvoisis.

[†] Chap. 12.

[*] See the collection of Ordinaces by Lauriere.

[*] This was observed at the digesting of the customs of Berry and of Paris. See La Thaumassiere, chap. 3.

[*] In the Spectator.

BOOK XXIX. OF THE MANNER OF COMPOSING LAWS.

CHAP. I.

Of the Spirit of a Legislator.

I SAY it, and methinks I have undertaken this work with no other view than to prove it; the spirit of a legislator ought to be that of moderation; political, like moral evil, lying always between two extremes. Let us produce an example.

The set forms of justice are necessary to liberty; but the number of them might be so great as to be contrary to the end of the very laws that established them; processes would have no end; property would be uncertain; the goods of one of the parties would be adjudged to the other without examining, or they would both be ruined by examining too much.

The citizens would lose their liberty and security; the accusers would no longer have any means to convict, nor the accused to justify themselves.

CHAP. II.

The same Subject continued.

CECILIUS, in Aulus Gellius^{*}, speaking of the law of the Twelve Tables, which permitted the creditor to cut the insolvent debtor into pieces, justifies it even by its cruelty, which[†] hindered people from borrowing beyond their ability of paying. Shall then the cruellest laws be the best? Shall goodness consist in excess, and all the relations of things be destroyed?

CHAP. III.

That the Laws which seem to deviate from the Views of the Legislator, are frequently agreeable to them.

THE law of Solon which declared those persons infamous who espoused no side in an insurrection, seemed very extraordinary; but we ought to consider the circumstances in which Greece was at that time It was divided into very small states: and there was

reason to apprehend, lest in a republic, torn by intestine divisions, the soberest part should keep retired, in consequence of which, things might be carried to extremity.

In the seditions raised in those petty states, the bulk of the citizens either made or engaged in the quarrel. In our large monarchies, parties are formed by a few, and the people chuse to live quiet. In the latter case it is natuaal to call back the seditious to the bulk of the citizens; and not these to the seditious: in the other it is necessary to oblige the small number of prudent people to enter among the seditious: it is thus the fermentation of one liquor may be stopped by a single drop of another.

CHAP. IV.

Of the Laws contrary to the Views of the Legislator.

THERE are laws so little understood by the legislator, as to be contrary to the very end he proposed. Those who made this regulation among the French, that when one of the two competitors died, the benefice should devolve to the survivor, had in view, without doubt, the extinction of quarrels; but the very reverse falls out; we see the clergy at variance every day, and like English mastiffs worrying one another to death.

CHAP. V.

The same Subject continued.

THE law I am going to speak of, is to be found in this oath preserved by Æschines^{*}; "I swear that I will never destroy a town of the Amphictyones' and that I will not divert the course of its running waters; if any nation shall presume to do such a thing, I will declare war against them, and will destroy their towns." The last article of this law, which seems to confirm the first, is really contrary to it. Amphictyon is willing that the Greek towns should never be destroyed, and yet this law paves the way for their destruction. In order to establish a proper law of nations among the Greeks, they ought to have been accustomed early to think it a barbarous thing to destroy a Greek town; consequently, they ought not even to ruin the destroyers. Amphictyon's law was just; but it was not prudent; this appears even from the abuse made of it. Did not Philip assume the power of demolishing towns, under the pretence of their having infringed the laws of the Greeks? Amphictyon might have inflicted other punishments; he might have ordained, for example, that a certain number of the magistrates of the destroying town, or of the chiefs of the infringing army, should be punished with death; that the destroying nation should cease for a while to enjoy the privileges of the Greeks; that

they should pay a fine till the town was rebuilt. The law ought, above all things, to aim at the reparation of damages.

CHAP. VI.

That Laws which appear the same, have not always the same Effect.

CÆSAR made a law to^{*} prohibit people from keeping above sixty sesterces in their houses. This law was considered at Rome as extremely proper for reconciling the debtors to their creditors; because by obliging the rich to lend to the poor, they enabled the latter to pay their debts. A law of the same nature made in France at the time of the System, proved extremely fatal; because it was enacted under a most frightful situation. After depriving people of all possible means of laying out their money, they stripped them even of the last resource of keeping it at home; which was the same as taking it from them by open violence. Cæsar's law was intended to make the money circulate; the French minister's design was to draw all the money into one hand. The former gave either lands or mortgages on private people for the money; the latter proposed in lieu of money, nothing but effects which were of no value, and could have none by their very nature, because the law compelled people to accept of them.

CHAP. VII.

The same Subject continued. Necessity of composing Laws in a proper Manner.

THE law of Ostracism was established at Athens, at Argos[†], and at Syracuse. At Syracuse it was productive of a thousand mischiefs, because it was imprudently enacted. The principal citizens banished one another by holding the leaf of a fig-tree[‡] in their hands; so that those who had any kind of merit withdrew from public affairs. At Athens, where the legislator was sensible of the proper extent and limits of his law, ostracism proved an admirable regulation: they never condemned more than one person at a time; and such a number of suffrages were requisite for passing this sentence, that it was extremely difficult for them to banish a person whose absence was not necessary to the state.

The power of banishing was exercised only every fifth year: and indeed, as the ostracism was designed against none but great personages who threatened the state with danger, it ought not to have been the transaction of every day.

CHAP. VIII.

That Laws which appear the same, were not always made through the same Motive.

IN France they have received most of the Roman laws on substitutions, but through quite a different motive from the Romans. Among the latter the inheritance was accompanied with certain^{*} sacrifices, which were to be performed by the inheritor, and were regulated by the pontifical law; hence it was, that they reckoned it a dishonour to die without heirs, that they made slaves their heirs, and that they devised substitutions. Of this we have a very strong proof in the vulgar substitution, which was the first invented, and took place only when the heir appointed did not accept of the inheritance. Its views were not to perpetuate the estate in a family of the same name, but to find somebody that would accept of it.

CHAP. IX.

That the Greek and Roman Laws punished Suicide, but not through the same Motive.

A MAN, says Plato^{*}, who has killed one nearly related to him, that is himself, not by an order of the magistrate, not to avoid ignominy, but through pusillanimity, shall be punished. The Roman law punished this action when it was not committed through pusillanimity, through weariness of life, through impatience in pain, but from a criminal despair. The Roman law acquitted where the Greek condemned, and condemned where the other acquitted.

Plato's law was formed upon the Lacedæmonian institutions, where the orders of the magistrate were absolute, where shame was the greatest of miseries, and pusillanimity the greatest of crimes. The Romans had no longer those refined ideas; theirs was only a fiscal law.

During the time of the republic, there was no law at Rome against suicides: this action is always considered by their historians in a favourable light, and we never meet with any punishment inflicted upon those who committed it.

Under the first emperors, the great families of Rome were continually destroyed by criminal prosecutions. The custom was then introduced of preventing judgment by a voluntary death. In this they found a great advantage: they had[†] an honourable

interment, and their wills were executed, because there was no law against suicides. But when the emperors perors became as avaricious as cruel, they deprived those who destroyed themselves of the means of preserving their estates, by rendering it criminal for a person to make away with himself through a criminal remorse.

What I have been saying of the motive of the emperors, is so true, that they consented^{*} that the estates of suicides should not be confiscated, when the crime for which they killed themselves was not punished with confiscation.

CHAP. X.

That Laws which seem contrary, proceed sometimes from the same Spirit.

IN our time we give summons to people in their own houses; but this was not permitted[†] among the Romans.

A summons was a[‡] violent action, and a kind of warrant for seizing the^{||} body; hence it was no more allowed to summon a person in his own house, than it is now allowed to arrest a person in his own house for debt.

Both the Roman[§] and our laws admit of this principle alike, that every man ought to have his own house for an asylum, where he should suffer no violence.

CHAP. XI.

How we are to judge of the Difference of Laws.

IN France, the punishment against false witnesses is capital; in England it is not. Now, to be able to judge which of these two laws is the best, we must add, that in France the rack is used against criminals, but not in England; that in France the accused is not allowed to produce his witnesses; and that they very seldom admit of circumstantial evidence in favour of the prisoner; in England they allow of witnesses on both sides. These three French laws form a close and well connected system; and so do the three English laws. The law of England, which does not allow of the racking of criminals, has but very little hopes to draw from the accused a confession of his crime; for this reason it invites witnesses from all parts, and does not venture to discourage them by the fear of a capital punishment. The French law, which has one resource more, is not afraid of intimidating the witnesses; on the contrary, reason requires they should be intimidated;

it listens only to the witnesses on one side^{*}, which are those produced by the attorney-general, and the fate of the accused depends entirely on their testimony. But in England they admit of witnesses on both sides, and the affair is discussed in some measure between them; consequently false witness is there less dangerous, the accused having a remedy against the false witness, which he has not in France. Wherefore, to determine which of those laws are most agreeable to reason, we must not consider them singly, but compare the whole together.

CHAP. XII.

That Laws which appear the same, are sometimes really different.

THE Greek and Roman laws inflicted the same^{*} punishment on the receiver as on the thief; the French law does the same. The former acted rationally, but the latter does not. Among the Greeks and Romans, the thief was condemned to a pecuniary punishment, which ought also to be inflicted on the receiver: for every man that contributes in what shape soever to a damage, is obliged to repair it. But as the punishment of theft is capital with us, the receiver cannot be punished like the thief, without carrying things to excess. A receiver may act innocently on a thousand occasions; the thief is always culpable: one hinders the conviction of a crime, the other commits it; in one the whole is passive, the other is active; the thief must surmount more obstacles, and his soul must be more hardened against the laws.

The civilians have gone farther; they look upon the receiver as more odious[†] than the thief; for were it not for the receiver, the theft, say they, could not be long concealed. But this again might be right when there was only a pecuniary punishment; the affair in question was a damage done, and the receiver was generally better able to repair it; but when the punishment became capital, they ought to have been directed by other principles.

CHAP. XIII.

That we must not separate Laws from the End for which they were made. Of the Roman Laws on Theft.

WHEN a thief was caught in the fact, this was called by the Romans an open theft; when he was not detected till some time afterwards, it was a private theft.

The law of the twelve tables ordained, that an open thief should be whipt with rods, and

condemned to slavery, if he had attained the age of puberty; or only whipt, if he was not of ripe age; but as for the private thief, he was only condemned to a fine of double the value of what he had stolen.

When the Porcian laws abolished the custom of whipping the citizens with rods, and of reducing them to slavery, the open thief was condemned to^{*} a payment of four-fold, and they still continued to condemn the private thief to a payment of double.

It seems very odd, that these laws should make such a difference in the quality of those two crimes, and in the punishments they inflicted. And indeed, whether the thief was detected either before or after he had carried the stolen goods to the place intended, this was a circumstance which did not alter the nature of the crime. I do not at all question but the whole theory of the Roman laws in relation to theft was borrowed from the Lacedæmonian institutions. Lycurgus, with a view of rendering the citizens dextrous and cunning, ordained that children should be practised in thieving, and that those who were caught in the fact should be severely whipt: this occasioned among the Greeks, and afterwards among the Romans, a great difference between an open and a private theft^{*}.

Among the Romans a slave who had been guilty of stealing was thrown from the Tarpeian rock. Here the Lacedæmonian institutions were out of the question; the laws of Lycurgus in relation to theft were not made for slaves; to deviate from them in this respect was in reality conforming to them.

At Rome, when a person of unripe age happened to be caught in the fact, the prætor ordered him to be whipt with rods according to his pleasure, as was practised at Sparta. All this had a more distant origin. The Lacedæmonians had derived these usages from the Cretans; and Plato[†], who wants to prove that the Cretan institutions were designed for war, cites the following, namely, the habit or power of bearing pain in private combats, and in punishments inflicted for open thefts.

As the civil laws depend on the political institutions, because they are made for the same society; whenever there is a design of adopting the civil law of another nation, it would be proper to examine before-hand whether they have both the same institutions, and the same political law.

Thus when the Cretan laws on theft were adopted by the Lacedæmonians, as their constitution and government were adopted at the same time, these laws were equally reasonable in both nations. But when they were carried from Lacedæmonia to Rome, as they did not find there the same constitution, they were always thought strange, and had no manner of connexion with the other civil laws of the Romans.

CHAP. XIV.**That we must not separate the Laws from the Circumstances in which they were made.**

IT was decreed by a law at Athens, that when the city was besieged, all the useless people should be put to death^{*}. This was an abominable political law, in consequence of an abominable law of nations. Among the Greeks, the inhabitants of a town taken, lost their civil liberty, and were sold as slaves. The taking of a town implied its intire destruction; which is the source not only of those obstinate defences, and of those unnatural actions, but likewise of those shocking laws which they sometimes enacted.

The Roman laws[†] ordained that physicians should be punished for neglect or unskilfulness. In those cases, if the physician was a person of any fortune or rank, he was only condemned to *deportation*; but if he was of a low condition, he was put to death. By our institutions it is otherwise. The Roman laws were not made under the same circumstances as ours: at Rome every ignorant pretender intermeddled with physic; but amongst us, physicians are obliged to go through a regular course of study, and to take their degrees; for which reason they are supposed to understand their profession.

CHAP. XV.**That sometimes it is proper the Law should amend itself.**

THE law of the twelve tables[‡] allowed people to kill a night-thief as well as a day-thief, if upon being pursued he attempted to make a defence: but it required that the person who killed the thief^{*}, should cry out and call his fellow-citizens: this is indeed what those laws, which permit people to do justice to themselves, ought always to require. It is the cry of innocence, which in the very moment of the action, calls in witnesses and appeals to judges. The people ought to take cognizance of the action, and at the very instant of its being done; an instant when every thing speaks, even the air, the countenance, the passions, the silence of the agent; and when every word either condemns or absolves. A law which may become so contrary to the security and liberty of the citizens, ought to be executed in their presence.

CHAP. XVI.**Things to be observed in the composing of Laws.**

THEY who have a genius sufficient to enable them to give laws to their own, or to another nation, ought to be particularly attentive to the manner of forming them.

The stile ought to be concise. The laws of the twelve tables are a model of conciseness; the very children[†] used to learn them by heart. Justinian's *Novellæ* were so very diffused, that they were obliged to abridge them[†].

The stile should also be plain and simple; a direct expression being better understood than an indirect one. There is no majesty at all in the laws of the lower empire; princes are made to speak like rhetoricians. When the stile of laws is tumid, they are looked upon only as a work of parade and ostentation.

It is an essential article that the words of the laws should excite in every body the same ideas. Cardinal Richlieu^{*} agreed, that a minister might be accused before the king; but he would have the accuser punished, if the facts he proved were not matters of moment. This was enough to hinder people from telling any truth whatsoever against the minister; because a matter of moment is entirely relative, and what may be of moment to one is not so to another.

The law of Honorius punished with death any person that purchased a freed-man as a slave, or that[†] gave him molestation. He should not have made use of so vague an expression; the molestation given to a man, depends entirely on the degree of his sensibility.

When the law would fix a set rate upon things, it should avoid as much as possible the estimating it in money. The value of money changes from a thousand causes, and the same denomination continues without the same thing. Every one knows the story of that impudent[†] fellow at Rome, who used to give those he met a box on the ear, and afterwards tendered them the five and twenty pence of the law of the twelve tables.

When the law has once fixed the idea of things, it should never return to vague expressions. The ordinance of Lewis XIV.[‡] concerning criminal matters after an exact enumeration of the cause in which the king is immediately concerned, adds these words, "and those which in all times have been subject to the determination of the king's judges; this renders the thing again arbitrary, after it had been fixed.

Charles VII.^{*} says, he has been informed that the parties appeal three, four, and six months after judgment, contrary to the custom of the kingdom in the country governed by custom: he therefore ordains, that they shall appeal forthwith, unless there happens to be some fraud or deceit in the attorney[†], or unless there be a great or evident cause to sue the appeal. The end of this law destroys the beginning, and it destroys it so effectually, that they used afterwards to appeal during the space of thirty years[†].

The law of the Lombards[‡] does not allow a woman that has taken a religious habit.

though she has made no vow, to marry; because, says this law, "if a spouse who has been contracted to a woman only by a ring, cannot without guilt be married to another; for a much stronger reason the spouse of God or of the blessed virgin". . . . Now I say, that in laws the arguments should be drawn from one reality to another, and not from reality to figure, or from figure to reality.

A law enacted by Constantine[§], ordains, that the single testimony of a bishop should be sufficient, without listening to any other witnesses. This prince took a very short method; he judged of affairs by persons, and of persons by dignities.

The laws ought not to be subtle; they are designed for people of common understanding; not as an art of logic, but as the plain reason of a father of a family.

When there is no necessity for exceptions and limitations in a law, it is much better to omit them: details of that kind throw people into new details.

No alteration should be made in a law without sufficient reason. Justinian ordained, that a husband might be repudiated, and yet the wife not lose her portion, if for the space of^{*} two years he had been incapable of consummating the marriage. He altered his law afterwards, and allowed the[†] poor wretch three years. But in a case of that nature, two years are as good as three, and three are not worth more than two.

When a legislator condescends to give the reason of his law, it ought to be worthy of its majesty. A Roman[‡] law decrees, that a blind man is incapable to plead, because he cannot see the ornaments of the magistracy. So bad a reason must have been given on purpose, when such a number of good reasons were at hand.

Paul the civilian[¶] says, that a child grows perfect in the seventh month, and that the proportion of Pythagoras's numbers seems to prove it. It is very extraordinary that they should judge of those things by the proportion of Pythagoras's numbers.

Some French lawyers have asserted, that when the king made an acquisition of a new country, the churches became subject to the *regale*, because the king's crown is round. I shall not examine here into the king's rights, or whether in this case the reason of the civil or ecclesiastic law ought to submit to that of the law of politics: I shall only say, that those august rights ought to be defended by grave maxims. Was there ever such a thing known, as the real rights of a dignity, founded on the figure of that dignity's sign?

Davila^{*} says, that Charles IX. was declared of age in the parliament of Roan at fourteen years commenced, because the laws require every moment of the time to be reckoned, in cases relating to the restitution and administration of an orphan's estate: whereas it considers the year commenced as a year complete, when the case is concerning the acquisition of honours. I am very far from censuring a regulation which has been hitherto attended with no inconveniency; I shall only take notice that the reason

alleged[†] is not the true one; it is false, that the government of a nation is only an honour.

In point of presumption, that of the law is far preferable to that of the man. The French law[†] considers every act of a merchant during the ten days preceding his bankruptcy as fraudulent: this is the presumption of the law. The Roman law inflicted punishments on the husband who kept his wife after she had been guilty of adultery, unless he was induced to do it through fear of the event of a law-suit, or through contempt of his own shame; this is the presumption of the man. The judge must have presumed the motives of the husband's conduct, and must have determined a very obscure and ambiguous point: when the law presumes, it gives a fixed rule to the judge.

Plato's law^{*}, as I have observed already, required that a punishment should be inflicted on the person who killed himself not with a design of avoiding shame, but through pusillanimity. This law was so far defective, that in the only case in which it was impossible to draw from the criminal an acknowledgment of the motive upon which he had acted, it required the judge to determine concerning these motives.

As useless laws debilitate such as are necessary, so those that may be easily eluded, weaken the legislation. Every law ought to have its effect, and no one should be suffered to deviate from it by a particular exception.

The Falcidian law ordained among the Romans, that the heir should always have the fourth part of the inheritance: another law[†] suffered the testator to prohibit the heir from retaining this fourth part. This is making a jest of the laws. The Falcidian law became useless: for if the testator had a mind to favour his heir, the latter had no need of the Falcidian law; and if he did not intend to favour him, he forbid him to make use of it.

Care should be taken that the laws be worded in such a manner, as not to be contrary to the very nature of things. In the proscription of the prince of Orange, Philip II. promises to any man that will kill the prince, to give him, or his heirs, five and twenty thousand crowns, together with the title of nobility; and this upon the word of a king, and as a servant of God. To promise nobility for such an action! to ordain such an action in the quality of a servant of God! This is equally subversive of the ideas of honour, morality, and religion.

There very seldom happens to be a necessity of prohibiting a thing which is not bad, under pretence of some imaginary perfection.

There ought to be a certain simplicity and candor in the laws: made to punish the iniquity of men, they themselves should be clad with the robes of innocence. We find in the law of the^{*} Visigoths that ridiculous request, by which the Jews were obliged to eat every thing dressed with pork, provided they did not eat the pork itself. This was a very

great cruelty; they were obliged to submit to a law, contrary to their own; and they were allowed to retain nothing more of their own, than what might serve as a mark to distinguish them.

CHAP. XVII.

A bad Method of giving Laws.

THE Roman emperors manifested their will like our princes, by decrees and edicts; but they permitted, which our princes do not, both the judges and private people to interrogate them by letters in their several differences; and their answers were called rescripts. The decretals of the popes are rescripts, strictly speaking. It is plain, that this is a bad method of legislation. Those who thus apply for laws are improper guides to the legislator; the facts are always wrong stated. Julius Capitolinus[†] says, that Trajan often refused to give this kind of rescripts, lest a single decision, and frequently a particular favour, should be extended to all cases. Macrinus[†] resolved to abolish all those rescripts; he could not bear that the answers of Commodus, Caracalla, and all those other ignorant princes, should be considered as laws. Justinian thought otherwise, and he filled his compilement with them.

I would advise those who read the Roman laws, to distinguish carefully between this sort of hypotheses, and the Senatus-consulta, the Plebiscita, the general constitutions of the emperors, and all the laws founded on the nature of things, on the frailty of women, the weakness of minors, and the public utility.

CHAP. XVIII.

Of the Ideas of Uniformity.

THERE are certain ideas of uniformity, which sometimes strike great geniuses, (for they even affected Charlemaign) but infallibly make an impression on little souls. They discover therein a kind of perfection; because it is impossible for them not to see it; the same weights, the same measures in trade, the same laws in the state, the same religion in all its parts. But is this always right, and without exception? Is the evil of changing constantly less than that of suffering? And does not a greatness of genius consist rather in distinguishing between those cases in which uniformity is requisite, and those in which there is a necessity for differences? In China the Chinese are governed by the Chinese ceremonial: and the Tartars by theirs. And yet there is no nation in the world that aims so much at tranquility. If the people observe the laws, what signifies it

whether these laws are the same?

CHAP. XIX.

Of Legislators.

ARISTOTLE wanted to indulge sometimes his jealousy against Plato, and sometimes his passion for Alexander. Plato was incensed against the tyranny of the people of Athens. Machiavel was full of his idol, the duke of Valentinois. Sir Thomas More, who spoke rather of what he had read, than of what he thought, wanted^{*} to govern all states with the simplicity of a Greek city. Harrington was full of the idea of his favourite republic of England, whilst a croud of writers saw nothing but confusion where monarchy is abolished. The laws always meet the passions and prejudices of the legislator; sometimes they pass through, and imbibe only a tincture; sometimes they stop, and are incorporated with them.

Endnotes

[*] Book 22. chap. 1.

[†] Cecilius says, that he never saw nor read of an instance, in which this punishment had been inflicted; but it is likely, that no such punishment was ever established; the opinion of some civilians, that, the law of the Twelve Tables meant only the division of the money arising from the sale of the debtor, seems very probable.

[*] De falsâ legatione.

[*] Dio, lib. 41.

[†] Arist. Repub. lib. 5. chap. 3.

[†] Plutarch, life of Dionysius.

[*] When the inheritance was too much encumbered, they eluded the pontifical law by certain sales, from whence come the words, *fine sacris hæreditas*.

[*] Book ix. of laws.

[†] Eorum qui de se statuebant humabantur corpora, manebant testamenta, pretium festinandi. *Tacit.*

[*] Rescript of the emperor Pius in the third law, sect. 1. and 2. ff. de bonis eorum qui ante sent. mortem sibi consoiverunt.

[†] Leg. 18. ff. de in jus vocando.

[‡] See the law of the twelve tables.

[||] *Rapit in jus*, Horace, satire 9. hence they could not summon those to whom a particular respect was due.

[§] See the law 18. ff. de in jus vocando.

[*] By the ancient French law, witnesses were heard on both sides; hence we find in the Institutions of St. Lewis, book i. chap. 7. that there was only a pecuniary punishment against false witnesses.

[*] Leg. 1. ff. de receptatoribus.

[†] Ibid.

[*] See what Favorinus says in Aulus Gellius, book xx. chap. 1.

[*] Compare what Plutarch says in the life of Lycurgus with the laws of the Digest, title *de Furtis*; and the Institutes, book iv. tit. 1. sect. 1, 2, and 3.

[†] Of laws, book 1.

[*] Inutilis ætas occidatur. *Syrian in Hermog.*

[†] The Cornelian law *de sicariis*, Institut. lib. 4. tit. 3. de lege Aquilia, sect. 7.

[‡] See the 4th law, ff. ad leg. Aquil.

[*] Ibidem, see the decree of Tassillon added to the law of the Bavarians, *de popularib. legib.* art. 4.

[†] Ut carmen necessarium, *Cicero de legib.* 2.

[‡] It is the work of Irnerius.

[*] Political testament.

[†] Aut qualibet manumissione donatum inquietare voluerit. *Appendix to the Theodosian code in the first volume of father Sirmond's works*, p. 737.

[‡] Aulus Gellius, book xx. chap. 1.

[||] We find in the verbal process of this ordinance the motives that determined him.

[*] In his ordinance of Montel-les-tours in the year 1453.

[†] They might punish the attorney, without there being any necessity of disturbing the public order.

[‡] The ordinance of the year 1667, has made some regulations upon this head.

[||] Book 2. tit. 37.

[§] In father Sirmondus's appendix to the Theodosian code, tom. 1.

[*] Leg. 1. code *de repudiis*.

[†] See the authentic *Sed bodie*, in the code *de repudiis*.

[‡] Leg. 1. ff. de postulando.

[||] In his sentences, book iv. tit. 9.

[*] Della guerra civile di Francia, page 96.

[†] The Chancellor de l'Hospital, *ibid*.

[‡] It was made in the month of November, 1702.

[*] Book ix. of laws.

[†] It is the authentic, *sed cum testater*.

[*] Book xii. tit. 2. sect. 16.

[†] See Julius Capitolinus in Macrino.

[†] *Ibid*.

[*] In his Utopia.

BOOK XXX. THEORY OF THE FEUDAL LAWS AMONG THE FRANKS, IN THE RELATION THEY BEAR TO THE ESTABLISHMENT OF THE MONARCHY.

CHAP. I.

Of feudal Laws.

I SHOULD think my work imperfect, were I to pass over in silence an event which never again, perhaps, will happen; were I not to speak of those laws which suddenly appeared over all Europe, without being connected with any of the former institutions; of those laws which have done infinite good and infinite mischief; which have suffered rights to remain when the demesne has been ceded; which by vesting several with different kinds of seignory over the same things or persons, have diminished the weight of the whole seignory; which have established different limits in empires of too great an extent; which have been productive of rule with a bias to anarchy, and of anarchy with a tendency to order and harmony.

This would require a particular work to itself; but considering the nature of the present undertaking, the reader will here meet rather with a general survey, than with a complete treatise of those laws.

The feudal laws form a very beautiful prospect. A venerable old^{*} oak raises its losty head to the skies; the eye sees from afar its spreading leaves: upon drawing nearer, it perceives the trunk, but does not discern the root; the ground must be dug up to discover it.

CHAP. II.

Of the Source of feudal Laws.

THE conquerors of the Roman empire came from Germany. Though few ancient authors have described their manners, yet we have two of very great weight. Cæsar making war against the Germans, describes the manners[†] of that nation; and upon these he regulated[‡] some of his enterprises. A few pages of Cæsar upon this subject are equal to whole volumes.

Tacitus has written an entire work on the manners of the Germans. This work is short, but it comes from the pen of Tacitus, who was always concise, because he saw every thing at one glance.

These two authors agree so perfectly with the codes still extant of the laws of the barbarians, that reading Cæsar and Tacitus, we imagine we are perusing these codes, and perusing these codes, we fancy we are reading Cæsar and Tacitus.

But if in this research into the feudal laws, I should find myself entangled and lost in a dark labyrinth, I fancy I have the clue in my hand, and that I shall be able to find my way through.

CHAP. III.

The Origin of Vassalage.

CÆSAR^{*} says, "That the Germans neglected agriculture; that the greatest part of them lived upon milk, cheese, and flesh; that no one had lands or boundaries of his own; that the princes and magistrates of each nation allotted what portion of land they pleased, to individuals, and obliged them the year following to remove to some other part." Tacitus says,[†] "That each prince had a multitude of men, who were attached to his service, and followed him wherever he went." This author gives them a name in his language relative to their state, which is that of *companions*.[‡] They had a strong emulation to obtain the prince's esteem; and the princes had the same emulation to distinguish themselves in the bravery and number of their companions. "Their dignity and power," continues Tacitus, "consists in being constantly surrounded with a multitude of young and chosen people: this they reckon their ornament in peace, this their defence and support in war. Their name becomes famous at home, and among neighbouring nations, when they excel all others in the number and courage of their companions: they receive presents and embassies from all parts. Reputation frequently decides the fate of war. In battle it is infamy in the prince to be surpassed in courage; it is infamy in the companions not to follow the brave example of their prince, it is an eternal disgrace to survive him. To defend him is their most sacred engagement. If a city be at peace, the princes go to those who are at war; and it is thus they retain a great number of friends. To these they give the war-horse and the terrible javelin. Their pay consists in coarse but plentiful repasts. The prince supports his liberality merely by war and plunder. You might easier persuade them to attack an enemy, and to expose themselves to the dangers of war, than to cultivate the land, or to attend to the cares of husbandry; they refuse to acquire by sweat what they can purchase with blood."

Thus, among the Germans there were vassals, but no fiefs; they had no fiefs, because the princes had no lands to give; or rather their fiefs consisted in horses trained for war, in arms, and feasting. There were vassals, because there were trusty men who being bound by their word engaged to follow the prince to the field, and did very near the same service as was afterwards performed for the fiefs.

CHAP. IV.

The same Subject continued.

CÆSAR^{*} says, that “when any of the princes declared to the assembly that he intended to set out upon an expedition, and asked them to follow him, those who approved the leader, and the enterprize, stood up and offered their assistance. Upon which they were commended by the multitude. But if they did not fulfil their engagements, they lost the public esteem, and were looked upon as deserters and traitors.”

What Cæsar says in this place, and what we have extracted in the preceding chapter from Tacitus, is the substance of the history of our princes of the first race.

We must not therefore be surprized, that our kings should have new armies to raise upon every expedition, new troops to encourage, new people to engage; that to acquire much they were obliged to incur great expences; that they should be constant gainers by the division of lands and spoils, and yet give these lands and spoils incessantly away: that their demesne should continually increase and diminish; that a father upon settling a kingdom[†] on one of his children, should always give him a treasure with it; that the king’s treasure should be considered as necessary to the monarchy; and that one king[‡] could not give part of it to foreigners, even in portion with his daughter, without the consent of the other kings. The monarchy moved by springs, which they were continually obliged to wind up.

CHAP. V.

Of the Conquests of the Franks.

IT is not true, that the Franks upon entering Gaul, took possession of the whole country to turn it into fiefs. Some have been of this opinion, because they saw the greatest part of the country towards the end of the second race, converted into fiefs, rear-fiefs, or other dependencies; but such a disposition was owing to particular causes, which we shall explain hereafter.

The consequence which sundry writers would infer from thence, that the Barbarians made a general regulation for establishing in all parts the state of villainage, is as false as the principle from which it is derived. If at a time when the fiefs were precarious, all the lands of the kingdom had been fiefs or dependencies of fiefs, and all the men in the kingdom vassals or bondmen, subordinate to vassals; as the person that has property is every possessed of power, the king who continually disposed of the fiefs, that is, of the only property then existing, would have been as arbitrary a monarch as the Grand Seigneur; which is absolutely contradictory to all history.

CHAP. VI.

Of the Goths, Burgundians, and Franks.

GAUL was invaded by German nations. The Visigoths took possession of the province of Narbonne, and of almost all the south; the Burgundians settled in the east; and the Franks subdued very near all the rest.

No doubt but these Barbarians retained in their respective conquests the manners, inclinations, and usages of their own country; for no nation can change in an instant their manner of thinking and acting. These people in Germany neglected agriculture. It seems by Cæsar and Tacitus, that they applied themselves greatly to a pastoral life: hence the regulations of the codes of the barbarian laws are almost all relating to their flocks. Roricon, who wrote a history among the Franks, was a shepherd.

CHAP. VII.

Different Ways of dividing the Land.

AFTER the Goths and Burgundians had under various pretences penetrated into the heart of the empire, the Romans, in order to put a stop to their devastations, were obliged to provide for their subsistence. At first they allowed them^{*} corn; but afterwards chose to give them lands. The emperors, or the Roman[†] magistrates in their name, made particular conventions with them concerning the division of lands, as we find in the chronicles and in the codes of the Visigoths[‡] and Burgundians.[§]

The Franks did not follow the same plan. In the Salic and Ripuarian laws we find not the least vestige of any such division of lands: they had conquered the country, and so took what they pleased, making no regulations but amongst themselves.

Let us therefore distinguish between the conduct of the Burgundians and Visigoths in Gaul, of those same Visigoths in Spain, of the^{||} auxiliary troops under Augustulus and Odoacer in Italy, and that of the Franks in Gaul, as also of the Vandals^{**} in Africa. The former entered into conventions with the antient inhabitants, and in consequence thereof made a division of lands between them; the latter did no such thing.

CHAP. VIII.

The same Subject continued.

WHAT has induced some to think that the Roman lands were entirely usurped by the barbarians, is their finding in the laws of the Visigoths and the Burgundians, that these two nations had two thirds of the lands: but this they took only in certain quarters or districts assigned them.

Gundebald^{*} says in the law of the Burgundians, that his people at their establishment had two-thirds of the lands allowed them; and the second supplement[†] to this law takes notice, that only a moiety would be allowed to those who should hereafter come to live in that country. Therefore all the lands had not been divided in the beginning between the Roman and the Burgundians.

In those two regulations we meet with the same expressions in the text; consequently they explain one another; and as the latter cannot mean an universal division of lands, neither can this signification be given to the former.

The Franks acted with the same moderation as the Burgundians; they did not strip the Romans wherever they extended their conquests. What would they have done with so much land? They took what suited them, and left the remainder.

CHAP. IX.

A just application of the Law of the Burgundians and of that of the Visigoths in relation to the division of Lands.

IT is to be considered that those divisions of land were not made with a tyrannical spirit; but with a view of relieving the reciprocal wants of two nations that were to inhabit the same country.

The law of the Burgundians ordains that a Burgundian shall be received in an hospitable manner by a Roman. This is agreeable to the manners of the Germans, who, according to Tacitus,^{*} were the most hospitable people in the world.

By the law of the Burgundians, it is ordained, that the Burgundians shall have two-thirds of the lands, and one third of the bondmen. In this it considered the genius of two nations, and conformed to the manner in which they procured their subsistence. As the Burgundians dealt chiefly in cattle, they wanted a great deal of land and few bondmen, and the Romans from their application to agriculture had need of less land and of a greater number of bondmen. The woods were equally divided, because their wants in this respect were the same.

We find in the code[†] of the Burgundians. that each Barbarian was placed near a Roman.

The division therefore was not general; but the Romans who gave the division, were equal in numbers to the Burgundians who received it. The Roman was injured the least possible. The Burgundians as a martial people, fond of hunting and of a pastoral life, did not refuse to accept of the fallow grounds; while the Romans kept such lands as were properest for agriculture: the Burgundian's flock fattened the Roman's field.

CHAP. X.

Of Servitudes.

THE law of the Burgundians[‡] takes notice, that when those people settled in Gaul, they were allowed two-thirds of the land, and one-third of the bondmen. The state of villainage was therefore[§] established in that part of Gaul before it was invaded by the Burgundians.

The law of the Burgundians in points relating to the two nations makes a formal[‡] distinction in both, between the nobles, the free-born, and the bondmen, Servitude was not therefore a thing particular to the Romans; nor liberty and nobility particular to the Barbarians.

This very same law says,^{*} that if a Burgundian freedman had not given a particular sum to his master, nor received a third share of a Roman, he was always supposed to belong to his master's family. The Roman proprietor was therefore free, since he did not belong to another person's family; he was free, because his third portion was a mark of liberty.

We need only open the Salic and Ripuarian laws, to be satisfied that the Romans were no more in a state of servitude among the Franks, than among the other conquerors of Gaul.

The count de Boulainvilliers is mistaken in the capital point of his system: he has not proved that the Franks made a general regulation to reduce the Romans into a kind of servitude.

As this author's work is penned without art, and as he speaks with the simplicity, frankness, and candor of that ancient nobility from whence he descends, every one is capable of judging of the fine things he says, and of the errors into which he is fallen. I shall not therefore undertake to criticise him; I shall only observe, that he had more wit than sense, more sense than knowledge; though his knowledge was not contemptible, for he was well acquainted with the most valuable part of our history and laws.

The count de Boulainvilliers, and the abbé du Bos, have formed two different systems, one of which seems to be a conspiracy against the commons, and the other against the

nobility. When the sun gave leave to Phaeton to drive his chariot, he said to him, "If you ascend too high, you will burn the heavenly mansions; if you descend too low, you will reduce the earth to ashes: Do not drive to the right, you will meet there with the constellation of the serpent; avoid going too much to the left, you will there fall in with that of the altar: keep in the middle^{*}."

CHAP. XI.

The same Subject continued.

WHAT first gave rise to the notion of a general regulation made at the time of the conquest, is our meeting with a prodigious number of servitudes in France towards the beginning of the third race; and as the continual progression of these servitudes was not attended to, people imagined in an age of obscurity a general law which was never framed.

Towards the commencement of the first race, we meet with an infinite number of freemen, both among the Franks and the Romans; but the number of bondmen increased to that degree, that at the beginning of the third race, all the husbandmen and almost all the inhabitants[†] of towns were become bondmen: and whereas at the first period there was very near the same administration in the cities as among the Romans; namely, a corporaton, a senate, and courts of judicature; at the other we hardly meet with any thing but a lord and his bondmen.

When the Franks, Burgundians, and Goths, made their several invasions, they seized upon gold, silver, moveables, cloaths, men, women, boys, and whatever the army could carry; the whole was brought to one place, and divided amongst the army[‡]. History shews, that after the first settlement, that is after the first devastations, they entered into an agreement with the inhabitants, and left them all their political and civil rights. This was the law of nations in those days; they plundered every thing in time of war, and granted every thing in time of peace. Were it not so, how should we find both in the Salic and Burgundian laws such a number of regulations absolutely contrary to a general servitude of the people?

But though the conquest was not immediately productive of servitude, it arose nevertheless from the same law of nations[§] which subsisted after the conquest. Opposition, revolts, and the taking of towns, were followed by the slavery of the inhabitants. And, not to mention the wars which the conquering nations made against one another, as there was this particularity among the Franks, that the different partitions of the monarchy gave rise continually to civil wars between brothers or nephews, in which this law of nations was constantly practised, servitudes of course

became more general in France than in other countries: and this is, I believe, one of the causes of the difference between our French laws and those of Italy and Spain, in respect to the right of seignories.

The conquest was soon over; and the law of nations then in force was productive of some servile dependencies. The custom of the same law of nations, which obtained for many ages, gave a prodigious extent to those servitudes.

Theodoric imagining that the people of Auvergne were not faithful to him, thus addressed the Franks of his division: "Follow me, and I will carry you into a country where you shall have gold, silver, captives, clothes, and flocks in abundance; and you shall remove all the people into your own country."

After the conclusion of the peace^{*} between Gontram and Chilperic, the troops employed in the siege of Bourges having had orders to return, carried such a considerable booty away with them, that they hardly left either men or cattle in the country.

Theodoric, king of Italy, whose spirit and policy it was ever to distinguish himself from the other barbarian kings, upon sending an army into Gaul, wrote thus to the General[†] "It is my will that the Roman laws be followed, and that you restore the fugitive slaves to their right owners. The defender of liberty ought not to encourage servants to desert their masters. Let other kings delight in the plunder and devastation of the towns which they have subdued; we are desirous to conquer in such a manner, that our subjects shall lament their having fallen too late under our government." It is evident, that his intention was to cast an odium on the king's of the Franks and the Burgundians, and that he alluded in the above passage to their particular law of nations.

Yet this law of nations continued in force under the second race. King Pepin's army, having penetrated into Aquitaine, returned to France loaded with an immense booty, and with a vast number of bondmen, as we are informed by the annals of Metz^{*}.

Here might I quote numberless[†] authorities; and as the public compassion was raised at the sight of those miseries, as several holy prelates, beholding the captives in chains, employed the treasure belonging to the church, and sold even the sacred utensils, to ransom as many as they could; and as several holy monks exerted themselves on that occasion, it is in the[†] lives of the saints that we meet with the best éclaircissements on this subject. And, although it may be objected to the authors of those lives, that they have been sometimes a little too credulous in respect to things which God has certainly performed, if they were in the order of his providence; yet we draw considerable lights from thence, with regard to the manners and usages of those times.

When we cast an eye upon the monuments of our history and laws, the whole seems to be an immense expanse,[†] or a boundless ocean: all those frigid, dry, crude writings must be devoured in the same manner, as Saturn is fabled to have devoured the

stones.

A vast quantity of land which had been in the hands of freemen,^S was changed into mortmain, when the country was stripped of its free inhabitants; those who had a great multitude of bondmen either took large territories by force, or had them yielded by agreement, and built villages, as may be seen in different charters. On the other hand, the freemen who cultivated the arts, found themselves reduced to exercise those arts in a state of servitude: thus the servitudes restored to the arts and to agriculture whatever they had lost.

It was a customary thing with the proprietors of land, to give them to the churches, in order to hold them themselves by a quit-rent, thinking to partake by their servitude of the sanctity of the churches.

CHAP. XII.

That the lands belonging to the division of the Barbarians paid no taxes.

A PEOPLE remarkable for their simplicity and poverty, a free and martial people, who lived without any other industry than that of tending their flocks, and who had nothing but rush cottages to attach them to their^{||} lands; such a people, I say, must have followed their chiefs for the sake of booty, and not to pay or to raise taxes. The art of tax-gathering is generally invented too late, and when men begin to enjoy the felicity of other arts.

The transient^{*} tax of a pitcher of wine for every acre, which was one of the exactions of Chilperic and Fredegonda, related only to the Romans. And indeed it was not the Franks that tore the rolls of those taxes, but the clergy who in those days were all Romans.

The burthen of this tax lay chiefly on the inhabitants[†] of the towns; now these were almost all inhabited by Romans.

Gregory of Tours[‡] relates, that a certain judge was obliged after the death of Chilperic to take refuge in a church, for having under the reign of that prince ordered taxes to be levied on several Franks, who in the reign of Childebert were *ingenui*, or freeborn: "Multos de Francis, qui tempore Childeberti regis ingenui fuerant, publico tributo subegit." Therefore the Franks who were not bondmen paid no taxes.

There is not a grammarian but would be ashamed to see how the Abbé du Bos^S has interpreted this passage. He observes, that in those days the freedmen were also called *ingenui*. Upon this supposition he renders the Latin word *ingenui*, by *freed from taxes*; a

phrase, which we indeed may use, as *freed from cares, freed from punishments*; but in the Latin tongue, such expressions as *ingenui a tributis, libertini a tributis, manumissi tributorum*, would be quite monstrous.

Parthenius, says Gregory of Tours[¶] had like to have been put to death by the Franks for subjecting them to taxes. The Abbé du Bos finding himself hard pressed by this passage^{*} very coolly supposes the thing in question: it was, he says, an extraordinary duty.

We find in the law of the Visigoths[†], that when a Barbarian had seized upon the estate of a Roman, the judge obliged him to sell it, to the end that this estate might continue to be tributary; consequently the Barbarians paid no taxes[‡].

The Abbé du Bos[§] who, to support his system, would fain have the Visigoths subject to taxes[¶], quits the literal and spiritual sense of the law, and pretends upon no other indeed than an imaginary foundation, that between the establishment of the Goths and this law there had been an augmentation of taxes which related only to the Romans. But none but father Harduin are allowed thus to exercise an arbitrary power over facts.

This learned author^{**} has rumaged Justinian's code^{††}, in search of laws, to prove that among the Romans the military benefices were subject to taxes. From whence he would infer that the same held good with regard to fiefs or benefices among the Franks. But the opinion that our fiefs derive their origin from that institution of the Romans, is at present exploded; it obtained only at a time when the Roman history, but not ours, was well understood, and our ancient records lay buried in obscurity and dust.

But the Abbé is in the wrong to quote Cassiodorus, and to make use of what was transacting in Italy, and in the part of Gaul subject to Theodoric, in order to acquaint us with the practice established among the Franks; these are things which must not be confounded. I propose shewing, some time or other, in a particular work, that the plan of the monarchy of the Ostrogoths was intirely indifferent from that of any other government founded in those days by the other Barbarian nations; and so far are we entitled to affirm that a practice obtained among the Franks, because it was established among the Ostrogoths, that on the contrary we have just reason to think that a custom of the Ostrogoths was not in force among the Franks.

The hardest task for persons of extensive erudition, is to deduce their arguments from passages not foreign to the subject, and to find, if we may be allowed to express ourselves in astronomical terms, the true place of the sun.

The same author makes a wrong use of the capitularies, as well as of the historians and laws of the barbarous nations. When he wants the Franks to pay taxes, he applies to freemen what can be understood only of^{*} bondmen; when he speaks of their military service. he applies to[†] bondmen what can never relate but to freemen.

CHAP. XIII.

Of Taxes paid by the Romans and Gauls, in the monarchy of the Franks.

I MIGHT here examine whether after the Gauls and Romans were conquered, they continued to pay the taxes to which they were subject under the emperors. But, for the sake of brevity, I shall be satisfied with observing that if they paid them in the beginning, they were soon after exempted, and that those taxes were changed into a military service. For I confess I cannot conceive how the Franks should have been at first such great friends, and afterwards such sudden and violent enemies, to taxes.

A capitulary^{*} of Lewis the Debonnaire explains extremely well the situation of the freemen in the monarchy of the Franks. Some troops[†] of Goths or Iberians, flying from the oppression of the Moors, were received into Lewis's dominions. The agreement made with them was, that like other freemen they should follow their count to the army; and that upon a march they should mount guard[‡] and patrol under the command also of their count; and that they should furnish horses and carriages for baggage to the king's[¶] commissaries and to the ambassadors in their way to and from court; and that they should not be compelled to pay any further acknowledgment, but should be treated as the other freemen.

It cannot be said that these were new usages introduced towards the commencement of the second race. This must be referred at least to the middle or to the end of the first. A capitulary of the year^{*} 864, says in express terms, that it was the ancient custom for freemen to perform military service, and to furnish likewise the horses and carriages above mentioned; duties particular to themselves, and from which those who possessed the fiefs were exempt, as we shall prove hereafter.

This is not all; there was a regulation[†] which hardly permitted the imposing of taxes on those freemen. He who had four manors[‡] was always obliged to march against the enemy: he who had but three, was joined with a freeman that had only one; the latter bore the fourth part of the other's charges, and staid at home. In like manner, they joined two freemen who had each two manors; he who went to the army had half his charges borne by him who staid at home.

Again, we have an infinite number of charters, in which the privileges of fiefs are granted to lands or districts possessed by freemen, and of which I shall make farther mention hereafter[¶]. These lands are exempted from all the duties or services, which were required of them by the counts, and by the rest of the king's officers: and as all these services are particularly enumerated, without making any mention of taxes, it is

manifest that no taxes were imposed upon them.

It was very natural that the Roman art of tax-gathering should fall of itself in the monarchy of the Franks: it was a most complicate art, far above the conception, and wide from the plan, of those simple people. Were the Tartars to over-run Europe, we should find it very difficult to make them comprehend what is meant by our financiers.

The^{*} anonymous author of the life of Lewis the Debonnaire, speaking of the counts and other officers of the nation of the Franks, whom Charlemaign established in Aquitania, says, that he intrusted them with the care of defending the frontiers, as also with the military power and the direction of the demesnes belonging to the crown. This shews the state of the royal revenues under the second race. The prince had kept his demesnes in his own hands, and employed his bondmen in improving them. But the indictions, the capitations, and other imposts raised at the time of the emperors on the persons or goods of freemen, had been changed into an obligation of defending the frontiers, and marching against the enemy.

In the same history[†], we find that Lewis the Debonnaire having been to wait upon his father in Germany, this prince asked him, why he, who was a crowned head, came to be so poor: to which Lewis made answer, that he was only a nominal king, and that the great lords were possessed of almost all his demesnes; that Charlemaign, being apprehensive lest this young prince should forfeit their affection, if he attempted himself to resume what he had inconsiderately granted, appointed commissaries to restore things to their former situation.

The bishops writings[‡] to Lewis brother to Charles the Bald, use these words: "Take care of your lands, that you may not be obliged to travel continually by the houses of the clergy, and to tire their bondmen with carriages. Manage your affairs, continue they, in such a manner, that you may have enough to live upon, and to receive embassies." It is evident, that the king's revenues^{*} in those days consisted of their demesnes.

CHAP. XIV.

Of what they called Census.

AFTER the Barbarians had quitted their own country, they were desirous of reducing their usages into writing; but as they found a difficulty in writing German words with Roman letters, they published these laws in Latin.

In the confusion and rapidity of the conquest, most things changed their nature; in order however to express them, they were obliged to make use of such old Latin words, as were most analoous to the new usades. Thus whatever was likely to revive[†] the

idea of the ancient census of the Romans, they called by the name of *census tributum*; and when things had no relation at all to the Roman census, they expressed, as well as they could, the German words by Roman letters: thus they formed the word *fredum*, on which I shall have occasion to descant in the following chapters.

The words *census* and *tributum* having been employed in an arbitrary manner, this has thrown some obscurity on the signification in which these words were used under our princes of the first and second race. And modern^{*} authors who have adopted particular systems, having found these words in the writings of those days, imagined that what was then called census, was exactly the census of the Romans; and from thence they inferred this consequence, that our kings of the two first races had put themselves in the place of the Roman emperors, and made no change in [†]their administration. Besides, as particular duties raised under the second race were by change and by certain[‡] restrictions converted into others, they inferred from thence that these duties were the census of the Romans; and, as since the modern regulations, they found that the crown demesnes were absolutely unalienable, they pretended that those duties which represented the Roman census, and did not form a part of the demesnes, were mere usurpation. I omit the other consequences.

To apply the ideas of the present time to distant ages, is a source of error. To these people who want to modernize all the ancient ages, I shall say what the Egyptian priests said to Solon, "O Athenians, you are mere children!"

CHAP. XV.

That what they called census was raised only on the bondmen, and not on the freemen.

THE king, the clergy, and the lords raised regular taxes, each on the bondmen of their respective demesnes. I prove it with respect to the king, by the capitulary *de Villis*; with regard to the clergy, by the codes of the^{*} laws of the Barbarians; and with relation to the lords, by the regulations[†] which Charlemaign made concerning this subject.

These taxes were called *census*; they were œconomical and not fiscal duties, mere private services and not public obligations.

I affirm, that what they called *census* at that time, was a tax raised upon the bondmen. This I prove by a formulary of Marculfus containing a permission from the king to enter into holy orders, provided the persons be^{*} free-born, and not enrolled in the register of the *census*. I prove it also by a commission from Charlemaign to a count[†], whom he had sent into Saxony; which contains the enfranchisement of the Saxons for having

embraced Christianity, and is properly a charter of freedom[¶]. This prince restores them to their former[§] civil liberty, and exempts them from paying the census. It was therefore the same thing to be a bondman as to pay the census, to be free as not to pay it.

By a kind of letters patent^{*} of the same prince in favour of the Spaniards, who had been received into the monarchy, the counts are forbid to demand any census of them, or to deprive them of their lands. That strangers upon their coming to France were treated as bondmen, is a thing well known; and Charlemaign being desirous they should be considered as freemen, since he would have them be proprietors of their lands, forbade the demanding any census of them.

A capitulary of Charles the Bald[†], given in favour of those very Spaniards, orders them to be treated like the other Franks, and forbids the requiring any census of them: consequently this census was not paid by freemen.

The thirtieth article of the edict of Pistes reforms the abuse, by which several of the husbandmen belonging to the king or to the church, sold the lands dependent on their manors to ecclesiastics or to people of their condition, reserving only a small cottage to themselves; by which means they avoided paying the census; and, it ordains, that things should be restored to their primitive situation: the census was therefore a tax peculiar to bondmen.

From thence also it follows, that there was no general census in the monarchy; and this is clear from a great number of passages. For what could be the meaning of this[‡] capitulary? "We ordain that the royal census should be levied in all places, where formerly it was[†] lawfully levied." What could be the meaning of that in which[‡] Charlemaign orders his commissaries in the provinces to make an exact enquiry into all the census's that belonged in former times[¶] to the king's demesne? And of that[§] in which he disposes of the census's paid by those^{*} of whom they are demanded? What can that other capitulary^{††} mean, in which we read, "If any person^{‡‡} has acquired a tributary land, on which we were accustomed to levy the census?" And that other in fine^{¶¶}, in which Charles the Bald^{§§} makes mention of the lands, whose census had from time immemorial belonged to the king.

Observe that there are some passages which seem at first sight to be contrary to what I have said, and yet confirm it. We have already seen that the freemen in the monarchy were obliged only to furnish particular carriages; the capitulary just now cited gives to this^{**} the name of census, and opposes it to the census paid by the bondmen.

Besides, the edict^{†††} of Pistes takes notice of those freemen who are obliged to pay the royal census for their[‡] head and for their cottages, and who had sold themselves during the famine. The king orders them to be ransomed. This is[¶] because those who were

manumitted by the king's letters, did not, generally speaking, acquire a full and perfect^S liberty, but they paid *censum in capite*; and these are the people here meant.

We must therefore explode the idea of a general and universal census, in imitation of that of the Romans, from which census the rights of the lords are also supposed to have been derived by usurpation. What was called *census* in the French monarchy, independently of the abuse made of that word, was a particular tax imposed on the bondmen by their masters.

I beg the reader to excuse the trouble I must give him with such a number of citations. I should be more concise, did I not meet with the Abbé du Bos's book on the establishment of the French monarchy in Gaul, continually in my way. Nothing is a greater obstacle to our progress in knowledge, than a bad performance of a celebrated author; because, before we instruct, we must begin with undeceiving.

CHAP. XVI.

Of the feudal Lords or Vassals.

I HAVE taken notice of those volunteers among the Germans, who followed their princes in their several expeditions. The same usage continued after the conquest. Tacitus mentions them by the name of companions^{*}; the Salic law by that of men who have vowed fealty[†] to the king; the formularies of[‡] Marculfus by that of the king's Antrustios[¶], the earliest French historians by that of Leudes^S, faithful and loyal; and those of later date by that of vassals^{**} and lords.

In the Salic and Ripuarian laws we meet with an infinite number of regulations in regard to the Franks, and only with a few for the Antrustios. The regulations concerning the Antrustios are different from those which were made for the other Franks; they are full of what relates to the settling of the property of the Franks, but mention not a word concerning that of the Antrustios. This is because the property of the latter was regulated rather by the political than by the civil law, and was the share that fell to an army, and not the patrimony of a family.

The goods reserved for the feudal lords were called fiscal^{††} goods, benefices, honours, and fiefs, by different authors, and in different times.

There is no doubt but the fiefs at first were at will^{‡‡}. We find in Gregory of Tours^{¶¶}, that Sunegisilus and Gallomanus were deprived of all they held of the exchequer, and no more was left them than their real property. When Gontram raised his nephew

Childebert to the throne, he had a private conference with him, in which he named^{*} the persons who ought to be honoured with, and those who ought to be deprived of, the

fiefs. In a formulary[†] of Marculfus, the king gives in exchange not only the benefices held by his exchequer, but likewise those which had been held by another. The law of the Lombards opposes[‡] the benefices to property. In this our historians, the formularies, the codes of the different barbarous nations, and all the monuments of those days, are unanimous. In fine, the writers of the book of fiefs[¶] inform us, that at first the lords could take them back when they pleased, that afterwards they granted them for the space of a year[§], and that at length they gave them for life.

CHAP. XVII.

Of the Military Service of Freemen.

TWO sorts of people were bound to military service; the great and lesser vassals, who were obliged in consequence of their fief; and the freemen, whether Franks, Romans, or Gauls, who served under the count, and were commanded by him and his officers.

The name of freemen was given to those, who on the one hand had no benefices or fiefs, and on the other were not subject to the base services of villainage; the lands they possessed were what they called allodial estates.

The counts^{*} assembled the freemen, and led them against the enemy; they had officers under them who were called[†] vicars; and as all the freemen were divided into hundreds, which constituted what they called a borough, the counts had also officers under them, who were denominated *centenarii*, and led the freemen[‡] of the borough, or their hundreds, to the field.

This division into hundreds is posterior to the establishment of the Franks in Gaul. It was made by Clotharius and Childebert, with a view of obliging each district to answer for the robberies committed in their division; this we find in the decrees[¶] of those princes. A regulation of this kind is to this very day observed in England.

As the counts led the freemen against the enemy, the feudal lords commanded also their vassals or rearvassals; and the bishops, abbots, or their[§] advocates likewise commanded theirs^{**}.

The bishops were greatly embarrassed, and^{††} inconsistent with themselves; they requested of Charlemain not to oblige them any longer to a military service; and when he granted their request, they complained that he had deprived them of the public esteem: so that this prince was obliged to justify his intentions upon this head. Be that as it may, when they were exempted from marching against the enemy, I do not find that their vassals were led by the counts; on the contrary, we see^{*} that the kings or the bishops chose one of their feudatories to conduct them.

In a capitulary[†] of Lewis the Debonnaire, this prince distinguishes three sorts of vassals, those belonging to the king, those to the bishops, and those to the counts.

The[‡] vassals of a feudal lord were not led against the enemy by the count, except some employment in the king's household hindered the lord himself from commanding them.

But who is it that led the feudal lords into the field? No doubt the king himself, who was always at the head of his faithful vassals. Hence we constantly find in the capitularies a distinction made[¶] between the king's vassals and those of the bishops. Such brave and magnanimous princes as our kings, did not take the field to put themselves at the head of an ecclesiastic militia; these were not the men they chose to conquer or to die with.

But these laws carried their vassals and rear-vassals with them; as we can prove by the capitulary^{*}, in which Charlemaign ordains that every freeman, who has four manors either in his own property, or as a benefice from some body else, should march against the enemy or follow his lord. It is evident, that Charlemaign means, that the person who had a manor of his own should march under the count, and he who held a benefice of a lord, should set out along with him.

And yet the Abbé du Bos[†] pretends, that when mention is made in the capitularies, of tenants who depended on a particular lord, no others are meant than bondmen; and he grounds his opinion on the law of the Visigoths, and the practice of that nation. It is much better to rely on the capitularies themselves; that which I have just quoted, says expressly the contrary. The treaty between Charles the Bald and his brothers, takes notice also of freemen, who might chuse to follow either a lord or the king; and this regulation is conformable to a great many others.

We may therefore conclude, that there were three sorts of military services; that of the king's vassals, who had no other vassals under them; that of the bishops or of the other clergy, and their vassals, and, in fine, that of the count, who commanded the freemen.

Not but the vassals might be also subject to the count; as those who have a particular command are subordinate to him, who is invested with a more general authority.

We even find that the count and the king's commissaries might oblige them to pay the fine, when they had not fulfilled the engagements of their fief. In like manner if the king's vassals[‡] committed any outrage, they were subject to the correction of the count, unless they chose rather to submit to that of the king.

CHAP. XVIII.

Of the double Service.

IT was a fundamental principle of the monarchy, that whosoever was subject to the military power of another person, was subject also to his civil jurisdiction. Thus the capitulary^{*} of Lewis the Debonnaire in the year 815, makes the military power of the count, and his civil jurisdiction over the freemen, keep always an equal pace. Thus the *placita*[†] of the count who carried the freemen against the enemy, were[‡] called the *placita* of the freemen; from whence undoubtedly came this maxim, that the questions relating to liberty could be decided only in the count's *placita*, and not in those of his officers. Thus the count never led the vassals[§] belonging to the bishops or to the abbots against the enemy, because they were not subject to this civil jurisdiction. Thus he never commanded the rear-vassals belonging to the king's vassals. Thus the glossary^{**} of the English laws informs us, that those to whom^{††} the Saxons gave the name of *Coples*, were by the Normans called *Counts*, or *companions*, because they shared the justiciary fines with the King. Thus we see, that at all times the duty of a vassal^{‡‡} towards his lord, was to bear arms^{§§}, and to try his peers in his court.

One of the reasons which produced this connexion between the judiciary right and that of leading the forces against the enemy, was because the person who led them exacted at the same time the payment of the fiscal duties, which consisted in some carriage services due by the freemen, and in general in certain judiciary profits, of which we shall treat hereafter.

The lords had the right of administring justice in their fief, by the same principle as the counts had it in their counties. And indeed the counties in the several variations that happened at different times, always followed the variations of the fiefs; both were governed by the same plan, and by the same principles. In a word, the counts in their counties were lords, and the lords in their seignories were counts.

It has been a mistake to consider the counts as civil officers, and the dukes as military commanders. Both were equally civil^{||} and military officers: the whole difference consisted in the duke's having several counts under him, though there were counts who had no duke over them, as we learn from Fredegarius^{*}

It will be imagined perhaps that the government of the Franks must have been very severe at that time, since the same officers were invested with a military and civil power, nay, even with a fiscal authority, over the subjects; which in the preceding books I have observed to be distinguishing marks of despotism.

But we must not believe that the counts pronounced judgment by themselves, and administered justice in the same manner as the bashaws in Turkey; in order to judge affairs, they assembled a kind of assizes, where the principal men appeared.

To the end we may thoroughly understand what relates to the judicial proceedings, in the formulas, in the laws of the barbarians, and in the capitularies, it is proper to

observe that the functions of the count, of the *Grafio* or fiscal judge, and the *Centenarius*, were the same; that the judges, the *Rathimburgers*, and the sheriffs, were the same persons under different names. These were the counts assistants, and were generally seven in number; and as he was obliged to have twelve persons to judge[†], he filled up the number with the principal men[‡].

But whoever had the jurisdiction, the king, the count, the *Grafio*, the *Centenarius*, the lords, or the clergy, they never tried causes alone; and this usage, which derived its origin from the forests of Germany, was still continued even after the fiefs had assumed a new form.

With regard to the fiscal power, its nature was such, that the count could hardly abuse it. The rights of the prince in respect to the freemen, were so simple, that they consisted only, as we have already observed, in certain carriages which were[‡] demanded of them on some public occasions. And as for the judiciary rights, there were laws which prevented^{*} misdemeanours.

CHAP. XIX.

Of Compositions among the barbarous Nations.

SINCE it is impossible to have any tolerable notion of our political law, unless we are thoroughly acquainted with the laws and manners of the German nations, I shall therefore pause here a while, in order to enquire into those manners and laws.

It appears by Tacitus, that the Germans knew only two capital crimes; they hanged traitors, and drowned cowards; these were the only public crimes among those people.

When a man[†] had injured another, the relations of the person injured took share in the quarrel, and the offence was cancelled by a satisfaction. This satisfaction was made to the person offended when capable of receiving it: or to the relations if they had been injured in common, or if by the decease of the party injured, the satisfaction had devolved to them.

In the manner mentioned by Tacitus, these satisfactions were made by the mutual agreement of the parties; hence in the codes of the barbarous nations these satisfactions are called compositions.

The law[‡] of the Frisians is the only one I find that has left the people in that situation, in which every family at variance was in some measure in the state of nature, and in which being unrestrained either by a political or civil law, they might give a loose to their revenge, till they had obtained satisfaction. Even this law was moderated; a regulation was made that the person whose life was sought after should be unmolested

in his own house, as also in going and coming from church, and from the court where causes were tried.*

The compilers of the Salic law cite[¶] an ancient usage of the Franks, by which a person who had dug a corpse out of the ground, in order to strip it, should be banished from society, till the relations had consented to his being re-admitted. And as before that time strict orders were issued to every one, even to the offender's own wife, not to give him a morsel of bread, or to receive him under their roof; such a person was in respect to others, and others in respect to him, in a state of nature, till an end was put to this state by a composition.

This excepted, we find that the sages of the different barbarous nations thought of determining by themselves, what would have been too long and too dangerous to expect from the mutual agreement of the parties. They took care to fix the value of the composition which the party injured was to receive. All those barbarian laws are in this respect most admirably exact; the several cases are minutely[§] distinguished, the circumstances are weighed, the law substitutes itself in the place of the person injured, and insists upon the same satisfaction as he himself would have demanded in cold blood.

By the establishing of those laws, the German nations quitted that state of nature, in which they seemed to have lived in Tacitus's time.

Rotharis declares in the law of[†] the Lombards, that he had increased the compositions anciently accustomed for wounds, to the end that the wounded person being fully satisfied, all enmities should cease. And indeed, as the Lombards, from a very poor people, were grown rich by the conquest of Italy, the ancient compositions were become frivolous, and reconcilements prevented. I do not question but this was the motive, which obliged the other chiefs of the conquering nations, to make the different codes of laws now extant.

The principal composition was that which the murderer paid to the relations of the deceased. The difference of[†] conditions produced a difference in the compositions: Thus in the law of the Angli, there was a composition of six hundred sous for the murder of an *adeling*, two hundred for that of a freeman, and thirty for killing a bondman. The largeness therefore of the composition for the life of a man, was one of his chief privileges; for besides the distinction it made of his person, it likewise established a greater security in his favour among rude and boisterous nations.

This we are made sensible of by the law of the[‡] Bavarians: it gives the names of the Bavarian families who received a double composition, because they were the first[¶] after the Agilolfings. The Agilolfings were of the ducal race, and it was customary with this nation to choose a duke out of that family; these had a quadruple composition. The

composition for a duke exceeded by a third, that which had been established for the Agilolfings: "Because he is a duke, says *the law*, a greater honour is paid to him than to his relations."

All these compositions were valued in money. But as those people, especially when they lived in Germany, had very little specie, they might pay it in cattle, corn, moveables, arms, dogs, hawks[§], lands, &c. The law itself^{*} frequently determined the value of those things; which explains how it was possible for them to have such a number of pecuniary punishments with so very little money.

These laws were therefore employed in exactly determinating the difference of wrongs, injuries, and crimes; to the end that every one might know how far he had been injured or offended, the reparation he was to receive, and especially that he was to receive no more.

In this light it is easy to conceive, that a person who had taken revenge after having received satisfaction, was guilty of an heinous crime. This contained a public as well as a private offence: it was a contempt of the law of itself; a crime which the legislators[†] never failed to punish.

There was another crime, which above all others was considered as dangerous, when[‡] those people lost something of their spirit of independence, and when the kings endeavoured to establish a better civil administration: this was the refusing to give or to receive satisfaction. We find in the different codes of the laws of the Barbarians, that the legislators were peremptory[¶] on this article. In effect, a person who refused to receive satisfaction, wanted to preserve his right of prosecution; he who refused to give it left the right of prosecution to the person injured; and this is what the sages had reformed in the institutions of the Germans, whereby people were invited but not compelled to compositions.

I have just now made mention of a text of the Salic law, in which the legislator left the party offended at liberty to receive or refuse satisfaction; it is the law[§] by which a person who had stript a dead body, was expelled society; till the relations upon receiving satisfaction, petitioned for his being re-admitted. It was owing to the respect they had for sacred things, that the compilers of the Salic laws did not meddle with the ancient usage.

It would have been absolutely unjust to grant a composition to the relations of a robber killed in the fact, or to the relations of a woman who had be repudiated for the crime of adultery. The law^{*} of the Bavarians allowed no composition in the like case, but punished the relations who sought revenge.

It is no rare thing to meet with compositions for involuntary actions in the codes of the laws of the Barbarians. The law of the Lombards is generally very prudent: it[†] ordained.

that in those cases the composition should be according to the person's generosity; and that the relations should no longer be permitted to pursue their revenge.

Clotharius the second made a very wise decree: he forbade[†] the person robbed to receive any clandestine composition, and without an order from the judge. We shall presently see the motive of this law.

CHAP. XX.

Of what was afterwards called the Jurisdiction of the Lords.

BESIDE the composition which they were obliged to pay to the relations for murders or injuries, they were also under a necessity of paying a certain duty, which the codes of the barbarian laws call[‡] *fredum*. We have no term in our modern language to express it; yet I intend to treat of it at large; and in order to give an idea of it, I begin with defining it a recompence for the protection granted against the right of prosecution. Even to this day, *fred*, in the Swedish language, signifies peace.

The administration of justice among those rude and unpolished nations, was nothing more than granting to the person who had committed an offence, a protection against the prosecution of the party offended, and obliging the latter to accept of the satisfaction due to him: insomuch that among the Germans, contrary to the practice of all other nations, justice was administered in order to protect the criminal against the party injured.

The codes of the Barbarian laws have given us the cases in which the *freda* might be demanded. When the relations could not prosecute, they allow of no *fredum*; and indeed, when there was no prosecution, there could be no composition for a protection against it. Thus, in the law of the[§] Lombards, if a person happened to kill a freeman by chance, he paid the value of the man killed, without the *fredum*; because as he had killed him involuntarily, it was not the case in which the relations were allowed the right of prosecution. Thus in the law of the^{*} Ripuarians, when a person was killed with a piece of wood, or with any instrument made by a man, the instrument or the wood were deemed culpable, and the relations seized upon them for their own use, but were not allowed to demand the *fredum*.

In like manner, when a beast happened to kill a man, the[‡] same law established a composition without the *fredum*, because the relations of the deceased were not offended.

In fine, it was ordained by the[†] Salic law, that a child who had committed a fault before the age of twelve, should pay the composition without the *fredum*: as he was not yet

able to bear arms, he could not be in the case in which the party injured, or his relations, had a right to demand satisfaction.

It was the criminal that paid the *fredum* for the peace and security, of which he had been deprived by his crime, and which he might recover by protection. But a child did not lose this security; he was not a man, and consequently could not be expelled from human society.

This *fredum* was a local right in favour of the person who was^{||} judge of the district. Yet the law of the Ripuarians^S forbade him to demand it himself: it ordained, that the party who had gained the cause should receive it and carry it to the exchequer, to the end that there might be a lasting peace, says the law, among the Ripuarians.

The greatness of the *fredum* was proportioned to the degree of^{*} protection: thus the *fredum* for the king's protection was greater than what was granted for the protection of the count, or of the other judges.

Here I see the origin of the jurisdiction of the lords. The fiefs comprized very large territories, as appears from a vast number of records. I have already proved that the kings raised no taxes on the lands belonging to the division of the Franks; much less could they reserve to themselves any duties on the fiefs. Those who obtained them, had in this respect a full and perfect enjoyment, reaping every possible emolument from them. And as one of the most considerable[†] emoluments was the justiciary profits *freda*, which were received according to the usage of the Franks, it followed from thence, that the person seized of the fief, was also seized of the jurisdiction, the exercise of which consisted of the compositions made to the relations, and of the profits accruing to the lord; it was nothing more than ordering the payment of the compositions of the law, and demanding the legal fines.

We find by the formularies containing confirmation of the perpetuity of a fief in favour of a feudal lord^{*}, or of the privileges of fiefs in favour of[†] churches, that the fiefs were possessed of this right. This appears also from an infinite number of charters[†] mentioning a prohibition to the king's judges or officers of entering upon the territory in order to exercise any act of judicature whatsoever, or to demand any judiciary emolument. When the king's judges could no longer make any demand in a district, they never entered it; and those to whom this district was left, performed the same functions as had been exercised before by the judges.

The king's judges are forbidden also to oblige the parties to give security for their appearing before them: it belonged therefore to the person who had received the territory in fief, to demand this security. They mention also, that the king's commissaries shall not insist upon being accommodated with a lodging; in effect, they no longer exercised any function in those districts.

The administration therefore of justice, both in the old and new fiefs, was a right inherent in the very fief itself, a lucrative right which constituted a part of it. For this reason it had been considered at all times in this light; from whence this maxim arose, that jurisdictions are patrimonial in France.

Some have thought that the jurisdictions derived their origin from the manumissions made by the kings and lords, in favour of their bondmen. But the German nations, and those descended from them, are not the only people who manumitted their bondmen, and yet they are the only people that established patrimonial jurisdictions. Besides, we find by the formularies^{*} of Marculfus that there were freemen dependent on these jurisdictions in the earliest times: the bondmen were therefore subject to the jurisdiction, because they were upon the territory; and they did not give rise to the fiefs for having been annexed to the fief.

Others have taken a shorter cut: the lords, say they, and this is all they say, usurped the jurisdictions. But are the nations descended from Germany the only people in the world that usurped the rights of princes? We are sufficiently informed by history, that several other nations have encroached upon their sovereigns; and yet we find no other instance of what we call the jurisdiction of the lords. The origin of it is therefore to be traced in the usages and customs of the Germans.

Whoever has the curiosity to look into Loyseau[†] will be surprised at the manner in which this author supposes the lords to have proceeded, in order to form and usurp their different jurisdictions. They must have been the most artful people in the world; they must have robbed and plundered, not after the manner of a military nation, but as the country justices and the attornies rob one another. Those brave warriors must be said to have formed a general system of politics throughout all the provinces of the kingdom, and in so many other countries in Europe: Loyseau makes them reason, as he himself reasoned in his closet.

Once more: if the jurisdiction was not a dependence of the fief, how come we every where[†] to find, that the service of the fief was to attend the king or the lord both in their courts and in the army?

CHAP. XXI.

Of the territorial Jurisdiction of the Churches.

THE churches acquired a very considerable property. We find that our kings gave them great seignories, that is, great fiefs; and we find jurisdictions established at the same time in the demesnes of those churches. From whence could so extraordinary a

privilege derive its origin? It must certainly have been in the nature of the grant: the church land had this privilege, because it had not been taken from it. A seignory was given to the church; and it was allowed to enjoy the same privileges, as if it had been granted to a vassal. It was also subjected to the same service as it would have paid to the state if it had been given to a layman, according to what we have already observed.

The churches had therefore the right of demanding the payment of compositions in their territory; and of insisting upon the *fredum*; and as those rights necessarily implied that of hindering the king's officers from entering upon the territory, to demand these *fréda* and to exercise acts of judicature, the right which ecclesiastics had of administering justice in their own territory, was called *immunity*, in the style of the formularies^{*}, of the charters, and of the capitularies.

The law of the Ripuarians[†] forbids the freedmen[‡] of the churches, to hold the assembly[¶] for administering justice in any other place than in the church where they were manumitted. The churches had therefore jurisdictions even over freemen, and held their *placita* in the earliest times of the monarchy.

I find in the lives of the saints[§], that Clovis gave to a certain holy person a power over a district of six leagues, and exempted it from all manner of jurisdiction. This, I believe, is a falsity, but it is a falsity of a very ancient date; both the truth and the fiction contained in that life are relative to the customs and laws of those times, and it is these customs^{*} and laws we are investigating.

Clotharius II. orders^{††} the bishops or the nobility who are possessed of estates in distant parts, to chuse upon the very spot those who are to administer justice, or to receive the judiciary emoluments.

The same prince^{‡‡} regulates the judiciary power between the ecclesiastic courts and his officers. The capitulary of Charlemaign in the year 802 prescribes to the bishops and abbots, the qualifications necessary for their officers of justice. Another capitulary^{¶¶} of the same prince inhibits the royal officers, to exercise any jurisdiction over^{§§} those who are employed in manuring church-lands, except they entered into that state by fraud, and to exempt themselves from contributing to the public charges. The bishops assembled at Rheims made a declaration^{*}, that the vassals belonging to the respective churches are within their immunity. The capitulary of Charlemaign in the year 806[†] ordains that the churches should have both criminal and civil jurisdiction over those who live upon their lands. In fine, as the capitulary[‡] of Charles the Bald distinguishes between the king's jurisdiction, that of the lords, and that of the church; I shall say nothing farther^{¶¶} upon this subject.

CHAP. XXII.

That the Jurisdictions were established before the End of the second Race.

IT has been pretended that the vassals usurped the jurisdiction in their seignories, during the confusion of the second race. Those who chuse rather to form a general proposition than to examine it, found it easier to say that the vassals did not possess, than to discover how they came to possess. But the jurisdictions do not owe their origin to usurpations; they are derived from the primitive establishment, and not from its corruption.

“He who kills a freeman, says^{*} the law of the Bavarians, shall pay a composition to his relations, if he has any; if not, he shall pay it to the duke, or to the person under whose protection he had put himself in his life-time.” It is well known what it was to put one’s self under the protection of another for a benefice.

“He who had been robbed of his bondman, says the law of the Alemans[†], shall have recourse to the prince to whom the robber is subject; to the end that he may obtain a composition.”

“If a *centenarius*, says[‡] the decree of Childebert, finds a robber in another hundred than his own, or in the limits of our faithful vassals, and does not drive him out, he shall be answerable for the robber, or purge himself by oath.” There was therefore a difference between the district of the centenarii and that of the vassals.

This decree[¶] of Childebert explains the constitution of Clotharius in the same year, which being given for the same case and fact, differs only in the terms; the constitution calling *in trustee*, what by the decree is stiled *in terminis fidelium nostrorum*. Messieurs Bignon and Ducange[§] who pretend that *in trustee* signified another king’s demesne, are mistaken in their conjecture.

Pepin, king of Italy, in a constitution^{**} that had been made as well for the Franks as for the Lombards, after imposing penalties on the counts and other royal officers, for prevarications or delays in the administration of justice, ordains^{††} that if it happens that a Frank or a Lombard possessed of a fief is unwilling to administer justice, the judge to whose district he belongs, shall suspend the exercise of his fief, and in the mean time, either the judge or his commissary shall administer justice.

It appears by a capitulary^{*} of Charlemaign, that the kings did not levy the *freda* in all places. Another[†] capitulary of the same prince shews the feudal laws, and feudal court to have been already established. Another of Lewis the Debonnaire ordains, that when a person possessed of a fief, does not administer justice[‡], or hinders it from being administered, the king’s commissaries shall live upon him at discretion, till justice be administered. I shall likewise quote two[¶] capitularies of Charles the Bald. one of the

year 861; where we find the particular jurisdictions established, with judges and subordinate officers; and the other^S of the year 864, where he makes a distinction between his own seignories and those of private persons.

We have not the original grants of the fiefs, because they were established by the partition, which is known to have been made among the conquerors. It cannot therefore be proved by original contracts, that the jurisdictions were at first annexed to the fiefs: but if in the formularies of the confirmations, or of the translations of those fiefs in perpetuity, we find, as already hath been observed, that the jurisdiction was there established; this judiciary right must certainly have been inherent in the fief, and one of its chief privileges.

We have a far greater number of records, that establish the patrimonial jurisdiction of the clergy in their districts, than there are to prove that of the benefices or fiefs of the feudal lords; for which two reasons may be assigned. The first, that most of the records now extant were preserved or collected by the monks, for the use of their monasteries. The second, that the patrimony of the several churches having been formed by particular grants, and by a kind of exception to the order established, they were obliged to have charters granted to them; whereas the concessions made to the feudal lords being consequences of the political order, they had no occasion to demand, and much less to preserve, a particular charter. Nay, the kings were oftentimes satisfied with making a simple delivery with the scepter, as appears from the life of St. Maur.

But the third formulary^{*} of Marculfus sufficiently proves, that the privileges of immunity, and consequently that of jurisdiction, were common to both the clergy and the laity, since it is made for both. The same may be said of the constitution of Clotharius II[†].

CHAP. XXIII.

General Idea of the Abbé Du Bos's Book on the Establishment of the French Monarchy in Gaul.

BEFORE I finish this book, it will not be im, proper to write a few strictures on the Abbé du Bos's performance, because my notions are perpetually contrary to his; and if he has hit on the truth, I must have missed it.

This performance has imposed upon a great many, because it is penned with art; because the point in question is constantly supposed; because the more it is deficient in proofs, the more it abounds in probabilities; and, in fine, because an infinite number of conjectures are laid down as principles, and from thence other conjectures are inferred

as consequences. The reader forgets he has been doubting, in order to begin to believe. And as a prodigious fund of erudition is interspersed, not in the system, but around it, the mind is taken up with the appendages, and neglects the principal. Besides, such a vast multitude of researches hardly permit one to imagine that nothing has been found; the length of the way makes us think that we are arrived at our journey's end.

But when we examine the matter thoroughly, we find an immense colossus with earthen feet; and it is the earthen feet that render the colossus immense. If the Abbé du Bos's system had been well grounded, he would not have been obliged to write three tedious volumes to prove it; he would have found every thing within his subject; and without wandering on every side in quest of what was extremely foreign to it, even reason itself would have undertaken to range this in the same chain with the other truths. Our history and laws would have told him; "Do not take so much trouble, we shall be your vouchers."

CHAP. XXIV.

The same Subject continued. Reflection on the main Part of the System.

THE Abbé du Bos endeavours by all means to explode the opinion that the Franks made the conquest of Gaul. According to his system our kings were invited by the people, and only substituted themselves in the place, and succeeded to the rights, of the Roman emperors.

This pretension cannot be applied to the time when Clovis, upon his entering Gaul, took and plundered the towns; neither is it applicable to the period when he defeated Syagrius the Roman commander, and conquered the country which he held; it can therefore be referred only to the period when Clovis, already master of a great part of Gaul by open force, was called by the choice and affection of the people to the sovereignty over the rest. And it is not enough that Clovis was received, he must have been called; the Abbé du Bos must prove that the people chose rather to live under Clovis, than under the domination of the Romans, or under their own laws. The Romans belonging to that part of Gaul not yet invaded by the Barbarians, were, according to this author, of two sorts; the first were of the Armorican confederacy, who had driven away the emperor's officers, in order to defend themselves against the Barbarians, and to be governed by their own laws; the second were subject to the Roman officers. Now does the Abbé produce any convincing proofs that the Romans who were still subject to the empire, called in Clovis? Not one. Does he prove that the republic of the Armoricans invited Clovis; or even concluded any treaty with him? Not at all. So far from being able to tell us the fate of this republic, he cannot even so much as prove its existence; and

notwithstanding he pretends to trace it from the time of Honorius to the conquest of Clovis, notwithstanding he relates with a most admirable exactness all the events of those times; still this republic remains invisible in ancient authors. For there is a wide difference between proving by a passage of Zozyms^{*}, that under the emperor Honorius, the[†] country of Armorica and the other provinces of Gaul revolted and formed a kind of republic; and shewing us that notwithstanding the different pacifications of Gaul, the Armoricans formed a particular republic, which continued till the conquest of Clovis: and yet this is what he should have demonstrated by strong and substantial proofs, in order to establish his system. For when we behold a conqueror entering a country, and subduing a great part of it by force and open violence, and soon after we find the whole country subdued, without any mention in history of the manner of its being effected, we have sufficient reason to believe that the affair ended as it began.

When we find he has mistaken this point, it is easy to perceive that his whole system falls to the ground; and as often as he infers a consequence from these principles, that Gaul was not conquered by the Franks, but that the Franks were invited by the Romans, we may safely deny it.

This author proves his principle, by the Roman dignities with which Clovis was invested: he insists that Clovis succeeded to Chilperic his father in the office of *magister militiæ*. But these two offices are merely of his own creation. S. Remigius's letter to Clovis, on which he grounds his opinion[†], is only a congratulation upon his accession to the crown. When the intent of a writing is so well known, why should we give it another turn?

Clovis, towards the end of his reign, was made consul by the emperor Anastasius: but what right could he receive from an authority that lasted only one year? It is very probable, says our author, that in the same diploma the emperor Anastasius made Clovis proconsul. And, I say, it is very probable he did not. With regard to a fact for which there is no foundation, the authority of him who denies is equal to that of him who affirms. But I have also a reason for denying it. Gregory of Tours, who mentions the consulate, says never a word concerning the proconsulate. And even this proconsulate could have lasted only about six months. Clovis died a year and a half after he was created consul; and we cannot pretend to make the proconsulate an hereditary office. In fine, when the consulate, and, if you will, the proconsulate were conferred upon him, he was already master of the monarchy, and all his rights were established.

The second proof alledged by the Abbé du Bos, is the renunciation made by the emperor Justinian, in favour of the children and grand-children of Clovis, of all the rights of the empire over Gaul. I could say a great deal concerning this renunciation. We may judge of the regard shewn to it by the kings of the Franks, from the manner in which they performed the conditions of it. Besides, the kings of the Franks were masters, and peaceable sovereigns of Gaul; Justinian had not one foot of ground in that

country; the western empire had been destroyed a long time before; and the eastern empire had no right to Gaul, but as representing the emperor of the west. These were rights to rights; the monarchy of the Franks was already founded; the regulation of their establishment was made; the reciprocal rights of the persons and of the different nations who lived in the monarchy, were agreed on; the laws of each nation were given and even reduced into writing. What could therefore that foreign renunciation avail to a government already established?

What can the Abbé mean by making such a parade of the declamations of all those bishops, who amidst the confusion, and total subversion of the state, endeavour to flatter the conqueror? What else is implied by flattering, but the weakness of him who is obliged to flatter? What does rhetoric and poetry prove, but the use of those very arts? Is it possible to help being surprised at Gregory of Tours, who after mentioning the assassinations committed by Clovis, says, that God laid his enemies every day at his feet, because he walked in his ways? Who doubts but the clergy were glad of Clovis's conversion, and that they even reaped great advantages from it? But who doubts at the same time that the people experienced all the miseries of conquest, and that the Roman government submitted to that of the Franks? The Franks were neither willing nor able to make a total change; and few conquerors were ever seized with so great a degree of madness. But to render all the Abbé du Bos's consequences true, they must not only have made no change amongst the Romans, but they must have even changed themselves.

I could undertake to prove, by following this author's method, that the Greeks never conquered Persia. I should set out with mentioning the treaties which some of their cities concluded with the Persians: I should mention the Greeks who were in Persian pay, as the Franks were in the pay of the Romans. And if Alexander entered the Persian territories, besieged, took, and destroyed the city of Tyre, it was only a particular affair like that of Syagrius. But, behold the Jewish pontiff goes forth to meet him. Listen to the oracle of Jupiter Hammon. Recollect how he had been predicted at Gordium. See what a number of towns crowd, as it were, to submit to him; and how all the Satraps and grandees come to pay him obeisance. He put on the Persian dress; this is Clovis's consular robe. Does not Darius offer him one half of his kingdom? Is not Darius assassinated like a tyrant? Do not the mother and wife of Darius weep at the death of Alexander? Were Quintus Curtius, Arrian, or Plutarch, Alexander's cotemporaries? Has not the invention of ^{*} printing affording us great lights, which those authors wanted? Such is the history of the *establishment of the French monarchy in Gaul*.

CHAP. XXV.

Of the French Nobility.

THE Abbé du Bos maintains, that at the commencement of our monarchy there was only one order of citizens among the Franks. This assertion, so injurious to the noble blood of our principal families, is equally affronting to the three great houses which successively governed this realm. The origin of their grandeur would not therefore have been lost in the obscurity of time. History might point out the ages when they were plebeian families; and to make Childeric, Pepin, and Hugh Capet gentlemen, we should be obliged to trace their pedigree among the Romans or Saxons, that is, among the conquered nations.

This author grounds^{*} his opinion on the Salic law. By that law, he says, it plainly appears, that there were not two different orders of citizens among the Franks: it allowed a composition[†] of two hundred sous for the murder of any Frank whatsoever; but among the Romans it distinguished the king's guest, for whose death it gave a composition of three hundred sous, from the Roman proprietor to whom it granted a hundred, and from the Roman tributary to whom it gave only a composition of forty-five. And as the difference of the compositions formed the principal distinction, he concludes that there was but one order of citizens among the Franks, and three among the Romans.

It is astonishing that his very mistake did not set him right. And indeed, it would have been very extraordinary that the Roman nobility who lived under the domination of the Franks, should have a larger composition; and been persons of much greater importance than the most illustrious among the Franks, and their greatest generals. What probability is there, that the conquering nation should have so little respect for themselves, and so great a regard for the conquered people? Besides, our author quotes the laws of other barbarous nations, which proves that they had different orders of citizens. Now it would be a matter of astonishment that this general rule should have failed only among the Franks. Hence he ought to have concluded either that he did not rightly understand, or that he misapplied, the passages of the Salic law; which is actually the case.

Upon opening this law, we find that the composition for the death of an Antrustio^{*}, that is, of the king's vassal, was fix hundred sous: and that for the death of a Roman, who was the[†] king's guest, was only three hundred. We find there likewise that[‡] the composition for the death of an ordinary Frank[¶] was two hundred sous; and for the death of an ordinary Roman[§], was only one hundred. For the death of a Roman^{**} tributary, who was a kind of bondman or freedman, they paid a composition of fortyfive sous: but I shall take no notice of this, no more than of the composition for the murder of a Frank bondman or of a Frank freedman, because this third order of persons is out of the question.

What does our author do? He is quite silent with respect to the first order of persons among the Franks, that is the article relating to the Antrustios; and afterwards, upon

comparing the ordinary Frank, for whose death they paid a composition of two hundred sous, with those whom he distinguishes under three orders among the Romans, and for whose death they paid different compositions, he finds that there was only one order of citizens among the Franks, and that there were three among the Romans.

As the Abbé is of opinion that there was only one order of citizens among the Franks, it would have been lucky for him that there had been only one order also among the Burgundians, because their kingdom constituted one of the principal branches of our monarchy. But in their codes^{*} we find three sorts of compositions, one for the Burgundian or Roman nobility, the other for the Burgundians or Romans of a middling condition, and the third for those of a lower rank in both nations. He has not quoted this law.

It is very extraordinary to see in what manner he evades[†] those passages which press him hard on all sides. If you speak to him of the grandees, lords, and the nobility: these, he says, are mere distinctions of respect, and not of order; they are things of courtesy, and not legal privileges; or else, he says, those people belonged to the king's council; nay, they possibly might be Romans: but still there was only one order of citizens among the Franks. On the other hand, if you speak to him of some Franks of an inferior rank[‡], he says, they are bondmen; and thus he interprets the decree of Childebert. But I must stop here a little, to enquire farther into this decree. Our author has rendered it famous by availing himself of it in order to prove two things; the one^{*}, that all the compositions we meet with in the laws of the Barbarians were only civil fines added to corporal punishments, which intirely subverts all the antient records: the other, that all freemen were judged directly and immediately by the king[†], which is contradicted by an infinite number of passages and authorities informing us of the[‡] judiciary order of those times.

This decree, which was made in an assembly[‡] of the nation, says, that if the judge finds a notorious robber, he must command him to be tied, in order to be carried before the king, *si Francus fuerit*; but if he is a weaker person (*debilior persona*), he shall be hanged on the spot. According to the Abbé du Bos, *Francus* is a freeman, *debilior persona* is a bondman. I shall defer entering for a moment into the signification of the word *Francus*, and begin with examining what can be understood by these words, *a weaker person*. In all languages whatsoever, every comparison necessarily supposeth three terms, the greatest, the less degree, and the least. If none were here meant but freemen and bondmen, they would have said *a bondman*, and not *a man of less power*. Therefore *debilior persona* does not signify a bondman, but a person of a superior condition to a bondman. Upon this supposition, *Francus* cannot mean a freeman but a powerful man; and this word is taken here in that acception, because among the Franks there were always men who had greater power than others in the state, and it was more difficult for the judge or count to chastise them. This explication agrees very well with manv capitularies^{*}. where we find the cases in which the criminals were to be

carried before the king, and those in which it was otherwise.

It is mentioned in the life of Lewis the Debonnaire[†], written by Tegan, that the bishops were the principal cause of the humiliation of that emperor, especially those who had been bondmen, and such as were born among the Barbarians. Tegan thus addresses Hebo, whom this prince had drawn from the state of servitude, and made archbishop of Rheims. "What recompence[‡] did the emperor receive from you for so many benefits? He made you a freeman, but did not enoble you, because he could not give you nobility after having given you your liberty."

This discourse which proves so strongly the two orders of citizens, does not at all confound the Abbé du Bos. He answers thus[¶]: "The meaning of this passage is not, that Lewis the Debonnaire was incapable of introducing Hebo into the order of the nobility. Hebo, as archbishop of Rheims, must have been of the first order, superior to that of the nobility." I leave the reader to judge, whether this be not the meaning of that passage; I leave him to judge whether there be any question here concerning a precedency of the clergy over the nobility. "This passage proves only," continues the same writer[§], "that the freeborn subjects were qualified as noblemen; in the common acceptation noblemen and men who are free-born have for this long time signified the same thing." What! because some of our Burghers have lately assumed the quality of noblemen, shall a passage of the life of Lewis the Debonnaire be applied to this sort of people? "And perhaps, (continues he still)[¶] Hebo had not been a bondman among the Franks, but among the Saxons, or some other German nation, where the people were divided into several orders." Then because of the Abbé du Bos's *perhaps* there must have been no nobility among the nation of the Franks. But he never applied a *perhaps* so badly. We have seen that Tegan[§] distinguishes the bishops, who had opposed Lewis the Debonnaire, some of whom had been bondmen, and others of a barbarous nation. Hebo belonged to the former and not to the latter. Besides, I do not see how a bondman, such as Hebo, can be said to have been a Saxon or a German; a bondman has no family, and consequently no nation. Lewis the Debonnaire manumitted Hebo; and as bondmen after their manumission, embraced the law of their master, Hebo was become a Frank, and not a Saxon or German.

I have been hitherto acting offensively; it is now time to defend myself. It will be objected to me, that indeed the body of the Antrustios formed a distinct order in the state, from that of the freemen; but as the fiefs were at first precarious, and afterwards for life, this could not form a nobleness of descent, since the privileges were not annexed to an hereditary fief. This is the objection which induced Mr. de Valos to think, that there was only one order of citizens among the Franks; an opinion which the Abbé du Bos has borrowed of him, and which he has absolutely spoiled with so many bad arguments. Be that as it may, it is not the Abbé du Bos that could make this objection. For after having given three orders of Roman nobility, and the quality of the king's guest for the first, he could not pretend to say that this title was a greater mark of a

noble descent than that of Antrustio. But I must give a direct answer. The Antrustios or trusty men were not such because they were possessed of a fief, but they had a fief given them because they were Antrustios or trusty men. The reader may please to recollect what has been said in the beginning of this book. They had not at that time, as they had afterwards, the same fief: but if they had not that, they had another, because the fiefs were given at their birth, and because they were often granted in the assemblies of the nation, and, in fine, because it was the interest of the nobility to receive them, it was likewise the king's interest to grant them. These families were distinguished by their dignity of trusty men, and by the privilege of being qualified to swear allegiance for a fief. In the following book,^{*} I shall demonstrate from the circumstances of time, that there were freemen who were permitted to enjoy this great privilege, and consequently to enter into the order of nobility. This was not the case at the time of Gontram, and his nephew Childebert; but so it was at the time of Charlemaign. But though in that prince's reign the freemen were not incapable of possessing fiefs, yet it appears by the above-cited passage of Tegan, that the freedmen were absolutely excluded. Will the Abbé du Bos,[†] who carries us to Turkey, to give us an idea of the ancient French nobility; will he, I say, pretend that they ever complained among the Turks of the elevation of people of low birth to the honours and dignities of the state, as they complained under Lewis the Debonnaire and Charles the Bald? There was no complaint of that kind under Charlemaign. because this prince always distinguished the ancient from the new families; which Lewis the Debonnaire and Charles the Bald did not.

The public should not forget the obligation it owes to the Abbé du Bos for several excellent performances. It is by these works, and not by his history of the establishment of the French monarchy, we ought to judge of his merit. He committed very great mistakes, because he had more in view the count of Boulainvillier's work, than his own subject.

From all these strictures I shall draw only one reflection; if so great a man was mistaken, how cautiously ought I to tread?

Endnotes

[†] Book 6.

[‡] For instance, his retreat from Germany. *Ibid.*

[*] Book 6th of the Gallic wars. Tacitus adds, "Nulli domus aut ager, aut aliqua cura; prout ad quem venére aluntur." De morib. Germ.

[†] De morib. German.

[‡] Comites.

[*] De Bello Gallico, lib. 6.

[†] See the life of Dagobert.

[‡] See Gregory of Tours, book 6. on the marriage of the daughter of Chilperic. Childebert sends ambassadors to tell him, that he should not give the cities of his father's kingdom to his daughter, nor his treasures, nor his bondmen, nor horses, nor horsemen, nor teams of oxen, &c.

[*] The Romans obliged themselves to this by treaties.

[†] Burgundiones partem Galliæ occuparunt, terrasque cum Gallicis senatoribus diviserunt. *Marius's Chronicle in the year 456.*

[‡] Book x. tit. 1. sect. 8, 9, and 16.

[§] Chap. 54, sect. 1 and 2. This division was still subsisting in the time of Lewis the Debonnaire, as appears by his capitulary of the year 829, which has been inserted in the law of the Burgundians, tit. 79. sect. 1.

[||] See Procopius, war of the Goths.

[**] See Procopius, war of the Vandals.

[*] Licèt eo tempore quo populus noster mancipiorum tertiam & duas terrarum partes accepit, &c. *Law of the Burgundians, tit. 54. sect. 1.*

[†] Ut non ampliùs a Burgundionibus qui infra venerunt requiratur quàm ad præsens necessitas fuerit, medietas terræ. *Art. 11.*

[*] De morib. German.

[†] And in that of the Visigoths.

[‡] Tit. 54.

[§] This is confirmed by the whole title of the code *de Agricolis & Censitis, & Colonis.*

[†] Si dentem optimati Burgundioni vel Romano nobili excusserit tit. 26. sect. 1. & si mediocribus personis ingenuis tam Burgundionibus quam Romanis. *Ibid. sect. 2.*

[*] Tit. 57.

[*]

*Nec preme, nec summum molire per æthera currum;
 Altius egressus, cœlestia tecta cremabis;
 Inferiùs terras: medio tutissimus ibis.
 Neu te dexterior tortum declinet ad anguem,
 Neve sinisterior pressam rota ducat ad aram;
 Inter utrumque tene.*

Ovid. Metam. lib. ii.

[†] While Gaul was under the dominion of the Romans, they formed particular bodies; these were generally freedmen, or the descendants of freed men.

[‡] See Gregory of Tours, book ii. chap. 27. Aimoin, book i. chap. 12.

[§] See the lives of the Saints in the next page.

[*] Ibid. book vi. chap. 31.

[†] Letter 43. lib. iii. in Cassiod.

[*] In the year 1763. Innumerabilibus spoliis & captivis totus ille exercitus diratus, in Franciam reversus est.

[†] See the annals of Fuld, in the year 1739; Paulus Diaconus, de gestis Longobardorum, lib. iii. c. 30. & lib. iv. c. 1. and the lives of the saints in the next quotation.

[‡] See the lives of S. Epiphanius, S. Eptadius, S. Cæsarius, S. Fidolus, S. Porcian, S. Treverius, S. Eusichius, and of S. Leger, the miracles of S. Julian, &c.

[‡]

— *Deberant quoque littora ponto.*

Ovid. lib. 1.

[§] Even the husbandmen themselves were not all slaves: see the 18th and 23d law in the code *de agricolis, et censitis, et colonis* and the 20th of the same title.

[||] See Gregory of Tours, book ii.

[*] Gregory of Tours, book v.

[†] Quæ conditio universis urbibus per Galliam constitutis summopere est adhibita.
Life of S. Aridius.

[‡] Book vii.

[§] Establishment of the French Monarchy, tom. iii. chap. 14. page 515.

[||] Book iii. c. 136.

[*] Tom. iii. p. 514.

[†] Judices atque præpositi tertias Romanorum, ab illis qui occupatas tenent, auferant, & Romanis suâ exactione sine aliquâ dilatione restituant, at nihil fisco debeat deperire.
Lib. x. tit. 1. cap. 14.

[‡] The Vandal's paid none in Africa. Procopius, war of the Vandals, lib. 1. and 2. *Historia Miscella*, lib 16. p. 106. Observe that the conquerors of Africa were a mixture of Vandals, Alans, and Franks. *Historia Miscella*, lib. 14. p. 94.

[§] Establishment of the Franks in Gaul, tom. iii. chap 14. page 510.

[||] He lays a stress upon another law of the Visigoths, book x. tit. 1. art xi. which proves nothing at all; it says only, that he who has received of a lord a piece of land on condition of a rent or service, ought to pay it.

[**] Book iii. p. 511.

[††] *Lege* iii. tit. 74. lib. 11.

[*] Establishment of the French monarchy, tom. iii. chap. 14. page 513. where he quotes the 28th article of the edict of Pistes. See farther on.

[†] *Ibid.* tom. iii. chap. 4. page 293.

[*] In the year 815, chap. 1. which is agreeable to the capitulary of Charles the Bald, in the year 844. art. 1. & 2.

[†] *Pro Hispanis in partibus Aquitaniæ, Septimaniæ, & Provinciæ, consistentibus. Ibid.*

[‡] *Excubias & explorationes quas Wactas dicunt. Ibid.*

[||] They were not obliged to furnish any to the count. *Ibid. art. 5.*

[*] *Ut pagenses Franci, qui caballos habent, cum suis comitibus in hostem pergant.*
The counts are forbid to deprive them of their horses, ut hostem facere, & debitos

paraveredos secundum antiquam consuetudinem exsolvere possint. *Edict of Pistes in Baluzius, p. 186.*

[†] Capitulary of Charlemaign, in the year 812. chap. 1. Edict of Pistes in the year 864. art. 27.

[‡] *Quatuor mansos*. I fancy that what they called *mansus* was a particular portion of land belonging to a farm where there were bondmen; witness the capitulary of the year 853, apud Sylvacum, tit. xiv. against those who drove the bondmen from their *mansus*.

[||] See above, chap. xx. of this book.

[*] In Duchesne, tom. ii. p. 287.

[†] Ibid. p. 80.

[‡] See the capitulary of the year 858. art. 14.

[*] They levied also some duties on rivers, where there happened to be a bridge or a passage.

[†] The *census* was so generical a word, that they made use of it to express the tolls of rivers, when there was a bridge or ferry to pass. See the third capitulary, in the year 803. edition of Baluzius, page 395. art. 1. and the 5th in the year 819. page 616. They gave likewise this name to the carriages furnished by the freemen to the king, or to his commissaries, as appears by the capitulary of Charles the Bald, in the year 865. art. 8.

[*] The Abbé du Bos, and his followers.

[‡] See the weakness of the arguments produced by the Abbé du Bos, in the establishment of the French monarchy, tom. iii. book 6. chap. 14. especially in the inference he draws from a passage of Gregory of Tours, concerning a dispute between his church and king Charibert.

[||] For instance, by enfranchisements.

[*] Law of the Alemans, chap. 22. and the law of the Bavarians, tit. 1. chap. 14. where the regulations are to be found which the clergy made concerning their order.

[†] Book 5th of the Capitularies, chap. 303.

[*] Si ille de capite suo bene ingenuus sit, et in Puletico publico censitus non est. *Lib. 1. formul. 19.*

[‡] In the year 789. edition of the Capitularies by Baluzius, vol. i. p. 250.

[‖] Et ut ista ingenuitatis pagina firma stabilisque consistat. *Ibid.*

[§] Pristinæque libertati donatos, & omni nobis debito censu solutos. *Ibid.*

[*] *Præceptum pro Hispanis*, in the year 812. edition of Baluzius, tom. i. page 500.

[†] In the year 844. edition of Baluzius, tom. ii. art. 1 and 2. page 17.

[‡] Third capitulary of the year 805. art. 20 and 23. inserted in the collection of Anzegise, book iii. art. 15. This is agreeable to that of Charles the Bald, in the year 854. apud Attiniacum, art. 6.

[†] Undecunque legitime exigebatur. *Ibid.*

[‡] In the year 812. art. 10. & 11. edition of Baluzius, tom. 1. page 398.

[‖] Undecunque antiquitus ad partem regis venire solebant. *Capitulary of the year 812*, art. 10. & 11.

[§] In the year 813. art. 6. edition of Baluzius, tom. i. page 508.

[*] De illis unde censa exigunt. *Capitulary of the year 813. art. 6.*

[††] Book 4. of the Capitularies, art. 37. and inserted in the law of the Lombards.

[‡‡] Si quis terram tributariam, unde census ad partem nostram exire solebat, susceperit. *Book 4. of the Capitularies, art. 37.*

[‖‖] In the year 805. art. 8.

[§§] Unde census ad partem regis exivit antiquitus. *Capitulary of the year 805. art. 8.*

[**] Censibus vel paraveredis quos Franci homines ad regiam potestatem exsolvere debent.

[†††] In the year 864. art. 34. edition of Baluzius, page 192.

[‡] De illis francis hominibus qui censum regium de suo capite & de suis recellis debeant. *Ibid.*

[‖] The 28th article of the same edict explains this extremely well; it even makes a distinction between a Roman freedman and a Frank freedman: And we likewise see there that the census was not general: it deserves to be read.

[§] As appears by the capitulary of Charlemaign in the year 813, which we have already quoted.

[*] Comites.

[†] Qui sunt in truste regis, tit. 44. art. 4.

[‡] Book i. formul. 18.

[‖] From the word *trew*, which signifies faithful, among the Germans.

[§] Leudes, fideles.

[**] Vassalli, seniores.

[††] *Fiscalia*. See the 14th formulary of Marculfus, book i. It is mentioned in the life of S. Maur, *dedit fiscum unum*; and in the annals of Metz, in the year 747, *dedit illi comitatus & fiscos plurimos*. The goods designed for the support of the royal family were called *regalia*.

[‡‡] See the 1st book, tit. 1. of the fiefs; and Cujas on that book.

[‖‖] Book ix. chap. 38.

[*] Quos honoraret muneribus, quos ab honore depelleret. *Ibid. lib. 7.*

[†] Vel reliquis quibuscumque beneficiis, quodcumque ille, vel fiscus noster, in ipsis locis tenuisse noscitur. *Lib. 1. formul. 30.*

[‡] Lib. iii. tit. 8. sect. 3.

[‖] Antiquissimo enim tempore sic erat in Dominorum potestate connexum, ut quando vellent possent auferre rem in feudam a se datam: postea vero conventum est ut per annum tantum firmitatem haberent, deinde statutum est ut usque ad vitam fidelis produceretur. *Feudorum, lib. 1. tit. 1.*

[§] It was a kind of precarious tenure which the lord consented or refused to renew every year; as Cujas has observed.

[*] See the capitulary of Charlemaign in the year 812. art. 3. & 4. edition of Baluzius, tom. 1. p. 491. and the edict of Pistes in the year 864. art. 26. tom. i. p. 186.

[†] Et habebat unusquisque comes Vicarios & Centenarios secum. *Book ii of the capitularies, art. 28.*

[†] They were called *Compagenses*.

[‖] Published in the year 595. art. 1. See the capitularies, edition of Baluzius, page 20. These regulations were undoubtedly made by agreement.

[§] *Advocati*.

[**] Capitulary of Charlemaign, in the year 812. art. 1. & 5. edition of Baluzius, tom. 1. page 490.

[††] See the capitulary of the year 803. published at Worms, edition of Baluzius, page 408 & 410.

[*] Capitulary of Worms in the year 803, edition of Baluzius, page 409. and the council in the year 845, under Charles the Bald, in *verno palatio*, edition of Baluzius, tom. ii. page 17. art. 8.

[†] The 5th capitulary of the year 819. art. 27. edition of Baluzius, p. 618.

[‡] *De Vassis Dominicis qui adhuc intra casam serviunt & tamen beneficia habere noscuntur, statutum est ut quicumque ex eis cum Domino Imperatore domi remanserint, vassallos suos casatos secum non retineant; sed cum comite, cujus pagenses sunt, ire permittant. Second Capitulary in the year 812. art. 7. edition of Baluzius, rom. 1. page 494.*

[‖] Capitulary 1. of the year 812. art. 5. *de bominibus nostris, & episcoporum & abbatum qui vel beneficia vel talia propria habent, &c.* edition of Baluzius, tom. 1. p. 490.

[*] In the year 812. chap. 1. edition of Baluzius, page 490. *Ut omnis homo liber quatuor mansos vestitos de proprio suo, sive de alicujus beneficio habet, ipse se præparet, & ipse in hostem pergat, sive cum seniore suo.*

[†] Tom. 3. book 6. chap. 4. p. 299. establishment of the French monarchy.

[‡] Capitulary of the year 882. art. 11. *apud vernum palatium*, edition of Baluzius, tom. ii. page 289.

[*] Art. 1, 2, and the council in *verno palatio* of the year 845. art. 8. edition of Baluzius, tom. ii. page 17.

[†] Or assizes.

[‡] Capitularies book fourth of the collection of Angezize, art. 57. and the 5th

capitulary of Lewis the Pious in the year 819. art. 14th, edition of Baluzius, tom. 1. page 615.

[§] See the 8th note of the preceding chapter.

[**] It is to be found in the collection of William Lambard, *de priscis Anglorum legibus*.

[††] In the word *Satrapia*

[††] This is well explained by the assizes of Jerusalem, chap. 221 and 222.

[§§] The advowees of the church (*advocati*) were equally at the head of their placita; and of their militia.

[||] See the 8th formulary of Marculfus, book i. which contains the letters given to a duke, patrician, or count, and invests them with the civil jurisdiction, and the fiscal administration.

[*] Chronicle, chap. 78. in the year 636.

[†] See concerning this subject the capitularies of Lewis the Pious, added to the Salic law, art 2. and the formula of judgments given by Du Cange in the word *boni homines*.

[†] Per *bonos homines*, sometimes there were none but principal men. See the appendix to the formularies of Marculsus, ch. 51.

[||] And some tolls on rivers, of which I have spoken already.

[*] See the law of the Ripuarians, tit. 89. and the Law of the Lombards, book ii. tit. 52. sect. 9.

[†] *Suscipere tam inimicitias, seu patris seu propinqui, quam amicitias necesse est: nec implacabiles durant; luitur enim etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem universa domus. Tacit. de morib. Germ.*

[†] See this law in the 2d title on murders; and Vulemar's addition on robberies.

[*] *Additio sapientum*, tit. i. sect. 1.

[||] Salic tit. Iviii. sect. 1. tit. xvii. sect 3.

[§] The Salic laws are admirable in this respect, see especially the titles 2, 3, 4, 5, 6, and 7, which related to the stealing of cattle.

[†] Book i. tit. 7. sect. 15.

[†] See the law of the Angli, tit. i. sect 1, 2, & 4, ibid. tit. v. sect vi. the law of the Bavarians, tit. i. chap 8. & 9. and the law of the Frisians, tit. xv.

[‡] Tit. ii. chap. 20.

[||] Hozidra, Hozza, Sagena, Habilingua, Aniena. *Ibid.*

[§] Thus the law of Ina valued life by a certain sum of money, or by a certain portion of land. *Leges Inæ regis, titulo de villico regio de priscis Anglorum legibus*, Cambridge, 1644.

[*] See the law of the Saxons, which makes this same regulation for several people, chap. 18. See also the law of the Ripuarians, tit. 36. sect. 11. the law of the Bavarians, tit. 1. sect. 10, and 11. *Si aurum non habet, donet aliam pecuniam, mancipia, terram*, &c.

[†] See the law of the Lombards, book i. tit. 25. sect. 21. ibid. book i. tit. 9. sect. 8 and 34. ibid. sect. 38, and the capitulary of Charlemain in the year 802. chap. 32. containing an instruction given to those whom he sent into the provinces.

[‡] See in Gregory of Tours, book vii. chap. 47. the detail of a process, wherein a party loses half the composition that had been adjudged to him, for having done justice to himself, instead of receiving satisfaction, whatever injury he might have afterwards received.

[||] See the law of the Saxons. chap. 3 and 4. the law of the Lombards, book i. tit. 37. sect. 1 and 2. and the law of the Alemans, tit. 45. sect 1 and 2. This last law gave leave to the party injured to right himself upon the spot, and in the first transport of passion. See also the capitularies of Charlemain in the year 779. chap. 22. in the year 802. chap. 32. and also that of the year 805. chap. 5.

[§] The compilers of the law of the Ripuarius seem to have softened this. See the 85th title of those laws.

[*] See the decree of Taffillon, *de popularibus legibus*, art. 3, 4, 10, 16, 19. the law of the Angli. tit. 7. sect. 4.

[†] Book i. tit. ix. sect. 4.

[†] Pactus pro tenore pacis inter Childebertum & Clotarium, anno 593. & decretio Clotarii 2. regis, circa annum 595. chap. 11.

[‡] When it was not determined by the law, it was generally the third of what was given for the composition, as appears in the law of the Ripuarians, chap. 89. which is

explained by the third capitulary of the year 813. Edition of Baluzius. tom, 1. page 512.

[§] Book i. tit. 9. sect. 17. edition of Lindenbrock.

[*] Tit. 70.

[‡] Tit. 46. See also the law of the Lombards, book i. chap. 21. sect. 3. Lindenbrock's edition: *Si caballus cum pede, &c.*

[†] Tit. 28. sect. 6.

[||] As appears by the decree of Clotharius II. in the year 595; *fredus tamen judici in cujus page est reservetur.*

[§] Tit. 85.

[*] *Capitulare incerti anni*, chap. 57. in Baluzius. tom. i. page 515. and it is to be observed, that what was called *fredum* or *faida*, in the monuments of the first race, is known by the name of *bannum* in those of the second race, as appears from the capitulary *de partibus Saxoniae*, in the year 789.

[†] See the capitulary of Charlemaign, *de villis*, where he ranks these *freda* among the great revenues of what was called *villæ*, or the king's demesnes.

[*] See the 3d, 8th, and 17th formula, book i. of Marculsus.

[†] See the 2d, 3d, and 4th formula of Marculsus, book i.

[‡] See the collections of those charters, especially that at the end of the 5th volume of the historians of France, published by the Benedictine monks.

[*] See the 3d, 4th, and 14th of the first book, and the charter of Charlemaign, in the year 771, in Martenne, tom. i. Anecd. collect. 11. *Præcipientes jubemus ut ullus judex publicus bomines ipsius ecclesiæ et monasterii ipsius Morbacensis tam ingenuos quam et servos, & qui super eorum terras manere, &c.*

[†] Treatise of village jurisdictions.

[†] See Mons. du Cange on the word *bominium*.

[*] See the 3d and 4th formulary of Marculsus, book 1.

[†] *Ne alibi nisi ad ecclesiam, ubi relaxati sunt, mallum teneant*, tit. 58. sect. 1. See also sect. 19. Lindenbrock's edition.

[‡] Tabulariis.

[||] Mallum.

[§] Vita S. Germeri Episcopi Tolosani apud Bollandianos, 16 Maii.

[*] See also the life of S. Melanius, and that of S. Deicola.

[††] In the council of Paris, in the year 615. *Episcopi vel potentes, qui in aliis possident regionibus, iudices vel missos discussores de aliis provinciis non instituant, nisi de loco qui justitiam percipiant & aliis reddant*, art. 19. See also the 12th art.

[‡‡] Ibid. art. 5.

[|||] In the law of the Lombards, book ii. tit. 44. chap. 2. Lindenbrock's edition.

[§§] Servi Aldiones, libellarii antiqui, vel alii noviter facti. *Ibid.*

[*] Letter in the year 858. art. 7. in the capitularies, p. 108. *Sicut illæ res et facultates, in quibus vivunt clerici, ita et illæ sub consecratione immunitatis sunt, de quibus debent militare vassalli.*

[†] It is added to the law of the Bavarians, art. 7. See also the 3d. art. Lindenbrock's edition, page 444. *Imprimis omnium jubendam est ut habeant ecclesiæ earum justitias, & in vita illorum qui habitant in ipsis ecclesiis & post, tam in pecuniis quam et in substantiis earum.*

[‡] In the year 857. in synodo apud Carifiatum, art. 9. edition of Baluzius, page 96.

[||] See the letter written by the bishops assembled at Rheims in the year 858. art. 7. in the capitularies, Baluzius's edition, page 108. *Sicut illæ res & facultates in quibus vivunt clerici, ita et illæ sub consecratione immunitatis sunt de quibus debent militare vassalli, &c.*

[*] Tit. iii. chap. 13. Lindenbrock's edition.

[†] Tit. 85.

[‡] In the year 595. art. 11 & 12. edition of the capitularies by Baluzius, page 19. *Pari conditione convenit ut si una centena in alia centena vestigium secuta fuerit et invenerit, vel in quibuscunque fidelium nostrorum terminis vestigium miserit, & ipsum in aliam centenam minime expellere potuerit, aut convictus reddit latronem, &c.*

[||] Si vestigius comprobatur latronis, tamen præsentia nihil longe mulctando; aut si

persequens latronem suum comprehenderit, integram sibi compositionem accipiat. Quod si in truste invenitur, medietatem compositionis trustis adquirat, & capitale exigat a latrone, *art. 2. & 3.*

[§] See the Glossary on the word *trustis*.

[**] Inserted in the law of the Lombards, book ii. tit. 52. sect. 14. it is the capitulary of the year 793. in Baluzius, page 544. art. 10.

[††] Et si forsitan Francus aut Longobardus habens beneficium justitiam facere noluerit, ille judex in cujus ministerio fuerit, contradicat illi beneficium suum, interim dum ipse aut missus ejus justitiam faciat. *See also the same law of the Lombards, book ii. tit. 52. sect. 2. which relates to the capitulary of Charlemaign of the year 779. art. 21.*

[*] The third of the year 812. art. 10.

[†] The second of the year 813. Baluzius's edition.

[‡] *Capitulare quintum anni* 819. art. 90. Baluzius's edition, page 617. *Ut ubicumque missi, aut episcopum, aut abbatem, aut alium quemlibet bonore præditum invenerint, qui justitiam facere noluit vel probibuit, de ipsius rebus vivant quamdiu in eo loco justitias facere debent.*

[||] Edictum in Carisiaco in Balluzius, tom. ii. page 152. *Unusquisque advocatus pro omnibus de sua advocacione in convenientia ut cum ministerialibus de sua advocacione quos invenerit contra bunc bannum nostrum fecisse castiget.*

[§] Edictum Pistense, art. 18. Baluzius's edition, tom. ii. page 181. *Si in fiscum nostrum vel in quamcunque immunitatem aut alicujus potentis potestatum vel proprietatem confugerit, &c.*

[*] Lib. 1. *Maximum regni nostri augere credimus monimentum, si beneficia opportuna locis ecclesiarum aut cui volueris dicere, benevola deliberatione concedimus.*

[†] I have already quoted it in the preceding chapter, *Episcopi vel potentes*.

[*] Hist. lib. vi.

[†] Totusque tractus Armoricus aliæque Galliarum provinciæ. *Ibid.*

[‡] Tom. ii. book 3. chap. 18. page 270.

[*] See the preliminary discourse of the Abbé du Bos.

[*] See the establishment of the French monarchy, vol. iii. book 6. chap. 4. page 304.

[†] He cites the 44th title of this law, and the law of the Ripuarians, tit. 7. and 36.

[*] *Qui in truste dominica est*, tit. 44. sect. 4. and this relates to the 13th formulary of Marculfus, *de regis Antrustione*. See also the title 66. of the Salic law, sect. 3. and 4. and the title 74. and the law of the Ripuarians, tit. 11. and the capitulary of Charles the Bald *apud Carisiacum*, in the year 877. chap. 20.

[†] Salic law, tit. 44. sect. 6.

[‡] Ibid. tit. 44. sect. 4.

[||] Tit. 44. sect. 15.

[§] Tit. 44 sect. 15.

[**] Salic law, tit. 44. sect. 7.

[*] Si quis quolibet casu dentem optimati Burgundioni vel Romano nobili excusserit, solidos viginti quinque cogatur exsolvere; de mediocribus personis ingenuis tam Burgundionibus quam Romanis si dens excussus fuerit, decem solidis componatur; de inferioribus personis, quidque solidos. *Art. 1, 2, and 3, of tit. 26. of the law of the Burgundians.*

[†] Establishment of the French monarchy, vol. iii. book 6. chap. 4. and 5.

[‡] Ibid. vol. iii. chap. 5. page 319 and 320.

[*] Establishment of the French monarchy, vol. iii. b. 6. c. 4. p. 307 and 308.

[†] Ibid. page 309. and in the following chapter, page 319 and 320.

[‡] See the 28th book of this work, chap. 28. and the 31st. book, chap. 8.

[||] Itaque Colonia convenit & ita bannivimus, ut unusque judex criminosum latronem ut audierit, ad casam suam ambulet & ipsum ligare faciat; ita ut si Francus fuerit, ad nostram præsentiam dirigatur; & si debilior persona fuerit, in loco pendatur. *Capitulary, of Baluzius's edition, tom. i. page 19.*

[*] See the 28th book of this work, chap. 28. and the 31st book, chap. 8.

[†] Chap. 43. and 44.

[‡] O qualem remunerationem reddidisti ei! fecit te liberum, non nobilem, quod

impossibile est post libertatem. *Ibid.*

[¶] Establishment of the French monarchy, vol. iii. book 6. chap. 4. p. 3, 6.

[§] *Ibid.*

[¶] Establishment of the French monarchy, vol. iii. book 6. chap. 4. p. 3. 6.

[§] Omnes episcopi molesti fuerunt Ludovico, & maximè ii quos è servile conditione honoratos habebat, cum his qui ex barbaris nationibus ad hoc fastigium perducti sunt. *De gestis Ludovici Pii*, cap. 43 & 44.

[*] Chap. 23.

[†] Establishment of the French monarchy, vol. iii. book 6. chap. 4. p. 302.

BOOK XXXI. THEORY OF THE FEUDAL LAWS AMONG THE FRANKS, IN THE RELATION THEY BEAR TO THE REVOLUTIONS OF THEIR MONARCHY.

CHAP. I.

Changes in the offices and in the fiefs. Of the mayors of the palace.

THE counts at first were sent into their districts only for a year; but they soon purchased the continuation of their offices. Of this we have an example in the reign of Clovis's grandchildren. A person named Peonius^{*} was count in the city of Auxerre; he sent his son Mummolus with money to Gontram, to prevail upon him to continue in his employment; the son gave the money for himself, and obtained the father's place. The kings had already begun to spoil their own favours.

Though by the laws of the kingdom the fiefs were precarious, yet they were neither given nor taken away in a capricious and arbitrary manner; nay, they were generally one of the principal subjects debated in the national assemblies. It is natural however to imagine that corruption had seized this, as well as the other article; and that the possession of the fiefs, like that of the counties, was continued for money.

I shall shew in the course of this book[†], that, independently of the grants which the princes made for a certain time, there were others in perpetuity. The court wanted to revoke the former grants; this occasioned a general discontent in the nation, and was soon followed with that famous revolution in the French history, whose first epocha was the amazing spectacle of the execution of Brunehild.

That this queen, who was daughter, sister, and mother to so many kings, a queen to this very day celebrated for public monuments worthy of a Roman Ædile or Proconful, born with an admirable genius for affairs, and endowed with qualities so long respected, should see herself[†] of a sudden exposed to so slow, so ignominious and cruel a torture, by[‡] a king whose authority was but indifferently established in the nation, would appear very extraordinary, had she not incurred that nation's displeasure for some particular cause. Clotharius reproached[§] her with the murder of ten kings: but two of them he had put to death himself; the death of some of the others was owing to chance, or to the villany of another queen; and to a nation that had permitted Fredegunda[‡] to die in her bed, that had even opposed the punishment of her flagitious crimes, ought to have been very indifferent with respect to those of Brunehild.

She was put upon a camel, and led ignominiously through the army: a certain sign that she had given great offence to those troops. Fredegarius relates, that Protarius^{*}, Brunehild's favourite, stripped the lords of their property, and filled the exchequer with the plunder; that he humbled the nobility, and that no person could be sure of continuing in any office or employment. The army conspired against him, and he was stabbed in his tent; but Brunehild, either by revenging[§] his death, or by pursuing the same plan, became every day more odious[†] to the nation.

Clotharius, ambitious of reigning alone, inflamed moreover with the most furious revenge, and sure of perishing if Brunehild's children got the upper hand, entered into a conspiracy against himself; and whether it was owing to ignorance, or to the necessity of his circumstances, he became Brunehild's accuser, and made a terrible example of that princess.

Warnacharius had been the very soul of the conspiracy formed against Brunehild; being at that time mayor of Burgundy, he made[†] Clotharius consent, that he should not be displaced while he lived. By this step the mayor could no longer be in the same case as the French lords before that period; and this authority began to render itself independent of the regal dignity.

It was Brunehild's unhappy regency, which had exasperated the nation. So long as the laws subsisted in their full force, no one could grumble at having been deprived of a fief, since the law did not bestow it upon him in perpetuity. But when fiefs came to be acquired by avarice, by bad practices and corruption, they complained of being divested by irregular means, of things that had been irregularly acquired. Perhaps if the public good had been the motive of the revocation of those grants, nothing would have been said: but they pretended a regard to order, while they were openly abetting the principles of corruption; the fiscal rights were claimed, in order to lavish the public treasure: and grants were no longer the reward or encouragement of services. Brunehild, from a corrupt spirit, wanted to reform the abuses of the ancient corruption. Her caprices were not owing to weakness; the vassals and the great officers thinking

themselves in danger, prevented their own, by her ruin.

We are far from having all the records of the transactions of those days; and the writers of chronicles, who understood very near as much of the history of their time, as our peasants know of ours, are extremely barren. Yet we have a constitution of Clotharius, given[¶] in the council of Paris for the reformation of[§] abuses, which shews that this prince put a stop to the complaints that had occasioned the revolution. On the one hand, he confirms^{*} all the grants that had been made or confirmed by the kings his predecessors; and on the other, he ordains[†] that whatever had been taken from his vassals, should be restored to them.

This was not the only concession the king made in that council; he enjoined that whatever had been innovated, in opposition to the privileges of the clergy, should be redressed[‡]; and he moderated the influence of the court in the[¶] elections of bishops. He even reformed the fiscal affairs; ordaining that all the new[§] census's should be abolished, and that they should not levy any^{**} toll established since the death of Gontram, Sigebert, and Chilperic; that is, he abolished whatever had been done during the regencies of Fredegunda and Brunehild. He forbade the driving of his cattle to graze[†] in private people's grounds; and we shall presently see that the reformation was still more general, so as to extend even to civil affairs.

CHAP. II.

How the civil Government was reformed.

HITHERTO the nation had given marks of impatience and levity, with regard to the choice or conduct of her masters; she had regulated their differences, and obliged them to come to an agreement amongst themselves. But now she did what before was quite unexampled; she cast her eyes on her actual situation, examined the laws coolly, provided against their insufficiency, repressed violence, and moderated the regal power.

The bold and insolent regencies of Fredegunda and Brunehild, had less surprised than roused the nation. Fredegunda had defended her horrid cruelties, her poisonings and assassinations, by a repetition of the same crimes; and had behaved in such a manner that her outrages were rather of a private than public nature. Fredegunda did more mischief: Brunehild threatened more. In this crisis, the nation was not satisfied with rectifying the feudal system; she was also determined to secure her civil government. For the latter was rather more corrupt than the former; a corruption the more dangerous as it was more inveterate, and connected rather with the abuse of manners than with that of laws.

The history of Gregory of Tours exhibits, on the one hand, a fierce and barbarous nation; and on the other, kings remarkable for the same ferocity of temper. Those princes were bloody, iniquitous, and cruel, because such was the character of the whole nation. If Christianity appeared sometimes to soften their manners, it was only by the circumstances of terror with which this religion alarms the sinner: the church supported herself against them by the miraculous operations of her saints. The kings would not commit sacrilege, because they dreaded the punishments inflicted on that species of guilt; but this excepted, either in the riot of passion, or in the coolness of deliberation, they perpetrated the most horrid crimes and barbarities, where the divine vengeance did not appear so immediately to overtake the criminal. The Franks, as I have already observed, bore with cruel kings, because they were of the same disposition themselves; they were not shocked at the iniquity and extortions of their princes, because this was the national characteristic. There had been many laws established, but it was usual for the king to defeat them all, by a kind of letters called *precepts*^{*}, which rendered them of no effect; they were somewhat similar to the rescripts of the Roman emperors, whether it be that our kings borrowed this usage of those princes, or whether it was owing to their own natural temper. We see in Gregory of Tours, how they perpetrated murder in cool blood, and put the accused to death, unheard; how they gave *precepts*[†] for illicit marriages; for transferring successions; for depriving relations of their right; and in fine, marrying consecrated virgins. They did not indeed assume the whole legislative power, but they dispensed with the execution of the laws.

Clotharius's constitution redressed all these grievances; no one[‡] could any longer be condemned without being heard; relations[§] were made to succeed according to the order established by law; all *precepts* for marrying religious women were declared null;[§] and those who had obtained and made use of them, were severely punished. We might know perhaps more exactly his determination with regard to these *precepts*, if the thirteenth and the two next articles of this decree had not been lost through the injuries of time. We have only the first words of this thirteenth article, ordaining that the *precepts* shall be observed, which cannot be understood of those he had just abolished by the same law. We have another constitution^{**} by the same prince, which is relative to his decree, and corrects in the same manner, every article of the abuses of the *precepts*.

True it is that Baluzius finding this constitution without date, and without the name of the place where it was given, attributes it to Clotharius I. But I say it belongs to

Clotharius II, for three reasons; 1. It says that the king will preserve the immunities[‡] granted to the churches, by his father and grandfather. What immunities could the churches receive from Childeric, grandfather of Clotharius I. who was not a Christian, and who lived even before the foundation of the monarchy? But if we attribute this decree to Clotharius II. we shall find his grandfather to have been this very Clotharius I. who made immense donations to the church, with a view of expiating the murder of his son Cramne, whom he had ordered to be burnt, together with his wife and children.

2. The abuses redressed by this constitution, were still subsisting after the death of Clotharius I. and were even carried to the highest extravagance during the weak reign of Gontram, the cruel administration of Chilperic, and the execrable regencies of Fredegunda and Brunehild. Now can we imagine that the nation would have borne with grievances so solemnly proscribed, without complaining of their continual repetition? Can we imagine she would not have taken the same step as she did afterwards under Childeric II. † when upon a repetition of the old grievances, she pressed § him to ordain that the law and customs in regard to judicial proceedings, should be complied with as formerly.

In fine, as this constitution was made to redress grievances, it cannot relate to Clotharius I. since there were no complaints of that kind in his reign, and his authority was perfectly established throughout the kingdom, especially at the time in which they place this constitution; whereas it agrees extremely well with the events that happened during the reign of Clotharius II. which produced a revolution in the political state of the kingdom. History must be illustrated by the laws, and the laws by history,

CHAP. III.

Authority of the Mayors of the Palace.

I TOOK notice that Clotharius II. had promised not to deprive Warnacharius of his mayor's place during life; a revolution productive of another effect. Before that time the mayor was the king's officer, but now he became the officer of the people; he was chosen before by the king, and now by the nation. Before the revolution, Protarius had been made mayor by Theodoric, and * Landeric by Fredegunda; but † after that the mayors were chosen by the nation ‡.

We must not therefore confound, as some authors have done, these mayors of the palace with such as were possessed of this dignity before the death of Brunehild; the king's mayors with those of the kingdom. We see by the law of the Burgundians, that among them the office of mayor was not one of the † most respectable in the state; nor was it one of the most eminent § under the first kings of the Franks.

Clotharius removed the apprehensions of those who were possessed of employments and fiefs; and when after the death of Warnacharius * he asked the lords assembled at Troyes, who is it they would put in his place; they cried out, they would chuse no one, but suing for his favour, committed them entirely into his hands.

Dagobert reunited the whole monarchy in the same manner as his father; the nation had a thorough confidence in him, and appointed no mayor. This prince finding himself

at liberty, and elated by his victories, resumed Brunechild's plan. But he succeeded so ill, that the vassals of Austrasia let themselves be beaten by the Sclavonians, and returned home, so that the marches of Austrasia were left a prey to the Barbarians[†].

He determined then to make an offer to the Austrasians, of resigning that country, together with a provincial treasure, to his son Sigebert, and to put the government of the kingdom and of the palace into the hands of Cunibert bishop of Cologne, and of the duke Adalgisus. Fredegarius does not enter into the particulars of the conventions then made; but the king confirmed them all by charters, and[†] Austrasia was immediately secured from danger.

Dagobert finding himself near his end, recommended his wife Nentechildis, and his son Clovis, to the care of Æga. The Vassals of Neustria and Burgundy chose^{*} this young prince for their king. Æga and Nentechildis had the government of[†] the palace; they restored[†] whatever Dagobert had taken; and complaints ceased in Neustria and Burgundy, as they had ceased in Austrasia.

After the death of Æga, the queen Nentechildis[‡] engaged the lords of Burgundy to chuse Floachatus for their mayor. The latter dispatched letters to the bishops and chief lords of the kingdom of Burgundy, by which he promised to preserve their honours and dignities[§] for ever, that is, during life. He confirmed his word by oath. This is the period, at which^{**} the author of the treatise of the mayors of the palace fixes the administration of the kingdom by those officers.

Fredegarius being a Burgundian, has entered into a more minute detail, as to what concerns the mayors of Burgundy, at the time of the revolution of which we are speaking, than with regard to the mayors of Austrasia and Neustria. But the conventions made in Burgundy were, for the very same reasons, agreed to in Neustria and Austrasia.

The nation thought it safer to lodge the power in the hands of a mayor whom she chose herself, and to whom she might prescribe conditions, than in those of a king whose power was hereditary.

CHAP. IV.

Of the Genius of the Nation in regard to the Mayors.

A GOVERNMENT, in which a nation that had an hereditary king, chose a person to exercise the regal authority, seems very extraordinary: but independently of the circumstances of the times, I apprehend that the notions of the Franks in regard to this article were derived from a higher source.

The Franks were descended from the Germans, of whom[†] Tacitus says, that in the choice of their king they were determined by his noble extraction; and in that of their leader, by his valour. This gives us an idea of the kings of the first race, and of the mayors of the palace; the former were hereditary, the latter elective.

No doubt, but those princes, who stood up in the national assembly, and offered themselves as the conductors of a public enterprize to such as were willing to follow them, united, generally in their own person, both the power of the mayor, and the king's authority. By the splendour of their descent they had attained the regal dignity; and their military abilities having recommended them to the command of armies, they rose to the power of mayor. By the regal dignity our first kings presided in the courts and assemblies, and enacted laws with the national consent; by the dignity of duke or leader, they undertook expeditions, and commanded the armies.

In order to be acquainted with the genius of the primitive Franks in this respect, we have only to cast an eye on the conduct of[‡] Argobastes, a Frank by nation, on whom Valentinian had conferred the command of the army. He confined the emperor to his own palace; where he would suffer nobody to speak to him concerning either civil or military affairs. Argobastes did at that time what was afterwards practised by the Pepins.

CHAP. V.

In what Manner the Mayors obtained the Command of the Armies.

SO long as the kings commanded their armies in person, the nation never thought of chusing a leader. Clovis and his four sons were at the head of the Franks, and led them on through a series of victories. Theobald son of Theodobert, a young, weak, and sickly prince, was the first^{*} of our kings that confined himself to his palace. He refused to undertake an expedition into Italy against Narses, and had[†] the mortification to see the Franks chuse themselves two chiefs, who led them against the enemy. Of the four sons of Clotharius I. Gontram[‡] was the least fond of commanding his armies; the other kings followed this example; and, in order to intrust the command without danger into other hands, they conferred it upon several chiefs or dukes[‡].

Innumerable were the inconveniencies which thence arose; all discipline was lost, no one would any longer obey. The armies were dreadful only to their own country; they were loaden with spoils, before they had reached the enemy. Of these miseries we have a very lively picture in Gregory of Tours^{*}. "How shall we be able to obtain a victory, says Gontram[†], we who do not so much as keep what our ancestors acquired? Our nation is no longer the same." Strange, that it should be on the decline so early

as the reign of Clovis's grand-children!

It was therefore natural they should determine at last upon an only duke, a duke invested with an authority over this prodigious multitude of feudal lords and vassals, who were now become strangers to their own engagements; a duke who was to establish the military discipline, and to put himself at the head of a nation unhappily practised in making war against itself. This power was conferred on the mayors of the palace.

The original function of the mayors of the palace, was the management of the king's household. They had afterwards, in conjunction[±] with other officers, the political government of fiefs; and at length they obtained the sole disposal of them. They had also the administration of military affairs and the command of the armies; employments necessarily connected with the other two. In those days it was much more difficult to raise than to command the armies; and who but the dispenser of favours could have this authority? In this martial and independent nation, it was prudent to invite, rather than to compel; prudent to give away or to promise the fiefs, that should happen to be vacant by the death of the possessor; prudent, in fine, to reward continually, and to raise a jealousy with regard to preferences. It was therefore right, that the person who had the superintendency of the palace, should also be general of the army.

CHAP. VI.

Second Epocha of the Humiliation of our Kings of the first Race.

AFTER the execution of Brunchild, the mayors were administrators of the kingdom under the sovereigns; and though they had the conduct of the war, yet the kings were always at the head of the armies, and the mayor and the nation fought under their command. But the victory^{*} of duke Pepin over Theodoric and his mayor, completed[±] the degradation of our princes; and that[±] which Charles Martel obtained over Chilperic and his mayor Rainfroy, confirmed it. Austrasia triumphed twice over Neustria and Burgundy; and the mayoralty of Austrasia being annexed as it were to the family of the Pepins, this mayoralty and family became greatly superior to all the rest, The conquerors were then afraid lest some person of credit should seize the king's person, in order to excite disturbances. For this reason they kept^{||} them in the royal palace as in a kind of prison, and once a year shewed them to the people. There they made ordinances, but^S these were such as were dictated by the mayor; they answered ambassadors, but the mayor made the answers. This is the time mentioned by^{*} historians of the government of the mayors over the kings whom they held in subjection.

The extravagant passion of the nation for Pepin's family went so far, that they chose one of his grandsons, who was yet[†] an infant, for mayor; and put him over one Dagobert, that is, one phantom over another.

CHAP. VII.

Of the great Offices and Fiefs under the Mayors of the Palace.

THE mayors of the palace were far from reviving the precariousness of posts and employments; for indeed their power was owing to the protection which in this respect they had granted to the nobility. Hence the great offices were continued to be given for life, and this usage was every day more firmly established.

But I have some particular reflections to make here in respect to fiefs: and in the first place I do not question but most of them became hereditary from this time.

In the treaty of Andeli[†], Gontram and his nephew Childebert engage to maintain the donations made to the vassals and churches by the kings his predecessors; and leave is given to the[†] wives, daughters and widows of kings, to dispose by will and in perpetuity of whatever they hold of the exchequer.

Marculfus wrote his formularies at the time[†] of the mayors. We find several[‡] in which the kings make donations both to the person and to his heirs: and as the formularies represent the common actions of life, they prove that part of the fiefs were become hereditary towards the end of the first race. They were far from having in those days the idea of an unalienable demesne; this is a modern thing, which they knew neither in theory nor practice.

In proof hereof we shall presently produce positive facts; and if we can point out a time in which there were no longer any benefices for the army, nor any funds for its support; we must certainly conclude that the ancient benefices had been alienated. The time I mean is that of Charles Martel, who founded some new fiefs, which we should carefully distinguish from those of the earliest date.

When the kings began to make grants in perpetuity, either through the corruption which crept into the government, or by reason of the constitution itself, which continually obliged those princes to confer rewards; it was natural they should begin with giving the perpetuity of the fiefs, rather than of the counties. For to deprive themselves of some acres of land was no great matter; but to renounce the right of disposing the great offices, was divesting themselves of their very power.

CHAP. VIII.**In what Manner the allodial Estates were changed into Fiefs.**

THE manner of changing an allodial estate into a fief, may be seen in a formulary of Marculfus^{*}. The owner of the land gave it to the king, who restored it to the donor by way of usufruit, or benefice, and then the latter nominated his heirs to the king.

In order to find out the reasons which induced them thus to change the nature of the *allodia*, I must trace the source of the ancient privileges of our nobility, a nobility who for these eleven centuries have been ready to undergo every hardship, and to spill their blood in their country's service.

They who were seized of fiefs enjoyed very great advantages. The composition for the injuries done them was greater than that of freemen. It appears by the formularies of Marculfus, that it was a privilege belonging to the king's vassal, that whoever killed him should pay a composition of six hundred sous. This privilege was established by the Salic law[†], and by that of the Ripuarians[‡]; and while these two laws ordained a composition of six hundred sous for the murder of the king's vassal, they gave but[¶] two hundred sous for the murder of a person freeborn, if he was a Frank or Barbarian living under the Salic law; and only a hundred for a Roman.

This was not the only privilege belonging to the king's vassals. When[§] a man was summoned in court, and did not make his appearance, nor obey the judges orders, he was appealed before the king; and if he persisted in his contumacy, he was excluded from[†] the Royal protection, and no one was allowed to entertain him, or even to give him a morsel of bread. Now if he was a person of an ordinary condition, his goods[‡] were confiscated; but if he was the king's vassal, they were not[¶]. The first by his contumacy was deemed sufficiently convicted of the crime, the second was not; the former[§] for the smallest crimes was obliged to undergo the trial by boiling water, the latter^{**} was condemned to this trial only in the case of murder: In fine, the king's vassal^{††} could not be compelled to swear in court against another vassal. These privileges augmented daily, and the capitulary of Carlomannus^{‡‡} does this honour to the king's vassals, that they shall not be obliged to swear in person, but only by the mouth of their own vassals. Besides, when a person who had these honours did not repair to the army, his punishment was to abstain from flesh-meat and wine as long as he had been absent from the service; but a freeman^{¶¶} who neglected to follow his count was fined^{§§} sixty sous, and reduced to a state of servitude till he paid it.

It is very natural therefore to think that those Franks who were not the king's vassals, and much more the Romans, became fond of entering into the state of vassalage; and that they might not be deprived of their demesnes, they devised the usage of giving their *allodium* to the king, of receiving it from him afterwards as a fief, and of

nominating their heirs. This usage was continued, and took place especially during the times of confusion under the second race, when every man being in want of a protector, was desirous to incorporate himself with^{*} the other lords, and to enter as it were, into the feudal monarchy, because the political no longer existed.

This continued under the third race, as we find by several[†] charters; whether they gave their *allodium*, and resumed it by the same act; or whether it was declared an *allodium*, and afterwards acknowledged as a fief. These were called *fiefs of resumption*.

This does not imply that those who were seized of fiefs administered them with prudence and œconomy; for though the freemen grew desirous of being possessed of fiefs, yet they managed this sort of estates as usufruits are managed in our days. This is what induced Charlemain, the most vigilant and attentive prince we ever had, to make a great many regulations[‡], to hinder the fiefs from being degraded in favour of allodial estates. It proves only that in his time most benefices were still only for life, and consequently that they took more care of the *allodia* than of the benefices; but it is no argument that they did not chuse rather to be the king's bondmen than freemen. They might have reasons for disposing of a particular portion of a fief, but they were not willing to be stripped even of their dignity.

I know likewise that Charlemain complains in a certain capitulary[§] that in some places there were people who gave away their fiefs in property, and redeemed them afterwards in the same manner. But I do not say, that they were not fonder of the property than of the usufruit; I mean only, that when they could convert an *allodium* into a fief, which was to descend to their heirs, and is the case of the formulary above-mentioned, they had very great advantages in doing it.

CHAP. IX.

How the Church-lands were converted into Fiefs.

THE use of the fiscal lands should have been only to serve as a donation, by which the kings were to encourage the Franks to undertake new expeditions, and by which, on the other hand, these fiscal lands were increased. This, as I have already observed, was the spirit of the nation; but these donations took another turn. There is still extant^{*} a speech of Chilperic, grandson of Clovis, in which he complains that almost all these lands had been already given away to the church. "Our exchequer," says he, "is impoverished, and our riches are transferred to the clergy[†]; none reign now but bishops, who live in grandeur, while ours is quite eclipsed."

This was the reason that the mayors, who durst not attack the lords, stripped the

churches; and one of the [†] motives alledged by Pepin for entering Neustria, was his having been invited thither by the clergy, to put a stop to the encroachments of the kings, that is, of the mayors, who deprived the church of all her possessions.

The mayors of Austrasia, that is the family of the Pepins, had behaved towards the clergy with more moderation than those of Neustria and Burgundy. This is evident from our chronicles^{*}, in which we see the monks perpetually extolling the devotion and liberality of the Pepins. They themselves had been possessed of the first places in the church. "One crow does not pull out the eyes of another;" as [†] Chilperic said to the bishops.

Pepin subdued Neustria and Burgundy; but as his pretence for destroying the mayors and kings was the grievances of the clergy, he could not strip the latter, without acting contrary to his own declaration, and shewing that he made a jest of the nation. However, the conquest of two great kingdoms and the destruction of the opposite party, afforded him sufficient means of satisfying his generals.

Pepin made himself master of the monarchy by protecting the clergy; his son Charles Martel could not maintain his power, but by oppressing them. This prince finding that part of the regal and fiscal lands had been given either for life, or in perpetuity to the nobility, and that the church by receiving both from rich and poor, had acquired a great part even of the allodial estates, he resolved to strip the clergy; and as the fiefs of the first division were no longer in being, he formed a second[†]. He took for himself and for his officers the church-lands, and the churches themselves: thus he remedied an evil which differed from ordinary diseases, as its extremity rendered it the more easy to cure.

CHAP. X.

Riches of the Clergy.

SO great were the donations made to the clergy, that under the three races of our princes they must have several times received the full property of all the lands of the kingdom. But if our kings, the nobility and the people, found the way of giving them all their estates, they found also the method of getting them back again. The spirit of devotion established a great number of churches under the first race; but the military spirit was the cause of their being given away afterwards to the soldiery, who divided them amongst their children. What a number of lands must have then been taken from the clergy's *mensalia*! The kings of the second race opened their hands, and made new donations to them: but the Normans, who came afterwards, plundered and ravaged all before them, wreaking their vengeance chiefly on the priests and monks, and devoting

every religious house to destruction. For they charged those ecclesiastics with the subversion of their idols, and with all the oppressive measures of Charlemagne, by which they had been successively obliged to take shelter in the north. These were animosities which the space of forty or fifty years had not been able to obliterate. In this situation what a loss must the clergy have sustained! There were hardly ecclesiastics left to demand the estates of which they had been deprived. There remained therefore for the religious piety of the third race, foundations enough to make, and lands to bestow. The opinions which were broached and spread in those days, would have deprived the laity of all their estates, if they had been but honest enough. But, if the clergy were actuated by ambition, the laity were not without theirs; if dying persons gave their estates to the church, their heirs would fain resume them. We meet with continual quarrels between the lords and the bishops, the gentlemen and the abbots; and the clergy must have been very hard pressed, since they were obliged to put themselves under the protection of certain lords, who granted them a momentary defence, and afterwards joined their oppressors.

But a better administration having been established under the third race, gave the clergy leave to augment their possessions; when the Calvinists started up, and having plundered the churches, they turned all the sacred plate into specie. How could the clergy be sure of their estates, when they were not even safe in their persons? They were debating on controversial subjects, while their archives were in flames. What did it avail them to demand back of an impoverished nobility, those estates which were no longer in the possession of the latter, but had been conveyed into other hands by different mortgages. The clergy have been long acquiring, and have often refunded, and still there is no end of their acquisitions.

CHAP. XI.

State of Europe at the Time of Charles Martel.

CHARLES MARTEL, who undertook to strip the clergy, found himself in a most happy situation. He was both feared and beloved by the soldiery; whose interest he promoted, having the pretence of the war against the Saracens. He was hated indeed by the clergy, but^{*} he had no need of their assistance. The pope, to whom he was necessary, stretched out his arms to him. Every one knows the famous[†] embassy he received from Gregory III. These two powers were strictly united, because they supported each other: the pope stood in need of the Franks to assist him against the Lombards and the Greeks; the Franks had occasion for the pope, to serve for a barrier against the Greeks, and to embarrass the Lombards. It was impossible therefore for the enterprize of Charles Martel to miscarry.

S. Eucherius, bishop of Orleans, had a vision which frightened all the princes of that time. I shall produce on this occasion the letter[†] written by the bishops assembled at Rheims to Lewis king of Germany, who had invaded the territories of Charles the Bald: because it will give us an insight into the situation of things in those times, and the temper of the people. They say[‡], "That S. Eucherius having been snatched up into heaven, saw Charles Martel tormented in the bottom of hell by order of the saints, who are to sit with Christ at the last judgment; that he had been condemned to this punishment before his time, for having stript the church of her possessions, and thereby charged himself with the sins of all those who founded these livings; that king Pepin held a council upon this occasion, and had ordered all the church-lands he could recover to be restored; that as he could get back only a part of them, because of his disputes with *Vaifre*, duke of *Aquitaine*, he issued out letters called *precaria*^{*} for the remainder, and made a law that the laity should pay a tenth part of the church lands they possessed, and twelve deniers for each house; that Charlemaign did not give the church lands away; on the contrary, that he published a capitulary, by which he engaged both for himself and for his successors never to make any such grant; that all they say is committed to writing, and that a great many of them heard the whole related by Lewis the Debonnaire, the father of those two kings."

King Pepin's regulation, mentioned by the bishops, was made in the council held at Leptines[†]. The church found this advantage in it, that such as had received those lands, held them no longer but in a precarious manner; and moreover that she received the tythe or tenth part and twelve deniers for every house that had belonged to her. But this was only a palliative, which did not remove the disorder.

Nay it met with opposition, and Pepin was obliged to make another capitulary[†], in which he enjoins those who held any of those benefices to pay this tythe and duty, and even to keep up the houses belonging to the bishopric or monastery, under the penalty of forfeiting those possessions. Charlemaign[‡] renewed the regulation of Pepin.

That part of the same letter which says, that Charlemaign promised both for himself and for his successors, never to divide again the church-lands among the soldiery, is agreeable to the capitulary of this prince, given at Aix la Chapelle, in the year 803, with a view of removing the apprehensions of the clergy upon this subject. But the donations already made were still in force^{*}. The bishops very justly add, that Lewis the Debonnaire followed the example of Charlemaign, and did not give away the churchlands to the soldiery.

And yet the old abuses were carried to such a pitch, that the laity under the children[†] of Lewis the Debonnaire preferred ecclesiastics to benefices, or turned them out of their livings, without the consent[†] of the bishops. The benefices[‡] were divided amongst the next heirs, and when they were held in an indecent manner, the bishops[§] had no other remedy left than to remove the relics.

By the capitulary^{**} of Compiègne, it is enacted, that the king's commissary shall have a right to visit every monastery, together with the bishop, by the consent and in presence of the person who holds it; and this shews that the abuse was general.

Not that there were laws wanting for the restitution of the church lands. The pope having reprimanded the bishops for their neglect in regard to the re-establishment of the monasteries, they wrote to Charles the Bald^{*} that they were not affected with this reproach, because they were not culpable; and they reminded him of what had been promised, resolved, and decreed in so many national assemblies. Accordingly they quoted nine.

Still they went on disputing; till the Normans came and made them all agree.

CHAP. XII.

Establishment of the Tithes.

THE regulations made under king Pepin had given the church rather hopes of relief, than effectually relieved her; and as Charles Martel found all the landed estates of the kingdom in the hands of the clergy, Charlemaign found all the church lands in the hands of the soldiery. The latter could not be compelled to restore a voluntary donation; and the circumstances of that time rendered the thing still more impracticable than it seemed to be of its own nature. On the other hand, christianity ought not to have been lost for want of ministers[†], churches, and instruction.

This was the reason of Charlemaign's establishing[‡] the tithes, a new kind of property, which had this advantage in favour of the clergy, that as they were given particularly to the church, it was easier in process of time to know when they were usurped.

Some have attempted to make this establishment of an earlier date; but the authorities they produce seem rather, I think, to prove the contrary. The constitution of Clotharius^{*} says only that they shall not raise certain[†] tithes on church-lands; so far then was the church from exacting tithes at that time, that its whole pretension was to be exempted from paying them. The second council[‡] of Macon, which was held in 585, and ordains the payment of tithes, says indeed that they were paid in ancient times; but it says also, that the custom of paying them was then abolished.

No one questions but that the clergy opened the Bible before Charlemaign's time, and preached the gifts and offerings of the Leviticus. But I dare say, that before that prince's reign, though the tithes might have been preached up, they were never established.

I took notice that the regulations made under king Pepin had subjected those who were seized of church-lands in fief, to the payment of tithes, and to the repairing of the churches. It was a great point to oblige by a law, whose equity could not be disputed, the principal men of the nation to set the example.

Charlemaign did more; and we find by the capitulary[¶] *de villis*, that he obliged his own demesnes to the payment of the tithes: this was still a more striking example.

But the commonalty are rarely influenced by example to sacrifice their interests. The synod of^{*} Frankfort furnished them with a more cogent motive to pay the tithes. A capitulary was made in that synod, wherein it is said, that in the last[†] famine the spikes of corn were found to contain no seed, the infernal spirits having devoured it all, and that those spirits had been heard to reproach them with not having paid the tithes; in consequence of which it was ordained that all those who were seized of church-lands, should pay the tithes; and the next consequence was that the obligation extended to all.

Charlemain's project did not succeed at first; for it seemed too heavy a burthen[‡]. The payment of the tithes among the Jews was connected with the plan of the foundation of their republic; but here it was a burthen quite independent of the other charges of the establishment of the monarchy. We find by the regulations[¶] added to the law of the Lombards the difficulty there was in causing the tithes to be accepted by the civil laws; and as for the opposition they met with before they were admitted by the ecclesiastic laws, we may easily judge of it from the different canons of the councils.

The people consented at length to pay the tithes, upon condition that they might have a power of redeeming them. This the constitution of Lewis the Debonnaire^{*}, and that of the emperor Lotharius[†] his son, would not allow.

The laws of Charlemaign, in regard to the establishment of tithes, were a work of necessity, not of superstition; a work in short, in which religion only was concerned.

His famous division of the tithes into four parts, for the repairing of the churches, for the poor, for the bishop, and for the clergy, manifestly proves that he wanted to restore the church to that fixed and permanent state of which she had been divested.

His will[‡] shews that he was desirous of repairing the mischief done by his grandfather Charles Martel. He made three equal shares of his moveable goods; two of these he would have divided each into one-and-twenty parts, for the one-and-twenty metropolitan churches of his empire; each part was to be subdivided between the metropolitan, and the suffragan bishops. The remaining third he distributed into four parts, one he gave to his children and grandchildren, another was added to the two thirds already bequeathed, and the other two were assigned to charitable uses. It seems as if he looked upon the immense donation he was making to the church, less as

a religious act, than as a political distribution.

CHAP. XIII.

Of the Election of Bishops and Abbots.

AS the church was grown poor, the kings resigned the right of[¶] nominating to bishopricks and other ecclesiastic benefices. The princes gave themselves less trouble about the ecclesiastic ministers; and the candidates were less solicitous in applying to their authorities. Thus the church received a kind of compensation for the possessions she had lost.

Hence if Lewis the Debonnaire^{*} left the people of Rome in possession of the right of chusing their popes, it was owing to the general spirit that prevailed in his time: he behaved in the same manner to the see of Rome as to other bishopricks.

CHAP. XIV.

Of the Fiefs of Charles Martel.

I SHALL not pretend to determine whether Charles Martel, in giving the church-lands in fief, made a grant of them for life or in perpetuity. All I know is, that under

Charlemaign[†], and Lotharius I.[‡] there were possessions of that kind which descended to the next heirs, and were divided amongst them.

I find moreover that one part of them[¶] was given as *allodia*, and the other as fiefs.

I took notice that the proprietors of the allodia were subject to the service all the same as the possessors of the fiefs. This, without doubt, was partly the reason that Charles Martel made grants of allodial lands, as well as of fiefs.

CHAP. XV.

The same Subject continued.

WE must observe, that the fiefs having been changed into church-lands, and these again into fiefs, they borrowed something of each other. Thus the church-lands had the privileges of fiefs, and these had the privileges of church-lands. Such were the

*
—honorary rights of churches, which began at that time. And as those rights have been ever annexed to the judiciary power, in preference to what is still called the fief, it follows that the patrimonial jurisdictions were established at the same time with those very rights.

CHAP. XVI.

Confusion of the Royalty and Mayoralty. The second Race.

THE connexion of my subject has made me invert the order of time, so as to speak of Charlemain before I had mentioned the famous epocha of the translation of the crown to the Carlovingians under king Pepin: a revolution which, contrary to the nature of ordinary events, is more remarkable perhaps in our days than when it happened.

The kings had no authority; they had only an empty name. The regal title was hereditary, and that of mayor elective. Though it was latterly in the power of the mayors to place any of the Merovingians on the throne, they had not yet taken a king of another race; and the ancient law which fixed the crown in a particular family, was not yet erased out of the hearts of the Franks. The king's person was almost unknown in the monarchy; but the royalty was established. Pepin, son of Charles Martel, thought it would be proper to consound those two titles, a confusion which would leave it a moot point, whether the new royalty was hereditary or not; and this was sufficient for him, who to the regal dignity had joined a great power. The mayor's authority was then blended with that of the king. In the mixture of these two authorities a kind of reconciliation was made; the mayor had been elective, and the king hereditary: the crown at the beginning of the second race was elective, because the people chose; it was hereditary, because they always chose in the same family*.

Father le Cointe, in opposition to the authority of all ancient records†, denies‡ that the pope authorized this great change; and one of his reasons is, that he would have committed an injustice. A fine thing to see an historian judge of facts from the circumstances of duty; at this rate we should have no history at all.

Be that as it may, it is very certain that immediately after duke Pepin's victory, the Merovingians ceased to be the reigning family. When his grandson Pepin was crowned king, it was only a ceremony the more, and a phantom the less; he acquired nothing thereby but the royal ornaments, there was no change made in the nation.

This I have said in order to fix the moment of the revolution, that we may not be mistaken in looking upon that as a revolution which was only a consequence of it.

When Hugh Capet was crowned king at the beginning of the third race, there was a

much greater change, because the kingdom passed from a state of anarchy to some kind of government; but when Pepin ascended the throne, there was only a transition from one government to another of the same nature.

When Pepin was crowned king, there was only a change of name: but when Hugh Capet was crowned, there was a change in the nature of the thing, because by uniting a great fief to the crown, the anarchy ceased.

When Pepin was crowned, the title of king was united to the highest office; when Hugh Capet was crowned, it was annexed to the greatest fief.

CHAP. XVII.

A particular Circumstance in the Election of the Kings of the second Race.

WE find by the formulary^{*} of Pepin's coronation, that Charles and Carloman were also anointed; and that the French nobility bound themselves, on pain of interdiction and excommunication, never to chuse a prince[†] of another family.

It appears by the wills of Charlemain and Lewis the Debonnaire, that the Franks made a choice among the king's children; which agrees with the abovementioned clause. And when the empire was transferred from Charlemain's family, the election, which before had been conditional, became simple and absolute; so that the ancient constitution was altered.

Pepin perceiving himself near his end, assembled[‡] the lords both temporal and spiritual at St. Denis, and divided his kingdom between his two sons Charles and Carloman. We have not the acts of this assembly; but we find what was there transacted, in the author of the ancient historical collection, published by Canifius, and in[¶] the writer of the annals of Mentz, according to[§] the observation of Baluzius. Here I meet with two things in some measure contradictory; that he made this division with the consent of the nobility, and afterwards that he made it by his paternal authority. This proves what I said, that the people's right in the second race was to chuse in the same family; it was properly speaking, rather a right of exclusion, than that of election.

This kind of elective right is confirmed by the records of the second race. Such is this capitulary of the division of the empire made by Charlemain among his three children, in which after settling their shares, he says^{*} "That if one of the three brothers happens to have a son, such as the people shall be willing to chuse as a fit person to succeed to his father's kingdom, his uncles shall consent to it."

This same regulation is to be met with in the partition^I which Lewis the Debonnaire made among his three children, Pepin, Lewis, and Charles, in the year 837, at the assembly of Aix-la-Chapelle: and likewise in another[±] partition, made twenty years before, by the same emperor, in favour of Lotharius, Pepin, and Lewis. We may likewise see the oath which Lewis the Stammerer took at Compeigne, at his coronation. "I Lewis, by the divine mercy, and the people's election^{||} appointed king, do promise What I say is confirmed by the acts of the council of Valence^S held in the year 890, for the election of Lewis, son of Boson, to the kingdom of Arles. Lewis was there elected, and the principal reason they give for chusing him, is, that he was of the imperial family^{*}, that Charles the Fat had conferred upon him the dignity of king, and that the emperor Arnold had invested him by the sceptre, and by the ministry of his ambassadors. The kingdom of Arles, like the other dismembered or dependent kingdoms of Charlemaign, was elective and hereditary.

CHAP. XVIII.

Charlemaign.

CHARLEMAIGN's attention was to restrain the power of the nobility within proper bounds, and to hinder them from oppressing the freemen and the clergy. He balanced the several orders of the state, and remained perfect master of them all. The whole was united by the strength of his genius. He led the nobility continually from one expedition to another; giving them no time to form conspiracies, but employing them entirely in the execution of his designs. The empire was supported by the greatness of its chief: the prince was great, but the man was greater. The kings his children were his first subjects, the instruments of his power, and patterns of obedience. He made admirable regulations; and, what is still more admirable, he took care to see them executed. His genius diffused itself through every part of the empire. We find in this prince's laws a spirit of forecast and sagacity that comprizes every thing, and a certain force that appears irresistible. All pretexts[†] for evading the performance of duties are removed, neglects are corrected, abuses reformed or prevented. He knew how to punish, but he understood much better how to pardon. He was great in his designs, and simple in the execution of them. No prince ever possessed in a higher degree the art of performing the greatest things with ease, and the most difficult with expedition. He was continually visiting the several parts of his vast empire, and made them feel the weight of his hand wherever he fell. New difficulties sprung up on every side, and on every side he removed them. Never prince had more resolution in facing dangers; never prince knew better how to avoid them. He mocked all manner of perils, and particularly those to which great conquerors are generally subject, namely, conspiracies. This surprising prince was extremely moderate, of a very mild character, plain and simple in his behaviour. He loved to converse freely with the lords of his court. He indulged perhaps

too much his passion for the fair-sex; a failing however which in a prince who always governed by himself, and who spent his life in a continual series of toils, may merit some allowance. He was wonderfully exact in his expences; administring his demesnes with prudence, attention and œconomy. A father[†] might learn from his laws how to govern his family; and we find in his capitularies the pure and sacred source from whence he derived his riches. I shall add only one word more: he gave orders that[‡] the eggs in the bartons on his demesnes and the superfluous garden stuff should be sold; a most wonderful œconomy in a prince, who had distributed among his people all the riches of the Lombards, and the immense treasures of those Huns that had plundered the whole world.

CHAP. XIX.

The same Subject continued.

THIS great prince was afraid lest those whom he intrusted in distant parts with the command, should be inclined to revolt; and thought he should find more docility among the clergy. For this reason he erected a great number of bishopricks in Germany[§] and endowed them with very large fiefs. It appears by some charters that the clauses containing the prerogatives of those fiefs, were not different from such as were commonly inserted in those grants^{*}; though at present we find the principal ecclesiastics of Germany invested with a sovereign power. Be that as it may, these were some of the contrivances he used against the Saxons. That which he could not expect from the indolence and supineness of a vassal, he thought he might promise himself from the sedulous attention of a bishop. Besides a vassal of that kind, far from making use of the conquered people against him, would rather stand in need of his assistance to support himself against his people.

CHAP. XX.

Lewis the Debonnaire.

WHEN Augustus Cæsar was in Egypt, he ordered Alexander's tomb to be opened; and upon their asking him whether he was willing they should open the tombs of the Ptolemy's, he made answer that he wanted to see the king, and not the dead. Thus, in the history of the second race, we are continually looking for Pepin and Charlemaign; we want to see the kings, and not the dead.

A prince who was the sport of his passions, and a dupe even to his virtues; a prince

who never understood rightly either his own strength or weakness; a prince who was incapable of making himself either feared or beloved; a prince, in fine, who with few vices in his heart, had all manner of defects in his understanding, took the reins of the empire into his hands, which had been held by Charlemaign.

At a time when the whole world is in tears for the death of his father, at a time of surprize and alarm, when the subjects of that extensive empire, all call upon Charles, who is no more; at a time when he is advancing with all expedition to take possession of his father's throne, he sends some trusty officers before him, in order to seize the persons of those who had contributed to the irregularity of his sisters. This step was productive of the most terrible catastrophies[†]. It was imprudent and precipitate. He began with punishing domestic crimes, before he reached the palace; and with alienating the minds of his subjects, before he ascended the throne.

His nephew, Bernard king of Italy being come to implore his clemency, he ordered his eyes to be put out, which proved the cause of that prince's death a few days after, and created Lewis a great many enemies. His apprehension of the consequence induced him to shut his brothers up in a monastery; by which means the number of his enemies increased. These two last transactions were afterwards laid to his charge in a judicial manner[‡], and his accusers did not fail to tell him, that he had violated his oath, and the solemn promises which he had made to his father on the day of his coronation.

After the death of the empress Hermengardis, by whom he had three children, he married Judith, and had a son by that princess; but soon mixing all the indulgence of an old husband, with all the weakness of an old king, he flung his family into a disorder, which was followed with the downfall of the monarchy.

He was continually altering the partitions he had made among his children. And yet these partitions had been confirmed each in their turn by his own oath, and by those of his children and the nobility.

This was as if he wanted to try the fidelity of his subjects; it was endeavouring by confusion, scruples, and equivocation to puzzle their obedience; it was confounding the different rights of those princes, and rendering their titles dubious, especially at a time when there were but few fortresses, and when the principal bulwark of authority was the fealty sworn and accepted.

The emperor's children, in order to preserve their shares, courted the clergy, and granted them privileges till then unheard. These privileges were specious; and the clergy in return were made to warrant the revolution in favour of those princes.

Agobard[¶] represents to Lewis the Debonnaire, his having sent Lotharius to Rome, in order to have him declared emperor; and that he had made a division of his dominions among his children, after having consulted heaven by three days fasting and praying.

What defence could such a weak prince make against the attack of superstition? It is easy to perceive the shock which the supreme authority must have twice received from his imprisonment, and from his public penance; they would fain degrade the king, and they degraded the regal dignity.

We find a difficulty at first to conceive how a prince who was possessed of several good qualities, who had some knowledge, who had a natural disposition to virtue, and who in short was the son of Charlemaign, could have such a number of enemies^{*}, so impetuous and implacable as even to insult him in his humiliation, and to be determined upon his ruin: and indeed they would have utterly completed it, if his children, who in the main were more honest than they, had been steady in their design, and could have agreed amongst themselves.

CHAP. XXI.

The same Subject continued.

THE strength and solidity for which the kingdom was indebted to Charlemaign, still subsisted under Lewis the Debonnaire in such a degree as enabled the state to support its grandeur, and to command respect from foreign nations. The prince's understanding was weak, but the nation was warlike. His authority declined at home, though there seemed to be no diminution of power abroad.

Charles Martel, Pepin, and Charlemaign, were in succession rulers of the monarchy. The first flattered the avarice of the soldiers; the other two that of the clergy.

In the French constitution, the whole power of the state was lodged in the hands of the king, the nobility, and clergy. Charles Martel, Pepin, and Charlemaign, joined sometimes their interests with one of those parties to check the other and generally with both: but Lewis the Debonnaire could gain the affection of neither. He disobliged the bishops by publishing regulations which had the air of severity, because he carried things to a greater length than was agreeable to their inclination. Very good laws may be ill-timed.

The bishops in those days, being accustomed to take the field against the Saracens^{*}, and the Saxons, had very little of the spirit of religion. On the other hand, as he had no longer any confidence in the nobility, he promoted mean people, turning the nobles out of their employments at court^S to make room for strangers and upstarts. By these means the affections of the two great bodies of the nobility and clergy were alienated from their prince, the consequence of which was a total desertion.

CHAP. XXII.

The same Subject continued.

BUT what chiefly contributed to weaken the monarchy, was the extravagance of this prince in alienating the crown demesnes^S. And here it is that we ought to listen to the account of Nitard, one of our most judicious historions, a grandson of Charlemaign, strongly attached to Lewis the Debonnaire, and who wrote his history by order of Charles the Bald.

He says, "that one Adelhard for some time gained such an ascendant over the emperor, that this prince conformed to his will in every thing; that at the instigation of this favourite, he had granted the the crown lands^{*} to every body that asked them, by which means the state was ruined[†]." Thus he did the same mischief throughout the empire, as I[‡] observed he had done in Aquitaine; the former, Charlemaign redressed, but the latter, was past all remedy.

The state was reduced to the same debility in which Charles Martel found it upon his accession to the mayoralty; and so desperate were its circumstances, that no exertion of authority was any longer capable of saving it.

The treasury was so exhausted, that in the reign of Charles the Bald, no one could continue^{||} in his employments, nor be safe in his person, without paying for it, When they had it in their power to destroy the Normans[†], they took money to let them escape: and the first advice which Hincmar gives to Lewis the Stammerer, is to ask of the assembly of the nation, a sufficient allowance to defray the expences of his household.

CHAP. XXIII.

The same Subject continued.

THE clergy had reason to repent the protection they had granted to the children of Lewis the Debonnaire. This prince, as I have already observed, had never given[‡] any of the church-lands by *precepts* to the laity; but it was not long before Lotharius in Italy, and Pepin in Aquitaine, quitted Charlemaign's plan, and resumed that of Charles Martel. The clergy had recourse to the emperor against his children, but they themselves had weakened the authority to which they appealed. In Aquitaine some condescension was shewn, but none in Italy.

The civil wars with which the life of Lewis the Debonnaire had been embroiled, were the seed of those which followed his death. The three brothers, Lotharius, Lewis, and Charles, endeavoured each to bring over the nobility to their party. To such as were

willing therefore to follow them they granted church-lands by *precepts*; so that to gain the nobility, they sacrificed the clergy.

We find in the capitularies^{*}, that those princes were obliged to yield to the importunity of demands, and that what they would not often have freely granted, was extorted from them: we find that the clergy thought themselves more oppressed by the nobility than by the kings. It appears that Charles the Bald[†] became the greatest enemy of the patrimony of the clergy, whether he was most incensed against them for having degraded his father on their account, or whether he was the most timorous. Be that as it may, we meet with[‡] continual quarrels in the capitularies; between the clergy who demanded their estates, and the nobility who refused or deferred to restore them; and the kings acting as mediators.

The situation of affairs at that time is a spectacle really deserving of pity. While Lewis the Debonnaire made immense donations out of his demesnes to the clergy; his children distributed the church-lands among the laity. The same prince with one hand enriched, and with another oftentimes stripped the clergy. The latter had no fixt state; one moment they were plundered, another they received satisfaction: but the crown was continually losing.

Towards the close of the reign of Charles the Bald, and from that time forward, there was an end of the disputes of the clergy and laity, concerning the restitution of church lands. The bishops indeed breathed out still a few sighs in their remonstrances to Charles the Bald, which we find in the capitulary of the year 856, and in the letter^{*} they wrote to Lewis king of Germany, in the year 858: but they proposed things, and challenged promises, so often eluded, that we plainly see they had no longer any hopes of obtaining their desire.

All that could be expected then, was[†] to repair in general the injuries done both to church and state. The kings engaged not to deprive the nobility of their freemen, and not to give away any more church-lands by *precepts*[‡]; so that the interests of the clergy and nobility seemed then to be united.

The dreadful depredations of the Normans, as I have already observed, contributed greatly to put an end to those quarrels.

The authority of our kings diminishing every day, both for the reasons already given, and those which I shall mention hereafter, they imagined they had no better resource left, than to resign themselves into the hands of the clergy. But the ecclesiastics had weakened the power of the kings, and these had diminished the influence of the ecclesiastics.

In vain did Charles the Bald and his successors call in the church to support the state, and to prevent its ruin: in vain did they avail themselves of the^{*} respect which the

commonalty had for that body, to maintain that which they should also have for their prince; in vain did they endeavour[†] to give an authority to their laws by that of the canons; in vain did they join the ecclesiastic[‡] with the civil punishments; in vain to counterbalance the authority of the count[¶] did they give to each bishop the title of their commissary in the several provinces: it was impossible for the clergy to repair the mischief they had done; and a terrible misfortune, which I shall presently mention, proved the ruin of the monarchy.

CHAP. XXIV.

That the Freemen were rendered capable of holding Fiefs.

I SAID that the freemen were led against the enemy by their count, and the vassals by their lord. This was the reason that the several orders of the state balanced each other; and though the king's vassals had other vassals under them, yet they might be overawed by the count who was at the head of all the freemen of the monarchy.

The freemen[§] were not allowed at first to do homage for a fief; but in process of time this was permitted: and I find that this change was made during the period that elapsed from the reign of Gontram to that of Charlemaign. This I prove by the comparison which may be drawn between the treaty of Andely[†], signed by Gontram, Childebert, and queen Brunehild, and the[‡] partition made by Charlemaign amongst his children, as well as a like partition by Lewis the Debonnaire. These three acts contain nearly the same regulations, with regard to the vassals; and as they determine the very same points, under almost the same circumstances, the spirit as well as the letter of those three treaties in this respect are very much alike.

But as to what concerns the freemen, there is a capital difference. The treaty of Andely does not say that they might do homage for a fief; whereas we find in the divisions of Charlemaign and Lewis the Debonnaire express clauses to empower them to do homage. This shews that a new usage had been introduced after the treaty of Andely, whereby the freemen were become capable of this great privilege.

This must have happened when Charles Martel, after distributing the church-lands to his soldiers, partly in fief, and partly as *allodia*, made a kind of revolution in the feudal laws. It is very probable that the nobility who were seized already of fiefs, found a greater advantage in receiving the new grants as *allodia*; and that the freemen thought themselves happy in accepting them as fiefs.

CHAP. XXV.

THE PRINCIPAL CAUSE OF THE HUMILIATION OF THE SECOND RACE.

Changes in the Allodia.

CHARLEMAIGN, in the partition^{*}, mentioned in the preceding chapter, ordained, that after his death, the vassals belonging to each king, should be permitted to receive benefices in their own sovereign's dominion, and not in those[†] of another; whereas they[‡] might keep their allodial estates in any of their dominions. But he adds[¶], that every freeman might, after the death of his lord, do homage in any of the three kingdoms to whom he pleased, as well as he that never had been subject to a lord. We find the same regulations in the partition which Lewis the Debonnaire made among his children in the year 817.

But though the freemen had done homage for a fief, yet the count's militia was not thereby weakened: the freeman was still obliged to contribute for his *allodium*, and to get people ready for the service belonging to it, at the proportion of one man to four manors: or else to procure a man that should do the duty of the fief in his stead. And when some abuses had been introduced upon this head, they were redressed, as appears by the constitutions^{*} of Charlemaign, and by that[†] of Pepin king of Italy, which explain each other.

The remark made by historians, that the battle of Fontenay was the ruin of the monarchy, is very true: but I beg leave to cast an eye on the unhappy consequences of that day.

Some time after that battle, the three brothers, Lotharius, Lewis, and Charles, made a treaty[‡], wherein I find some clauses which must have altered the whole political system of the French government.

In the declaration[¶], which Charles made to the people, of that part of the treaty relating to them, he says, that[§] every freeman might chuse whom he pleased for his lord, whether the king or any of the nobility. Before this treaty the freemen might do homage for a fief; but his *allodium* still continued under the immediate power of the king, that is, under the count's jurisdiction; and he depended on the lord to whom he vowed fealty, only on account of the fief which he had obtained. After that treaty, every freeman had a right to subject his *allodium* to the king, or to any other lord, as he thought proper. The question is not in regard to those who put themselves under the protection of another for a fief, but to such as changed their allodial into a feudal land, and withdrew themselves, as it were, from the civil jurisdiction, to enter under the power of the king, or of the lord whom they thought proper to chuse.

Thus it was that those who formerly were only under the king's power, as freemen under the count, became insensibly vassals one of another, since every freeman might chuse whom he pleased for his lord, the king, or any of the nobility.

2. If a man changed an estate, which he possessed in perpetuity into a fief, this new fief could no longer be only for life. Hence we see, a short time after, a^{*} general law for giving the fiefs to the children of the present possessor: it was made by Charles the Bald, one of the three contracting princes.

What has been said concerning the liberty every freeman had in the monarchy, after the treaty of the three brothers, of chusing whom he pleased for his lord, the king or any of the nobility, is confirmed by the acts subsequent to that time.

In the reign[†] of Charlemaign, when the vassal had received a present of a lord, were it worth only a sol, he could not afterwards quit him. But under Charles the Bald, the vassals[‡] might follow what was agreeable to their interests, or their inclination, with intire safety; and so strongly does this prince explain himself on this subject, that he seems rather to encourage them in the enjoyment of this liberty, than to restrain it. In Charlemaign's time, benefices were rather personal than real; afterwards they became rather real than personal.

CHAP. XXVI.

Changes in the Fiefs.

THE same changes happened in the fiefs, as in the *allodia*. We find by the capitulary^{*} of Compeigne, under king Pepin, that those who had received a benefice from the king, gave a part of this benefice to different bondmen; but these parts were not distinct from the whole. The king revoked them when he revoked the whole; and at the death of the king's vassal, the rear-vassal lost also his rear-fief; and a new beneficiary succeeded, who likewise established new rear-vassals. Thus it was the person, and not the rear-fief, that depended on the fief; on the one hand, the rear-vassal returned to the king, because he was not tied for ever to the vassal; and the rear-fief returned also to the king, because it was the fief itself, and not a dependance of it.

Such was the rear-vassalage, while the fiefs were during pleasure; and such was it also while they were for life. This was altered when the fiefs descended to the next heirs, and the rear-fiefs the same. That which was held before immediately of the king, was held now mediately; and the regal power was thrown back, as it were, one degree; sometimes two, and oftentimes more.

We find in the books[†] of fiefs, that though the king's vassals might give away in fief, that is, in rear-fief, to the king, yet these rear-vassals, or petty vavasors, could not give also in fief; so that whatever they had given, they might always resume. Besides, a grant of that kind did not descend to the children like the fiefs, because it was not

supposed to have been made according to the feudal laws.

If we compare the situation in which the rear-vassal-age was at the time when the two Milanese senators wrote that book, to what it was under king Pepin, we shall find that the rear-fiefs preserved[†] their primitive nature longer than the fiefs.

But when those senators wrote, such general exceptions had been made to this rule, as had almost abolished it. For if a person[‡] who had received a fief of a rear-vassal, happened to follow him upon an expedition to Rome, he was intitled to all the privileges of a vassal. In like manner, if he had given money to the rear-vassal to obtain the fief, the latter could not take it from him, nor hinder him from transmitting it to his son, till he returned him his money: in fine, this rule[¶] was no longer observed by the senate of Milan.

CHAP. XXVII.

Another Change which happened in the Fiefs.

IN Charlemaign's time^{*} they were obliged, under great penalties, to repair to the general meeting in case of any war whatsoever; they admitted of no excuses, and if the count exempted any one he was liable himself to be punished. But the treaty of the three brothers[¶] made a restriction[§] upon this head, which rescued the nobility, as it were, out of the king's hands; they were no longer obliged to serve in time of war, but when the war was defensive. In others, they were at liberty to follow their lord, or to mind their own business. This treaty relates to another[¶], concluded five years before, between the two brothers, Charles the Bald and Lewis king of Germany, by which these princes release their vassals from serving them in war, in case they should attempt hostilities against each other; an agreement which the two princes confirmed by oath, and, at the same time, made their armies swear to it.

The death of an hundred thousand French, at the battle of Fontenay, made the remains of the nobility imagine, that by the private quarrels of their kings, about their respective shares, their whole body should be exterminated, and that the ambition and jealousy of those princes would end in the destruction of all the best families of the kingdom. A law was therefore passed, that the nobility should not be obliged to serve their princes in war, unless it was to defend the state against a foreign invasion. This law^{*} obtained for several ages.

CHAP. XXVIII.

Changes which happened in the great Offices, and in the Fiefs.

THE many changes introduced into the fiefs, in particular cases, seemed to spread so wide as to be productive of a general corruption. I took notice, that in the beginning several fiefs had been alienated in perpetuity; but those were particular cases, and the fiefs in general preserved their nature; so that if the crown lost some fiefs, it substituted others in their stead. I observed likewise, that the crown had never alienated the great offices in perpetuity[†].

But Charles the Bald made a general regulation, which equally affected the great offices and the fiefs. He ordained, in his capitularies, that the[‡] counties should be given to the children of the count, and that this regulation should also take place in respect to the fiefs.

We shall see presently that this regulation received a more considerable extent, insomuch that the great offices and fiefs went even to distant relations. From thence it followed, that most of the lords, who before this time had held immediately of the crown, held now only mediately. Those counts who formerly administered justice in the king's *placita*, and who led the freemen against the enemy, found themselves situated between the king and his freemen; and the king's power was removed farther off another degree.

Again it appears from the capitularies^{||}, that the counts had benefices annexed to their countries, and vassals under them. When the counties became hereditary, the count's vassals were no longer the immediate vassals of the king; and the benefices annexed to the counties were no longer the king's benefices: the counts grew powerful, because the vassals, whom they had already under them, enabled them to procure others.

In order to be convinced how much the monarchy was thereby weakened towards the end of the second race, we have only to cast an eye on what happened at the beginning of the third, when the multiplicity of rear-fiefs flung the great vassals into despair.

It was a custom[§] of the kingdom, that when the elder brothers had given shares to their younger brothers, the latter paid homage to the elder; so that those shares were held of the lord paramount only as a rear-fief. Philip Augustus, the duke of Burgundy, the counts of Nevers, Boulogne, S. Paul, Dampierre, and other lords, declared^{*} that henceforward, whether the fief was divided by succession, or otherwise, the whole should be held always of the same lord, without any intermediation. This ordinance was not generally followed; for as I have elsewhere observed, it was impossible to make general ordinances at that time; but many of our customs were regulated by them.

CHAP. XXIX.**Of the Nature of the Fiefs after the Reign of Charles the Bald.**

WE have observed, that Charles the Bald ordained that when the possessor of a great office or of a fief left a son at his death, the office or fief should devolve to him. It would be a difficult matter to trace the progress of the abuses which from thence resulted, and of the extension given to that law in each country. I find in the books^{*} of fiefs, that towards the beginning of the reign of the emperor Conrad II. the fiefs situated in his dominions did not descend to the grandchildren: they descended only to one of the last possessor's children[†], who had been chosen by the lord: thus the fiefs were given by a kind of election, which the lord made among the children.

In the seventeenth chapter of this book, we have explained in what manner the crown was in some respects elective, and in others hereditary, under the second race. It was hereditary, because, the kings were always taken from that family, and because the children succeeded; it was elective, by reason the people chose from amongst the children. As things of a similar nature move generally alike, and one political law is constantly relative to another, the same spirit was followed[‡] in the succession of fiefs, as had been observed in the succession to the crown. Thus the fiefs were transmitted to the children by the right of succession, as well as of election; and each fief was become both elective and hereditary, like the crown.

This right of election in the person of the lord, was not subsisting[§] at the time of the authors[§] of the books of fiefs, that is, in the reign of the emperor Frederic I.

CHAP. XXX.**The same Subject continued.**

IT is mentioned in the books of fiefs, that when^{**} the emperor Conrad set out for Rome, the vassals in his service presented a petition to him, that he would please to make a law, that the fiefs which descended to the children should descend also to the grandchildren, and that he whose brother died without legitimate heirs, might succeed to the fief which had belonged to their common father: This was granted.

In the same place it is said, (and we are to remember that those writers^{*} lived at the time of the emperor Frederic I.) "that the ancient civilians[†] had always been of opinion, that the succession of fiefs in a collateral line did not extend farther than to cousin germans by the father's side, though of late it was carried as far as the seventh degree, and by the new code they had extended it in a direct line *in infinitum*." It is thus that

Conrad's law was insensibly extended.

All these things being supposed, the bare perusal of the history of France is sufficient to demonstrate, that the perpetuity of fiefs was established earlier in this kingdom than in Germany. Towards the commencement of the reign of the emperor Conrad II. in 1024, things were upon the same footing still in Germany, as they had been in France under the reign of Charles the Bald, who died in 877. But such were the changes made in this kingdom after the reign of Charles the Bald, that Charles the Simple found himself unable to dispute with a foreign house his incontestable rights to the empire; and, in fine, that in Hugh Capet's time the reigning family, stripped of all its demesnes, was no longer in a condition to maintain the crown.

The weak understanding of Charles the Bald produced an equal weakness in the French monarchy. But as his brother Lewis king of Germany, and some of that prince's successors, were men of better parts, their government preserved its vigor much longer.

But what do I say? perhaps the flegmatic constitution, and, if I dare use the expression, the immutability of spirit peculiar to the German nation, made a longer stand than the volatile temper of the French, against that disposition of things, which perpetuated the fiefs, by a natural tendency in families.

Besides, the kingdom of Germany was not laid waste, and annihilated, as it were, like that of France, by that particular kind of war with which it had been harrassed by the Normans and Saracens. There were less riches in Germany, fewer cities to plunder, less extent of coast to scour, more marshes to get over, more forest to penetrate. As the dominions of those princes were less in danger of being ravaged and torn to pieces, they had less need of their vassals, and consequently less dependence on them. And in all probability, if the emperors of Germany had not been obliged to be crowned at Rome, and to make continual expeditions into Italy, the fiefs would have preserved their primitive nature much longer in that country.

CHAP. XXXI.

In what Manner the Empire was transferred from the Family of Charlemaign.

THE empire, which in prejudice to the branch of Charles the Bald, had been already given to the^{*} bastard line of Lewis king of Germany, was transferred to a foreign house by the election of Conrad, duke of Franconia, in 912. The reigning branch of France being hardly able to dispute a few villages, was much less in a situation to contest the

empire. We have an agreement which passed between Charles the Simple and the emperor Henry I. who had succeeded to Conrad. It is called the compact of Bonn[†]. These two princes met in a vessel which had been placed in the middle of the Rhine, and swore eternal friendship. They used on this occasion an excellent *middle term*. Charles took the title of king of West France, and Henry that of king of East France. Charles contracted with the king of Germany, and not with the emperor.

CHAP. XXXII.

In what Manner the Crown of France was transferred to the House of Hugh Capet.

THE inheritance of the fiefs, and the general establishment of rear-fiefs, extinguished the political, and formed a feudal government. Instead of that prodigious multitude of vassals who were formerly under the king, there were now a few only, on whom the others depended. The kings had scarce any longer a direct authority; a power which was to pass through so many and through such great powers, either stopt or was lost before it reached its term. Those great vassals would no longer obey; and they even made use of their rear-vassals to withdraw their obedience. The kings deprived of their demesnes, and reduced to the cities of Rheims and Laon, were left exposed to their mercy; the tree stretched out its branches too far, and the head was withered. The kingdom found itself without a demesne, as the empire is at present. The crown was therefore given to one of the most potent vassals.

The Normans ravaged the kingdom: they sailed in open boats or small vessels, entered the mouths of rivers, and laid the country waste on both sides. The cities of Orleans^{*} and Paris put a stop to those plunderers, so that they could not advance farther, either on the Seine, or on the Loire. Hugh Capet, who was master of those cities, held in his hands the two keys of the unhappy remains of the kingdom; the crown was conferred upon him as the only person able to defend it. It is thus the empire was afterwards given to a family, whose dominions form so strong a barrier against the Turks.

The empire went from Charlemagne's family, at a time when the inheritance of fiefs was established only as a mere condescendence. It even appears that this inheritance obtained much later[†] among the Germans than among the French; which was the reason that the empire, considered as a fief, was elective. On the contrary, when the crown of France went from the family of Charlemagne, the fiefs were really hereditary in this kingdom; and the crown, as a great fief, was also hereditary.

But it is very wrong to refer to the very moment of this revolution, all the changes which happened, either before or afterwards. The whole was reduced to two events; the

reigning family changed, and the crown was united to a great fief.

CHAP. XXXIII.

Some Consequences of the perpetuity of Fiefs.

FROM the perpetuity of fiefs, it followed, that the right of seniority or primogeniture was established among the French. This right was quite unknown under the first race^{*}; the crown was divided among the brothers, the *allodia* were shared in the same manner; and as the fiefs, whether precarious or for life, were not an object of succession, there could be no partition in regard to those tenures.

Under the second race, the title of emperor which Lewis the Debonnaire enjoyed, and with which he honoured his eldest son Lotharius, made him think of giving this prince a kind of superiority over his younger brothers. The two kings[†] were obliged to wait upon the emperor every year, to carry him presents, and to receive much greater from him; they were also to consult with him upon common affairs. This is what inspired Lotharius with those pretences which met with such bad success. When Agobard[‡] wrote in favour of this prince, he alledged the emperor's own regulation, who had associated Lotharius to the empire, after he had consulted the Almighty by a three days fast, and by the celebration of the holy mysteries; after the nation had sworn aliegiance to him, which they could not refuse without perjuring themselves; and after he had sent Lotharius to Rome to be confirmed by the pope. Upon all this he lays a stress, and not upon his right of primogeniture. He says, indeed, that the emperor had designed a partition among the younger brothers, and that he had given the preference to the elder; but saying he had preferred the elder, was saying at the same time that he might have given the preference to his younger brothers.

But as soon as the fiefs became hereditary, the right of seniority was established in the feudal succession: and for the same reason in that of the crown, which was the great fief. The ancient law of partitions was no longer subsisting; the fiefs being charged with a service, the possessor must have been enabled to discharge it. The right of primogeniture was established, and the reason of the feudal law was superior to that of the political or civil institution.

As the fiefs descended to the children of the possessor, the lords lost the liberty of disposing of them; and, in order to indemnify themselves, they established what they called the right of redemption, whereof mention is made in our customs, which at first was paid in a direct line; and by usage came afterwards to be paid only in a collateral line.

The fiefs were soon rendered transferable to strangers, as a patrimonial estate. This gave rise to the right of fines of alienation, which were established almost throughout the kingdom. These rights were arbitrary in the beginning; but when the practice of granting such permissions was become general, they were fixed in every district.

The right of redemption was to be paid at every change of heir, and at first was paid even in a direct line[¶]. The most general custom had fixed it to one year's income. This was burthensome and inconvenient to the vassal, and affected in some measure the fief itself. It was often agreed[§] in the act of homage, that the lord should no longer demand more than a certain sum of money for the redemption, which, by the changes incident to money, became afterwards of no manner of importance. Thus the right of redemption is in our days reduced almost to nothing, while that of the fines of alienation is continued in its full extent. As this right concerned neither the vassal nor his heirs, but was a fortuitous case which no one was obliged to foresee or expect; these stipulations were not made, and they continued to pay a certain part of the price.

When the fiefs were for life, they could not give a part of a fief to hold in perpetuity as a rear-fief; for it would have been absurd that a person who had only the usufruit of a thing, should dispose of the property of it. But when they became perpetual, this was^{*} permitted, with some restrictions made by the customs[†], which was what they call dismembering their fief.

The perpetuity of feudal tenures having established the right of redemption, the daughters were rendered capable of succeeding to a fief, in default of male issue. For when the lord gave the fief to his daughter, he multiplied the cases of his right of redemption, because the husband was obliged to pay it as well as the wife[‡]. This regulation could not take place in regard to the crown; for as it was not held of any one there could be no right of redemption over it.

The daughter of William V. count of Tholouse, did not succeed to the county. But Eleanor succeeded to Aquitaine, and Mathildis to Normandy; and the right of the succession of females seemed so well established in those days, that Lewis the Young, after his divorce from Eleanor, made no difficulty in restoring Guyenne to her. But as these two last instances followed close to the first, the general law by which the women were called to the succession of fiefs, must have been introduced much later[†] into the county of Toulouse, than into the other provinces of France.

The constitutions of several kingdoms of Europe have been directed by the state of feudal tenures at the time when those kingdoms were founded. The women succeeded neither to the crown of France nor to the empire, because at the establishment of those two monarchies, they are incapable of succeeding to fiefs. But they succeeded in kingdoms, whose establishment was posterior to that of the perpetuity of the fiefs, such as those founded by the Normans, those by the conquests made on the Moors; and

others, in fine, which beyond the limits of Germany, and in latter times received in some measure, a second birth, by the establishment of Christianity.

When these fiefs were at will, they were given to such as were capable of doing service for them, and therefore were never bestowed on minors; but † when they became perpetual, the lords took the fiefs into their own hands, till the pupil came of age, either to increase their own emoluments, or to train the pupil to the use of arms. This is what our customs call the *guardianship of a nobleman's children*, which is founded on principles different from those of tutelage, and is intirely a distinct thing from it.

When the fiefs were for life, it was customary to vow fealty for a fief; and the real delivery, which was made by a scepter, secured the fief, as it is now secured by homage. We do not find that the counts, or even the king's commissaries, received, the homage in the provinces; nor is this ceremony to be met with in the commissions of those officers, which have been handed down to us in the capitularies. They sometimes, indeed, made all the king's subjects take an oath of allegiance †; but so far was this oath from being of the same nature as the service afterwards established by the name of homage, that it was only a § ceremony, or less solemnity, occasionally used, either before or after that act of obeisance; in short, it was quite a distinct thing from homage.

The counts and the king's commissaries made those vassals* whose fidelity was suspected, give occasionally a security which was called *firmitas*; but this could not be an homage, since the king's † gave it to one another.

And though the abbot *Suger* † makes mention of a chair of Dagobert, in which according to the testimony of antiquity, the kings of France were accustomed to receive the homage of the nobility; it is plain that he expresses himself agreeably to the ideas and language of his own time.

When the fiefs descended to the heirs, the acknowledgment of the vassal, which at first was only an occasional service, became a regular duty. It was performed in a more solemn manner, and attended with more formalities, because it was to be a perpetual monument of the reciprocal duties of the lord and vassal.

I should be apt to think, that homages began to be established under king Pepin, which is the time I mentioned that several benefices were given in perpetuity; but I should not think thus without caution, and only upon a supposition that the authors of the ancient annals † of the Franks were not ignorant pretenders, who in describing the fealty professed by Tassillo, duke of Bavaria, to king Pepin spoke † according to the usages of their own time.

CHAP. XXXIV.

The same subject continued.

WHEN the fiefs were either precarious or for life, they seldom had a relation to any other than the political laws, for which reason in the civil institutions of those times there is very little mention made of the laws of fiefs. But when they were become hereditary, when there was a power of giving, selling, and bequeathing them, they had a relation both to the political and the civil laws. The fief, considered as an obligation of performing military service, depended on the political law; considered as a kind of commercial property, it depended on the civil law. This gave rise to the civil regulations concerning feudal tenures.

When the fiefs were become hereditary, the law relating to the order of succession must have been relative to the perpetuity of fiefs. Hence this rule of the French law, *estates of inheritance do not ascend*[¶], was established in spite of the Roman and Salic[§] laws. It was necessary that service should be paid for the fief; but a grandfather or a great uncle would have been too old to perform any service; therefore this rule took place at first only in regard to the feudal tenures, as we learn of Boutillier^{*}.

When the fiefs became hereditary, the lords who were to see that service was paid for the fief, insisted that the[†] females who were to succeed to the feudal estate, and I fancy sometimes the males, should not marry without their consent; insomuch that the marriage-contracts became in respect to the nobility both a feudal and a civil regulation. In an act of this kind under the lord's inspection, regulations were made for the succession, with a view that the heirs might pay service for the fief; hence none but the nobility at first had the liberty of disposing of successions by marriage contract, as[‡] Boyer and[¶] Aufrerius have justly observed.

It is needless to mention that the power of redemption, founded on the old right of the relations, a mystery of our ancient French jurisprudence which I have not time to develop, could not take place with regard to the fiefs, till they were become hereditary.

Italiam, Italiam^{*}

I finish my treatise of fiefs at a period, where most authors commence theirs.

END of the SECOND VOLUME.

Endnotes

[*]

— *Quantum vertice ad oras*

Æthereas, tantum radice ad Tartara tendit.

Virgil.

[*] Gregory of Tours, book iv. chap. 42.

[†] Chap. vii.

[‡] Fredegarius's chronicle, chap. 42.

[||] Clotharius II. son of Chilperic, and father of Dagobert.

[§] Fredegarius's chronicle, chap. 42.

[||] See Gregory of Tours, book viii. chap. 31.

[*] *Sæva illi fuit contra personas iniquitas, fisco nimium tribunes, de rebus personarum ingeniose fiscum vellens implere . . . ut nullus reperiretur qui gradum quem arripuerat potuisset adsumere. Fredeg. chron. chap. 27. in the year 605.*

[§] Ibid cap. 28. in the year 607.

[†] Ibid cap. 41. in the year 613. *Burgundiæ farones, tam episcopi quam cæteri Leudes, timentes Brunecildem et odium in eam habentes, consilium inientes, &c.*

[‡] Ibid. cap. 42. in the year 613. *Sacramento a Clothario accepto ne unquam vitæ suæ temporibus degradaretur.*

[||] Some time after Brunecild's execution, in the year 615. See Baluzius's edition of the capitularies, page 21.

[§] *Quæ contra rationis ordinem acta vel ordinata sunt, ne in antea, quod avertat divinitas, contingant, disposuerimus, Christo præsule, per hujus edicti tenorem generaliter emendare. Ibid. art. 16.*

[*] See Baluzius's edit. of the capitularies, art. 16.

[†] Ibid. art. 17.

[‡] *Et quod per tempora ex hoc prætermisum est vel dehinc perpetualiter observetur.*

[||] *Ita ut episcopo decedente in loco ipsius, qui a metropolitano ordinari debet cum principalibus, a clero et populo eligatur; et si persona condigna fuerit, per ordinationem principis ordinetur; vel certe si de palatio eligitur, per meritum personæ & doctrinæ ordinetur. Ibid. art. 1.*

[§] Ut ubicumque census novus impiè additus est, emendetur. *Art.* 8.

[**] Ibid. art. 9.

[†] Ibid. art. 21.

[*] They were orders which the king sent to the judges, to do or to tolerate things contrary to law.

[†] See Gregory of Tours, book iv. page 227. Both our history and the charters are full of this; and the extent of these abuses appears especially in Clotharius's constitution, inserted in the edition of the capitularies made to reform them. Baluzius's edition, page 7.

[‡] Art. 22.

[||] Ibid. art. 6.

[§] Ibid.

[**] In Baluzius's edition of the capitularies, tom. i. page 7.

[†] In the preceding book I have made mention of these immunities, which were grants of judicial rights, and contained prohibitions to the regal juges to perform any function in the territory, and were equivalent to the erection or grant of a fief.

[‡] He began to reign towards the year 670.

[§] See the life of S. Leger.

[*] Instigante Brunehilde, Theodorico jubente, &c. Fredegarius, chap. 27. in the year 605.

[†] *Gesta regum Francorum*, cap. 36.

[‡] See Fredegarius's chronicle, chap. 54, in the year 626, and his anonymous continuator, chap. 101. in the year 695. and chap. 105. in the year 715. Aimoin, book iv. chap. 15. Eginhard, life of Charlemaign, chap. 48. *Gesta regum Francorum*, chap. 45.

[||] See the law of the Burgundians *in præfat.* and the second supplement to this law, tit. 13.

[§] See Gregory of Tours, book ix. chap. 36.

[*] Eo anno Clotarius cum proceribus et leudibus Burgundiæ Trecassinis conjugitur, cum eorum effet sollicitus si vellent jam Warnachario discesso, alium in ejus honoris gradum sublimare: Sed omnes unanimiter denegantes se nequaquam velle majorem domus eligere, regis gratiam obnixè petentes, cum rege transegere. *Fredegarius's chronicle, chap. 54, in the year 626.*

[†] Istam victoriam quam Winidi contra Francos meruerunt, non tantùm Sclavinorum fortitudo obtinuit, quantùm dementatio Austrasiorum, dum se cernebant cum Dagoberto odium incurrisse, et assidue expoliarentur. *Fredegarius's chronicle, chap. 68. in the year 630.*

[†] Deinceps Austrasii eorum studio limitem et regnum Francorum contra Winidos utiliter defensasse noscuntur. *Fredagarius's chronicle, chap. 75, in the year 632.*

[*] *Fredegarius's chronicle, chap. 79. in the year 638.*

[†] Ibid.

[†] Ibid. chap. 80. in the year 639.

[||] Ibid. chap. 89. in the year 641.

[§] Ibid. cap. 89. Floachatus cunctis ducibus a regno Burgundiæ seu et pontisicibus, per epistolam etiam et sacramentis firmavit unicuique gradum honoris et dignitatem, seu et amicitiam, perpetuo conservare.

[**] Deinceps a temporibus Clodovei qui suit filius Dagoberti inclyti regis, pater vero Theodorici, regnum Francorum decidens per majores domus, cœpit ordinari. *De majoribus domus regia.*

[†] Reges ex nobilitate, duces, ex virtute sumunt. *De moribus Germanorum.*

[†] See Sulpicius Alexander in Gregory of Tours, book 2.

[*] In the year 552.

[†] Leutharis vero et Butilinus, tametsi id regi ipsorum minime placebat, belli cum eis societatem inierunt. *Agathias, book 1. Gregory of Tours, book iv. chap. 9.*

[†] Gontram did not even march against Gondovald, who stiled himself son of Clotharius, and claimed his share of the kingdom.

[||] Sometimes to the number of twenty. See Gregory of Tours, book v. chap. 27. book viii. chap. 18, and 30. book x. chap. 3. Dagobert, who had no mayor in Burgundy,

observed the same policy, and sent against the Gascons ten dukes and several counts who had no dukes over them. *Fredegarius's Chronicle, chap. 78. in the year 636.*

[*] Gregory of Tours, book viii. chap. 30. and book x. chap. 3. Ibid. book viii. chap. 30.

[†] Ibid.

[‡] See the second supplement to the law of the Burgundians, tit. 13. and Gregory of Tours, book ix. chap. 36.

[*] See the annals of Metz, year 687, and 688.

[†] Illis quidem nomina regum imponens, ipse totius regni habens privilegium, &c. *Annals of Metz, year 695.*

[‡] Ibid, year 719.

[||] Sedemque illi regalem sub sua ditione concessit. *Ibid. anno 719.*

[§] Ex chronico Centulensi, lib. 2. *Ut responsa quæ erat eductus vel potius jussus ex sua velut potestate redderet.*

[*] Annals of Metz, anno 691. *Anno principatus Pippini super Theodoricum*
Annals of Fulda, or of Laurisham. *Pippinus dux Francorum obtinuit regum Francorum per annos 27. cum regibus sibi subjectis.*

[†] Posthæc Theudoaldus filius ejus (Grimoaldi) parvulus in loco ipsius, cum prædicto rege Dagoberto, major-domus pallatii effectus est. *The anonymous continuator of Fredegarius in the year 714. chap. 104.*

[‡] Cited by Gregory of Tours, book 9. See also the edict of Clotharius II. in the year 615. art. 16.

[†] Ut si quid de agris fiscalibus vel speciebus atque præsidio pro arbitrii sui voluntate facere aut cuiquam conserre voluerint, fixa stabilitate perpetuo conserventur.

[‡] See the 24th and the 34th of the first book.

[||] See the 14th formula of the first book, which is equally applicable to the fiscal estates given directly and in perpetuity, or given at first as a benefice, and afterwards in perpetuity: *Sicut ab illo aut a fisco nostro fuit possessa.* See also the 17th formula, *ibid.*

[*] Book i. formulary 13.

[†] Tit. 44. See also the titles 66. sect. 3. and 4. and tit. 74.

[‡] Tit. 2.

[‖] See also the law of the Ripuarians, tit. 7. and the Salic law, tit. 44. art. 1. and 4.

[§] Salic law, tit. 59, and 76.

[†] Extra sermonem regis. Salic law, tit. 59, and 76.

[‡] Ibid. tit. 59. sect. 1.

[‖] Ibid. tit. 76. sect. 1.

[§] Ibid. tit. 56, and 59.

[**] Ibid. tit. 76. sect. 1.

[††] Ibid. tit. 76. sect. 2.

[‡‡] Apud Vernis Palatium, in the year 883. art. 4, and 11.

[‖‖] Capitulary of Charlemaign, in the year 812. art. 1, and 3.

[§§] Heribannum.

[*] Non infirmis reliquit hæredibus, says Lambert à Ardres, in Du Cange, on the word *alodis*.

[†] See those quoted by Du Cange, in the word *alodis*, and those produced by Galland, in his treatise of allodial lands, page 14. and the following.

[‡] Second capitulary of the year 802, art. 10. and the 7th capitulary of the year 803. art. 3. the 1st capitulary *incerti anni*, art. 49. the 5th capitulary of the year 806. art. 7. the capitulary of the year 779. art. 29. and the capitulary of Lewis the Pious, in the year 829. art. 1.

[‖] The 5th of the year 806. art. 8.

[*] In Gregory of Tours, book vi. chap. 46.

[†] This is what induced him to annul the testaments made in favour of the clergy, and even the donations of his father; Gontram re-established them, and even made

new donations. Gregory of Tours, book vii. chap. 7.

[‡] See the annals of Metz, year 687. *Excitor imprimis querelis sacerdotum & servorum Dei, qui me sæpius adierunt ut pro sublatis injuste patrimoniis, &c.*

[*] See the annals of Metz.

[†] In Gregory of Tours.

[‡] Karolus plurima juri ecclesiastico detrahens prædia fisco sociavit, ac deinde militibus dispertivit. *Ex Chronico Centulenst, lib. ii.*

[*] See the annals of Metz.

[†] Epistolam quoque, decreto Romanorum principum, sibi prædictus præful Gregorius miserat, quod sese populus Romanus relicta imperatoris dominatione, ad suam defensionem & invictam clementiam convertere voluisset *Annals of Metz, year 741.* Eo pacta patrato, ut a partibus imperatoris recederet. *Fredegarius.*

[‡] Anno 858. apud Carisianum; Baluzius's edition, tom. 1. page 101.

[||] Ibid. art. 7. page 109.

[*] *Precaria, quod precibus utendum conceditur*, says Cujas in his notes upon the first book o fiefs. I find in a diploma of king Pepin, dated the 3d year of his reign, that the prince was not the first who established these *precaria*; he cites one made by the mayor Ebrom, and continued after his time. See the diploma of the king, in the 5th tom. of the historians of France by the Benedictins, art. 6.

[†] In the year 743. see the 5th book of the capitularies, art. 3. Baluzius's edition, page 825.

[‡] That of Metz, in the year 736, art. 4.

[||] See his capitulary in the year 803, given at Worms, Baluzius's edition, page 411. where he regulates the precarious contract; and that of Frankfort, in the year 794, page 267. art. 24. in relation to the repairing of the houses; and that of the year 800. page 330.

[*] As appears by the preceding note, and by the capitulary of Pepin king of Italy, where it says, that the king would give the monasteries in fief to those who would swear allegiance for fiefs: it is added to the law of the Lombards, book iii. tit. 1. sect. 30. and to the Salic laws, collection of Pepin's laws in Echard, page 195. tit. 26. art. 4.

[†] See the constitution of Lotharius I. in the law of the Lombards, book iii. law 1. sect. 43.

[‡] Cum consilio & consensu ipsius qui locum retinet.

[||] Ibid. sect. 44.

[§] Ibid.

[**] Given the 28th year of the reign of Charles the Bald, in the year 868. Baluzius's edition, page 2, 3.

[*] Consistum apud Bonoilum, the 16th year of Charles the Bald, in the year 856, Baluzius's edition, page 78.

[†] In the civil wars which broke out at the time of Charles Martel, the lands belonging to the Church of Rheims were given away to laymen; the clergy were left to shift as well as they could, says the life of Remigius, Surius, tom. 1. page 279.

[‡] Law of the Lombards, book 3. tit. 3. sect. 1. and 2.

[*] It is that on which I have descanted in the 4th chapter of this book, and which is to be found in Baluzius's edition of the capitularies, tom. 1. art. 11. page 9.

[†] Agratia & pascuria vel decimas porcorum ecclesiæ concedimus, ita aut actor aut decimator in rebus ecclesiæ nullus accedat. The capitulary of Charlemaign in the year 800. Baluzius's edition, page 336. explains extremely well what is meant by that sort of tithe from which the church is exempted by Clotharius; it was the tithe of the swine which were put into the king's forests to fatten; and Charlemaign enjoins his judges to pay it, as well as other people, in order to set an example: it is plain, that this was a right of seigniory or œconomy.

[‡] Canone 5. ex tomo 1. conciliorum antiquorum Galliæ opera Jacobi Sirmundi.

[||] Art. 6. Baluzius's edition, page 332. it was given in the year 800.

[*] Held under Charlemaign, in the year 794.

[†] Experimento enim didicimus in anno quo illa valida fames irrepsit, ebullire vacuas annonas a dæmonibus devoratas, & voces exprobrationis auditas, &c. *Baluzius's edition, page 267. art. 23.*

[‡] See among the rest the capitulary of Lewis the Debonnaire, in the year 829. Baluzius's edition, page 663. against those who to avoid paying tithes neglected to

cultivate the lands, &c. art. 5. Nonis quidem & decimis, unde & genitor noster et nos frequenter in diversis placitis admonitionem fecimus.

[||] Among others, that of Lotharius, book 3. tit. 3. chap. 6.

[*] In the year 829. art. 7. in Baluzius, tom. 1. page 663.

[†] In the law of the Lombards, book 3. tit. 3. sect. 8.

[‡] It is a kind of codicil produced by Eginhard, and different from the will itself, which we find in Goldastus and Baluzius.

[||] See the capitulary of Charlemaign in the year 803. art. 2. Baluzius's edition, page 379. and the edict of Lewis the Pious, in the year 834, in Goldast. Constit. Imperial. tom. 1.

[*] This is mentioned in the famous canon, *ego Ludovicus*, which is a palpable forgery; it is in Baluzius's edition, page 591. in the year 817.

[†] As appears by his capitulary, in the year 801. art. 17. in Baluzius, tom. 1. page 360.

[‡] See his constitution, inserted in the code of the Lombards, book 3. tit. 1. sect. 44.

[||] See the above constitution, and the capitulary of Charles the Bald, in the year 846. chap. 20. in villa Sparnaco, Baluzius's edition, tom. 2. page 31. and that of the year 853. chap. 3. and 5. in the synod of Soissons, Baluzius's edition, tom. 2. page 54. and that of the year 854. apud Attiniacum, chap. 10. Baluzius's edition, tom. 2. page 70. See also the first capitulary of Charlemaign, incerti anni, art. 49. and 56. Baluzius's edition, tom. 1. page 519.

[*] See the capitularies, book 5. art. 44. and the edict of Pistes in the year 869. art. 8. and 9. where we find the honorary rights of the lords established, in the same manner as they are at this very day.

[*] See the will of Charlemaign, and the division which Lewis the Debonnaire made to his children in the assembly of the states held at Querzy, produced by Goldast, quem populos eligere velit, ut patri suo succedat in regni hæreditate.

[†] The anonymous chron. in the year 752. and Chronic. Centul. in the year 754.

[‡] Fabella quæ post Pippini mortem excogitata est, equitati ac sanctitati Zachariæ papæ plurimum adyersatur Ecclesiastic annals of the French, tom. 2. page 319.

[*] Vol. 5th of the historians of France by the Benedictins, page 9.

[†] Ut numquam de alterius lumbis regem in ævo presumant eligere, sed ex ipsorum.
Vol. 5th o the bistorians o France page 10.

[‡] In the year 768.

[||] Tom. 2. lectionis antiquæ.

[§] Edition of the capitularies, tom. 1, page 188.

[*] In the first capitulary of the year 806. Baluzius's edition, page 439, art. 5.

[†] In Goldast. Imperial. Constitut. tom. 2. page 19.

[‡] Baluzius's edition, page 574. art. 14. Si vero aliquis illorum decedens legitimos filios reliqueret, non inter eos potestas ipsa dividatur, sed potius populus pariter conveniens, unum ex eis quem dominus voluerit eligat, ethunc senior frater in loco fratris et filii suscipiat.

[||] Capitulary of the year 877. Baluzius's edition, page 272.

[§] In father Labbe's councils, tom. 9. col. 424. and in Dumont's Corp. Diplomat. tom. 1. art. 36.

[*] By the mother's side.

[†] See his 3d capitulary of the year 811. page 486. art. 1, 2, 3, 4, 5, 6, 7, and 8, and the first capitulary of the year 812. page 490. art. 1. and the capitulary of the year 812. page 494. art. 9, and 11.

[‡] See the capitulary de villis in the year 800. his 2d capitulary of the year 813. art. 6. and 19, and the 5th book of the capitularies, art. 303.

[||] Capitul. de villis, art. 39. See this whole capitulary, which is a masterpiece of prudence, good administration, and œconomy.

[§] See among others the foundation of the archbishoprick of Bremen in the capitulary of the year 789. Baluzius's edition, page 245.

[*] For instance, the prohibition to the King's judges against entering upon the territory to demand the freda, and other duties. I have said a good deal concerning this in the preceding book.

[†] The anonymous author of the life of Lewis the Debonnaire in Duchesne's collection, tom. 2. page 295.

[‡] See his trial and the circumstances of his deposition, in Duchesne's collection, tom. 2. page 331.

[||] See his letters.

[*] See his trial and the circumstances of his deposition, in Duchesne's collection, tom. 2. page 331. See also his life written by Tegan *Tanto enim odio laborabat, ut tæderet eos vita ipsius*, says this anonymus author in Duchesne, tom. 2. page 307.

[*] Tegan says that what seldom happened under Charlemaign was a common practice under Lewis.

[§] Being desirous to check the nobility, he promoted one Bernard to the place of Chamberlain, by which the great lords were exasperated to the highest pitch.

[§] *Villas regias, quæ erant sui et avi et tritavi, fidelibus suis tradidit eas in possessiones sempiternas: fecit enim hoc diu tempore. Tegan de Gestis Ludovici Pii.*

[*] *Hinc libertatis, hinc publica in propriis usibus distribuere suasit. Nitard, Lib. 4. propre finem.*

[†] *Rempubicam penitus annullavit. Ibid.*

[‡] See book xxx. chap. 13.

[||] Hincmar, let. 1. to Lewis the Stammerer.

[†] See the fragment of the chronicle of the monastery of S. Sergius in Angers in Du Chesne, tom. ii. page 40.

[‡] See what the bishops say in the synod of the year 845. *Apud Teudonis Villam.*

[*] See the synod in the year 845, *apud Teudonis Villam*, art. 3, and 4, which gives a very exact description of things; as also, that of the same year, held at the palace of Vernes, art. 12, and the synod of Beauvais also in the same year, art. 3, 4, and 6; and the capitulary in villa Sparnaco, in the year 846, art. 20, and the letter which the bishops assembled at Rheims wrote in 858, to Lewis king of Germany, art. 8.

[†] See the capitulary in villa Sparnaco, in the year 846. The nobility had set the king against the bishops, insomuch that he expelled them from the assembly; a few of the canons enacted in council were picked out, and the prelates were told that these were

the only ones which should be observed; nothing was granted them that could be refused. See art. 20, 21, and 22. See also the letter which the bishops assembled at Rheims wrote in the year 858 to Lewis king of Germany, and the edict of Pistes, in the year 864, art. 5.

[‡] See this very capitulary in the year 846, in villa Sparnaco. See also the capitulary of the assembly held apud Marsnam, in the year 847. art. 4. wherein the clergy reduced themselves to demand only the restitution of what they had been postessed of under Lewis the Debonnaire. See also the capitulary of the year 851. apud Marsnam, art. 6. and 7. which confirms the nobility and clergy in their several possessions, and that apud Bonoilum, in the year 856, which is a remonstrance of the bishops to the king, because the evils, after so many laws, had not been redressed; and, in fine, the letter which the bishops assembled at Rheims wrote in the year 858, to Lewis king of Germany, art. 8.

[*] Art. 8.

[†] See the capitulary of the year 852. art. 6. & 7.

[‡] Charles the Bald, in the synod of Soissons, says, that he had promited the bishops not to issue out any more precepts relating to church-lands. Capitularies of the year 853. art. 11. Baluzius's edition, tom. ii. p. 56.

[*] See the capitulary of Charles the Bald, apud Saponarias, in the year 859. art. 3. "Venilon, whom I made archbishop of Sens, has consecrated me; and I ought not to be expelled the kingdom by any body." *Saltem sine audientia & judicio episcoporum, quorum ministerio in regem sum consecratus, & qui throni Dei sunt dicti, in quibus Deus sedet, & per quos sua decernit judicia, quorum paternis correctionibus & castigatoriis judiciis me subdere fui paratus & in præsentis sum subditus.*

[†] See the capitulary of Charles the Bald, de Carisiaco, in the year 857. Baluzius's edition, tom. ii. page 81. sect. 1, 2. 4. & 7.

[‡] See the synod of Pistes in the year 802. art. 4. and the capitulary of Lewis II. apud vernis palatium, in the year 883. art. 4. and 5.

[||] Capitulary of the year 876, under Charles the Bald, in Synodo Pontigonensi, Baluzius's edition, art. 12.

[§] See what has been said already, book xxx. last chapter towards the end.

[†] In the year 587. in Gregory of Tours, book 9.

[‡] See the following chapter, where I shall speak more diffusively of those partitions; and the notes in which they are quoted.

[*] In the year 806, between Charles, Pepin, and Lewis; it is quoted by Goldast, and by Baluzius, tom. 1. p. 439.

[†] Art. 9. page 443. which is agreeable to the treaty of Andely in Gregory of Tours, book ix.

[‡] Art. 10. and there is no mention made of this in the treaty of Andely.

[§] In Baluzius, tom. i. p. 574. *Licentiam habeat unusquisque liber homo qui seniore non habuerit, cuicumque ex his tribus sratribus voluerit, se commendandi, art. 9.* See also the division made by the same emperor in the year 837. art. 6. Baluzius's edition, page 686.

[*] In the year 811. Baluzius's edition, tom. 1. page 486. art. 7. and 8. and that of the year 812. *ibid.* page 490. art. 1. *Ut omnis liber homo qui quatuor mansos vestitos de proprio suo, sive de alicujus beneficio, habet, ipse se præparet, & ipse in hostem pergat sive cum seniore suo, &c.* See also the capitulary of the year 807. Baluzius's edition, tom. 1. page 458.

[†] In the year 793. inserted in the law of the Lombards, book iii. tit. 9. chap. 9.

[‡] In the year 847. quoted by Aubert Le Mire, and Baluzius, tom. ii. p. 42. *Conventus apud Marsnam.*

[§] *Adnunciato.*

[§] *Ut unusquisque liber homo in nostro regno seniore quem voluerit in nobis & in nostris fidelibus accipiat, art. 2. of the Declaration of Charles.*

[*] Capitulary of the year 877. tit. 53. art. 9. and 10. *apud Carisiacum, similiter & de nostris vassallis faciendum est, &c.* This capitulary relates to another of the same year, and of the same place, art. 3.

[†] Capitulary of Aix la Chapelle, in the year 813. art. 16. *quod nullus seniore suum dimittat postquam ab eo acceperit valente solidum unum; and the capitulary of Pepin, in the year 783. art. 5.*

[‡] See the capitulary de Cansiaco, in the year 856. art. 10. and 13. Baluzius's edition, tom, 2. page 83. in which the king, together with the lords spiritual and temporal, agreed to this; *Et si aliquis de vobis sit cui suus senioratus non placet, & illi simulat ad alium seniore meliùs quam ad illum acaptare possit, veniat ad illum, & ipse tranquille & pacifico animo donat illi comteatum . . . & quod Deus illi cupierit ad alium seniore acaptare potuerit, pacificè habeat.*

[*] In the year 757. art. 6. Baluzius's edition, page 181.

[†] Book i. chap. 1.

[†] At least in Italy and Germany.

[‡] Book i. of fiefs, chap. 1.

[||] Ibid.

[*] Capitulary of the year 802. art. 7. Baluzius's edition, page 365.

[||] Apud Marsnam, in the year 847. Baluzius's edition, p. 42.

[§] Volumus ut cujuscumque nostrum homo in cujuscumque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus pergat, nisi talis regni invasio quam LAMTUVERI dicunt, quod absit, acciderit, ut omnis populus illius regni ad eam repellendam, communiter pergat, art. 5. ibid. page 44.

[||] Apud argenteratum, in Baluzius, capitularies, tom. 2. page 39.

[*] See the law of Guy king of the Romans, among those which were added to the Salic law, and to that of the Lombards, tit. 6. sect. 2. in Echard.

[†] Some authors pretend that the county of Toulouse had been given away by Charles Martel, and passed by inheritance down to Raymond the last count; but if this be true, it was owing to some circumstances, which might have been an inducement to chuse the counts of Toulouse from among the children of the last possessor.

[‡] See his capitulary of the year 877. tit. 53. art. 9. and 10. apud Carisiacum; this capitulary is relative to another of the same year and place, art. 3.

[||] The 3d capitulary of the year 812. art. 7. and that of the year 815. art. 6. on the Spaniards. The collection of the capitularies, book 5. art. 223. and the capitulary of the year 869. art. 2. and that of the year 877. art. 13. Baluzius's edition.

[§] As appears from Otho of Frisingen, of the actions of Frederic, book ii. chap. 29.

[*] See the ordinance of Philip Augustus in the year 1209. in the new collection.

[*] Book i. tit. 1.

[†] Sic progressum est, ut ad filios deveniret in quem Dominus hoc vellet beneficium confirmare. Ibid.

[‡] At least in Italy and Germany.

[¶] Quod hodie ita stabilitum est, ut ad omnes æqualiter veniat. Book i. of the fiefs, tit. 1.

[§] Gerardus Niger and Aubertus de Orto.

[**] Cum vero Conradus Romam proficisceretur, petatum est a fidelibus qui in ejus erant servitio, ut, lege ab eo promulgatâ, hoc etiam ad nepotes ex filio producere dignaretur, & ut frater fratri sine legitimo hærede defuncto in beneficio quod eorum patris fuit, succedat. Book i. of fiefs, tit. 1.

[*] Cujas has proved it extremely well.

[†] Sciendum est quod beneficium advenientes ex latere, ultra fratres patruelles non progreditur successione ab antiquis sapientibus constitutum, licet moderno tempore usque ad septimum geniculum sit usurpatum, quod in masculis descendentibus novo jure in infinitum extenditur. Ibid.

[*] Arnold, and his son Lewis IV.

[†] In the year 926. quoted by Aubert le Mire, Cod. donationum piarum, chap. 27.

[*] See the capitulary of Charles the Bald, in the year 877, apud Carisiacum, on the importance of Paris, S. Denis, and the castles on the Loire, in those days.

[†] See above, chap. xxx. p. 199.

[*] See the Salic law, and the law of the Ripuarians, in the title of *allodia*.

[†] See the capitulary of the year 817, which contains the first partition made by Lewis the Debonnaire, among his children.

[‡] See his two letters upon this subject, the title of one of which is, *de divisione imperii*.

[¶] See the ordinance of Philip Augustus, in the year 1209, on the fiefs.

[§] We find several of these conventions in the charter, as in the register-book of Vendome, and that of the abbey of S. Cyprian in Poitou, of which Mr. Galland has given some extracts, page 55.

[*] But they could not abridge the fiefs, that is, abolish a portion of it.

[†] They fixed the portion which they could dismember.

[‡] This was the reason that the lords obliged the widow to marry again.

[†] Most of the great families had their particular laws of succession. See what M. de la Thaumassiere says, concerning the families of Berry.

[‡] We see in the capitulary of the year 877, *apud Carsiacum*, art. 3. Baluzius's edition. tom. 2. page. 269. the moment in which the kings caused the fiefs to be administered in order to preserve them for the minors; an example followed by the lords, and which gave rise to what we have mentioned by the name of *the guardianship of a nobleman's children*.

[||] We find the formula thereof in the second capitulary of the year 802. See also that of the year 854, art. 13. and others.

[§] M. Du Change, in the word *bominium*, page 1163. and in the word *fidelitas*, page 474, cites the charters of the ancient homages where these differences are found, and a great number of authorities which may be seen. In paying homage, the vassal put his hand on that of his lord, and took his oath; the oath of fealty was made by swearing on the gospels. The homage was performed kneeling, the oath of fealty standing. None but the lord could receive homage, but his officers might take the oath of fealty. See Littleton, sect. 91, 92. of homage, that is, fidelity and homage.

[*] Capitularies of Charles the Bald, in the year 860, post redditum a Confluentibus, art. 3. Baluzius's edition, page 145.

[†] Ibid. art. 3.

[†] Lib. de administratione sua.

[‡] Anno 757. chap. 17.

[||] Tassillo venit in vasatico se commendans, per manus sacramenta juravit multa et in numerabilia, reliquiis sanctorum manus imponens et fidelitatem promisit regi Pippinio. One would think that here was an homage and an oath of fealty. See the Capitularies of Charles the Bald. Balus. edit.

[||] Book 4. de feudis, tit. 59.

[§] In the title of allodia.

[*] Somme Rurale, book 1. tit. 96. page 447.

[†] According to an ordinance of St. Lewis, in the year 1246, to settle the customs of Anjou and Maine, those who shall have the care of the heiress of a fief, shall give security to the lord, that she shall not be married without his consent.

[‡] Decision 155. No. 8. and 204. and No. 38.

[||] In Capell. Theol. decis. 453.

[*] [The author concludes his elaborate work with an allusion to the joyful acclamations of Æneas's followers upon coming in sight of the land of Italy, they so much desired, after long wanderings, great dangers, and furious storms undergone in quest of it.

—*Humilemque videmus*
Italiam! Italiam! primus conclamat Achates!
Italiam læto focii clamore salutant.

Æneid. lib. 3. ver. 522.]
