THE

# COMPLETE WORKS

OF

# M. DE MONTESQUIEU.

1689-1755

VOL. I.

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# COMPLETE WORKS

OF

# M. DE MONTESQUIEU.

Born 1689 — Died 1755

TRANSLATED FROM THE FRENCH.

IN FOUR VOLUMES.

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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 eclat 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

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

* 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.

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.

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

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

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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

* See vol. iv, p. 115.

ſubject,

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.

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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

come 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.

ginal. 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

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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

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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;

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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 fatiguing 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

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 theologiſts. 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

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,

amination, 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

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

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 theologiſt; that

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

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

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,

* 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."

a prince

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

happened in the midde 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

* 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 that, 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.

repoſe.

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 chearfully 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

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

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 inchanted 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 prin-

cipal 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

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.

# 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

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 knowlege 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

* Ludibria ventis.

† Bis patriæ cecidere manus. ——

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 fought 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.**

* Ed io anche ſon pittore.

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THE

# 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 intelligences 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?

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

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

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 allurement of pleaſure they preſerve the individual, and by the ſame allurement 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,

portance, 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 reci-

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

procal, 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

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, "conſti-"tutes 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 con-"junction 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

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.

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# 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.

## 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;

* Declam. 17. & 28.

Rome,

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

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

the

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,†

* Page 691. & 692. edit. Wechel. Ann. 1576. † Lib. 1.

and

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.

‡ 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.

Solon

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 §; and this ſhould be conſidered as a fundamental

* 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.

law

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

* 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 Agorat. cap.* 8.

‡ See Dionyſ. Halicarn. lib. 4. & 9.

ſpace

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

* See Mr. Addiſon's Travels to Italy.

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,

* 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.

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

* Tournefort's voyages.

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

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

two

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

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 depoſitary of the laws. This depoſitary 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

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

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

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.

* 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

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

are

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

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,

† Cromwell.

but

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 inſlaved. 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

§ 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.

riches

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 pow-

† 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.

er

er 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,

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

* 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 wich relates to revealed truths. This will appear better, book V. chap. 2.

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

ſhould

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

‡ 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.

honour

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,

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 can-

* See Perry, p 447.

not 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.

† 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.

Here

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 peo-

* See ſir John Chardin. § Ibid.

ple. 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.

BOOK

# 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

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,

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 everything; 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

* See D'Aubigny's hiſtory.

vourite 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

† 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.

commands;

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, be-

* Polit. lib. 1.

held,

held, 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

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 of improving their fortune: they had natural ſentiments

ments 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

* 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.

‖ Florus, lib. 1.

‡ *In fœce Romuli.* Cicero.

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

§ 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.

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

† Plutarch, in *his queſtions concerning the Greek affairs.*
* Such as were formerly the cities of Greece.

common

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 Xeno-

§ Life of Pelopidas.

* Plato, in his fourth book of laws, ſays, that the præfectures of muſic and gymnic 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.

"phon

" phon ‡) 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

‡ Book 5th of memorable ſayings.

‖ 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.

‖‖ Ariſt. Polit. lib. 10.

in gymnic 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

‡ Ars corporum exercendorum gymnastica, variis certaminibus terendorum pædotribica. *Aristot.* Polit. l. 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.

trumpet,

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.

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# 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.

¶ Life of Pelopidas.

## 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,

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,

ſed, 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 divi-

* 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.

ſion, 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.

* *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.

Se-

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

‖ *Athenis 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.

laws

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."

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

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

As

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 theſe the portions or fortunes of women ought to be very much limited.

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,

tions, 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 depoſitary, 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

* 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.

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 diſpleaſed to be thought dependent on the magiſtrate."

Paternal

‡ Even the Areopagus itſelf was ſubject to their cenſure.
* Republic of the Lacedæmonians.

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

† 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.*

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 ple-

* 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.

beians;

beians*; 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.

* It was inſerted by the decemvirs in the two laſt tables. See Dionyſ. Halicarn. l. 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.

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

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-Inquiſitors 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 *.

‡ *Amelot de la Houſaye*, of the government of Venice, part 3. The *Claudian* law forbad 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.

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.

† 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.

CHAP.

## 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 in-

conveniences 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

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

§ Teſtam. polit.

difficulties

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

¶ *Barbaris cunctatio ſervilis, ſtatim exequi regium videtur.* Tacit. Annal. l. 5.
* Lib. 3. de Leg.

"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 ‖.

† See the firſt note of book 2. ch. 4.
‖ Memoirs of Cardinal de Retz, and other hiſtories.

Cardinal

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

‡ Teſtam. polit.

fruit.

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

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

people

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 envi-

† 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.

roned

roned 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,

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 untilled, 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.

† 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.

By

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

* 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.

things

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

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.

‡ See Juſtin.

CHAP.

## 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 precarioufneſs 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

‖ 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.

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

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

thing

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 conſe-

* They ſeem to have been too fond of confiſcations in the republic of Athens.

‖ Book 5. ch. 3.

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

quence 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

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,

† 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.

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.

## 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

¶ 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.

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,

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

and

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 ſeve-

‖ 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.*

ral

ral 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 ad- "miniſtration 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

* Fragments taken from the embaſſies of Conſtantine Porphyrogenitus.

† Repub. lib. 8.

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

his

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.

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# 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

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

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

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,

* 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.

by

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 popu-

lar

lar 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

* Cæſar, Cromwell, and many others.

ſettled

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 ſet 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.

* *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.

CHAP.

## CHAP. V.

### *In what Governments the Sovereign may be Judge.*

MACHIAVEL § 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

§ 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 Æſchines.

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 bé 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 *de la Valette* †, ſent for ſome

* 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 *Montreſor*, tom. ii. p. 62.

members

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 ſen- " tence 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,

‡ It was afterwards revoked. See the ſame relation.
‖ Annal. lib. 11.

" 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 eve- " ry 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 reſcript. For, as " the prince was ſurprizingly ſtupid, and the em- " preſs exceſſively enterprizing, ſhe was a ſlave to " the inſatiable avarice of her domeſtics and confi- " dents; 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 admi- " niſtering juſtice, their tribunals were deſerted, " while the prince's palace reſounded with the liti- " gious 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

§ Annal. lib. 13. ¶ Hiſt. lib. 5.
* The ſame diſorder happened under Theodoſius the younger.
† Secret Hiſtory.

judges.

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;

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

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 watches for the ſafety of the citizens; he proceeds in his office while they enjoy their quiet and eaſe.

‖ 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.

CHAP.

## 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.

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

Men,

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

‡ 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.

reverſe;

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* § 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

§ 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.

* *Nihil ultra quam improbe factum adjecit.* Liv.

the

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 high-ways 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 im-

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

punity

punity 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.

‡ Xenoph. Hiſt. lib. 3.

"The

"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, § 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

‖ 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.

defy

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.

* 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.

But

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 mar-

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

ried

ried 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.

‡ 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.

## 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 †

¶ 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 ſatyrical writers.

After

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.

¶ Book 1.

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

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.

† 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.

" An impoſtor*, who called himſelf Conſtantine " Ducas, raiſed a great inſurrection at Conſtantino- " ple. He was taken and condemned to be whipt; " but, upon informing againſt ſeveral perſons of " diſtinction, he was ſentenced to be burnt as a ca- " lumniator." 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 ſove- " reign." 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 high-way, 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.

* Hiſt. of Nicephorus, patriarch of Conſtantinople.
† In Nicephorus's hiſtory.
‡ Duhalde, tom. i. p. 6.

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 §, where, without any inconveniency, the practice of racking criminals is rejected. It is not, therefore, in its own nature, neceſſary ¶.

So

‖ Preſent ſtate of Ruſſia, by *Perry*.

§ The Engliſh.

¶ The citizens of Athens could not be put to the rack (*Lyſiæ, orat. in Agoratum,*) unleſs it was for high-treaſon. The torture was uſed within thirty days after

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

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.*

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.

‡ 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.*

CHAP.

## 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

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.

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# 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,

† *Evagr.* hiſt.
‡ Fragments of Suidas, in *Conſtant. Porphyrog.*

ſome

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

‖ 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.

it

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.

§ 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.

## 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, ¶ 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

¶ Chap. 4. and 5.

may

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 courtezans 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.

* 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.*

CHAP.

## 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 ſollicitations of thoſe

‡ De morib. German.

‖ Dio Caſſius, lib. 54.

ſenators.

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.*

§ Tacit. Annal. lib. 3.

¶ Multa duritiei veterum melius et lætius mutata. *Tacit. Annal. lib. 3.*

* Opulentia paritura mox egeſtatem. *Florus*, lib. 3.

CHAP.

## 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.

† Conſtitution of James I. in the year 1234, article 6, in Marca Hiſpanica, p. 1429.

‡ They have prohibited rich wines and other coſtly merchandizes.

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.

* See book 20. chap. 20.

On

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?

* 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.

## 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.

## CHAP. VIII.

### *Of public Continency.*

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

* 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 intitled *Hiero*.

† At Athens there was a particular magiſtrate who inſpected the conduct of women.

cenſors

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 depravation 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

§ 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; *graviores, leviores.*

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 ‡.

* *Judicio de moribus (quod antea quidem in antiquis legibus poſitum 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

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.

‖ 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 convenijſent 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*.

The

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

§ 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.)

particular

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.

* 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 graviorem pœnam deprecatus, ut exemplo majorum propinquis ſuis ultra ducenteſimum lapidem removeretur, ſuaſit. Adultero Manlio Italiâ atque Africâ interdictum eſt. *Tacit.* Annal. lib. 2.

CHAP.

## 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

§ 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.

the

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

† Fragment of Nicolaus Damaſcenus, taken from Stobæus, in the collection of Conſtantine Porphyrogenitus.

of

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.

* He even permits them to have a more frequent interview with one another.

† Ediſying 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.

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 main-"tains 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 flatter 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

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

¶ 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.

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

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 in-

‡ Ariſtot. Polit. lib. 5. cap. 4. ‖ Ibid.
§ The ariſtocracy is changed into an oligarchy.

creaſing, 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

¶ 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.

their

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 "Soüi (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.

† Compilement of works made under the *Mings*, by father Du Halde.

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

‡ 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; *per vulgatis triumphi inſignibus*. Tacit. Annal. book 13.

‖ In this ſtate, the prince knew extremely well the principle of his government.

§ Herodian.

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 allurement 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

¶ Ariſtot. Polit. book 2, chap. 10.

to

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 La-"cedæmonians and Cretans (ſaid Plato ‖) that o-"pened 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 im-

* 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 gymnic 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.*

portant

portant 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.

¶ . . . . . *Aut libidinosæ*
*Ledæas 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.

When

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

‖ Book 1.

where

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 con-"ſul of the preceding year, march under my ban-"ner."§ 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.

§ Livy, book 3. ¶ Ibid. book 3.

CHAP.

## 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.

* 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*.

CHAP.

## 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

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

* 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.

Macedonian

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

† See the hiſtory of the United-Provinces, by Monſ. Le Clerc.

of

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 baſtinaded ‡.

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 ¶.

‡ 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.

In

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 mul-"tiply." 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 abu-

ſes, 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.

* See the order of Tſongtou for tilling the land, in the Edifying Letters, 21ſt collection.

BOOK

# 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, aſſo-

ciations 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,

† 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.

with

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.

* Strabo, lib. 14. † Ibid. ‖ Ibid.

CHAP.

## 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

riſon 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

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

cuſed 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

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

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 rebuffs 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.

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# 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.

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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.

## 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

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

* 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.

more

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.

‡ See M. Barbeyrac's collection, art. 112.
‖ Strabo, lib. 2.

CHAP.

## 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 Swiſſerland. § 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

§ With regard to Tockenburg.
* He was at the head of a faction.

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.

† Hanno wanted to deliver Hannibal up to the Romans, as Cato would fain have delivered up Cæſar to the Gauls.

What

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.

* Of the 18th of October, 1738, printed at Genoa, by Franchelli. Vietiamo al noſtro general governatore in detta iſola di condannare in avennire 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.

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;

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.

† See Puffendorf's Univerſal Hiſtory.

Ariſtodemus,

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.

‡ Dionyſ. Halicar. l. 7.

Sweden

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,

feats, 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 impetuoſity 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

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.

* See Arrian. de expedit. Alexandri, lib. 1. † Ibid. ‡ Ibid.
‖ See Arrian. de expedit. Alexandri.

He

He oppoſed thoſe who would have had him treat the Greeks as maſters § 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 forbad 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.

§ 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.

Alexander,

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 §. 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;

‡ 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.

his,

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 œconomy ¶; 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

¶ See Arrian. de expedit. Alexandri, lib. 3. and others.

proper

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.

† 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 exclu-

* I have copied, *ſays Cicero*, Scævola'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.

ſive 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.

† The Cappadocians refuſed the condition of a republican ſtate, which was offered them by the Romans.

CHAP.

## 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 indivi-

* The natural end of a ſtate that has no foreign enemies, or that thinks itſelf ſecured againſt them by barriers.

duals 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 found, 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.

† Inconveniency of the *Liberum veto*.

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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

* At Venice.

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

* As at Athens.

or

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,

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,

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

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

bation 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.

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

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

* 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.

this

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

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

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

* *De minoribus rebus principes conſultant, de majoribus omnes; ita tamen ut ea quoque, quorum penes plebem arbitrium eſt, apud principes pertractentur.*

their

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 atchieving 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 no: 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 repreſentatives. 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 infranchiſement, 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

* Polit. book 3, chap. 14.

not

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

† See Juſtin, book 17.
‡ Ariſt. Polit. book 5, chap. 8.
‖ Ariſtot. Polit. book 3, chap. 14.

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.

¶ Ariſtot. Polit. book 3. chap. 14.

* See what Plutarch ſays, in the Life of *Theſeus*. See likewiſe Thucydides, book 1.

They

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.

† *Ariſtot. Polit.* book 4, chap. 8.
‡ *Dionyſ. Halicarn.* book 2, p. 120. & book 4, p. 242 & 243.

The

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 §§.

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

‖ 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.

affairs

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

* 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.

jealouſy

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,

fore, 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*.

2d. 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 cri-

‡ Livy, 1 decad. book 6.

* *Quæſtores parricidii.* Pomponius, leg. 2. ff. de orig. Jur.

mi al

minal 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.

3d. 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.

‖ Plutarch, *Life of Publicola.*

† *Comitiis centuriatis.*

‡ See Livy, book 1. and Dionyſ. Halicarn. book 4 and 7.

In

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.

§ 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.

CHAP.

## 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

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

‖ Dionyſ. Halicarn. book 11, p. 725.

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 freed-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.§

* 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.

CHAP.

## 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

† Book 6.

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.

* 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.

CHAP.

## 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 ‖

‡ 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.

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 tri-

* 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.

bunes;

bunes; 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

† The comitia by centuries. Thus Manlius Capitolinus was tried in theſe comitia. Livy, dec. 1, book 6, p. 60.

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 §; at other times they ordained that the people ſhould be convened by a tribune, with a view of proceeding to

‡ *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.

the

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.

¶ 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.

It

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 §; 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 inliſted 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 ca-

§ 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.

valry

valry 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 inliſted 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

* *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.*

to

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.

‖ Fragment of the 34th book, in the *Extract of virtues and vices.*

§ Penes quos Romæ tum judicia erant, atque ex equeſtri ordine ſolerent fortito judices elegi in cauſa prætorum & proconſulum, quibus poſt adminiſtratam provinciam dies dicta erat.

CHAP.

## 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 people ¶. 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

¶ They made their edicts upon entering the provinces.

the

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,

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 confiſca-"tions 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.

* 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.

## 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,

* 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.

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

§ See Ariſtid. Orat. in Minervam.

¶ Dionyſ. Halicarn. on the judgement of Coriolanus, book 7.

* *Minervæ calculus.*

very

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.

† 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.

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

‡ Father Bougerel.

leſs

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

* *Nicetas*, Life of Manuel Comnenus, book 4.
† Ibid.

reading

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

* Hiſtory of the emperor Maurice, by *Theophylactus*, chap. 11.

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 a-"gainſt 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, eſ-"pecially 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

* Secret Hiſtory.

be

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 exercíſes 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

cumſtances relating to a certain fact that were not true, it was pretended that to tell a lie in the court-gazette 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

* 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.

guilty

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 conſe-"quence 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 de-"prive the former one of his arms ‡, and the lat-"ter 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-

¶ 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.*

treaſon.

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 un-"der 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 ſtran-"ger 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

* *Etiam ex aliis cauſis majeſtatis crimina ceſſant meo ſæculo.* Leg. 1. cod. ad leg. Jul. Maj.

† *Alienam ſectæ meæ ſollicitudinem concepiſti.* Leg. 2. cod. ad leg. Jul. Maj.

‡ See the 4th law in ff. *ad leg. Jul. Maj.*

§ See the 5th law, ibid.

‖ Ibid.

of

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

* *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.

a moſt

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 in-

‖ 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.

decent

decent 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 *Ruſinus*, who was *præfectus prætorio*: "Though a man ſhould happen to ſpeak a-"miſs of our perſon, or government, we do not "intend to puniſh him §: 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

‡ *Nec lubricum linguæ ad pœnam facile trahendum 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.*

"they

" 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 ſatyrical 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 ¶.

Satyrical 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

‖ *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.

people

people patience to ſuffer, and make them laugh at their ſufferings.

But no government is ſo averſe to ſatyrical writings as the ariſtocratical. There the magiſtrates are petty ſovereigns, but not great enough to deſpiſe affronts. If, in a monarchy, a ſatyrical 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 ſatyrical 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

* The law of the twelve tables.
† Suetonius, *in Tiberio.*

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 compilement.

## 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.

‡ 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.

It

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

* 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 aſſequebatur, 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.

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.

‖ Dionyſ. Halicarn. Roman Antiquities, book 8.

* *Tyranno occiſo, quinque ejus proximos cognatione magiſtratus necato.* Cic. de invent. lib. 2.

The

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 § 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 tranquility 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 unparallelled abſurdity, he ordered public rejoicings in that city, upon pain of proſcription †.

¶ Book 8, p. 547.
§ Of the civil wars, book 4.
* Quod felix fauſtumque ſit.
† *Sacris et epulis dent hunc diem: qui ſecus faxit inter proſcriptos eſto.*

## 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.

§ 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 latæ. *Cicero* de leg. lib. 3.

‡ Scitum eſt juſſum in omnes. *Cicero*, ibid.

CHAP.

## 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

§ 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*.

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

* 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.

the

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

* 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 *Dionyſ. Halicarn.* in the extract of virtues and vices; Livy's epitome, book 2; and Freinſhemius, book 2.

the

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 arraigning 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

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.

* Plutarch's Morals, *Compariſon of ſome Roman and Greek Hiſtories*, tom. 2, p. 487.

No

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 accu- "ſer, 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*.

† Leg. VI. Cod. Theod. *de famoſis libellis.*
* Nerva, *ſays Tacitus*, increaſed the eaſe of government.

CHAP.

## 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 Perry ‡, has pub- "liſhed 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 re- "fuſal 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 pe- "tition 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

‡ State of Ruſſia, p. 173. Paris edition, 1717.

little

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

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.

* The caliphs.

† Hiſtory of the Tartars, 3d part, p. 277, in the remarks.

CHAP.

## 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

‡ 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.

deſpotic

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.

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# 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 reſt-

† 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.

leſs 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

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

* Plutarch.

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

* 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.

number

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 liſts or regiſters, in which the different claſſes of

‡ Pollux, book 8, chap. 10, art. 130.
* Or 60 minæ.

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

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

* *Vectigal quintæ & viceſſimæ venalium mancipiorum remiſſum ſpecie magis, quam vi, quia cum venditor pendere juberetur, in partem pretii impetribus accreſcebat.* Tacit. Annal. lib. 13.

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

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,

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.

* 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.

CHAP.

## 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 Turky. Swiſſerland 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

* 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, 3d part.

† The *Pais d'états*, where the ſtates of the province aſſemble to deliberate on public affairs.

their

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, chearfully 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

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 Turky? And, were he ſo preſumptuous, how could he do it with a crazy or ſhattered fortune?

CHAP.

## 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

* This is the practice of the emperors of China.

know

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

* See in hiſtory the greatneſs, the oddity, and even the folly, of thoſe taxes. Anaſtaſius invented a tax for breathing, *ut quiſque pro hauſtu aeris penderet.*

name

name of peace to this general effort of all againſt all. Thus 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 ſubſiſtance. 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

* 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.

oppreſſed

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

* See *A Treatiſe on the Roman Finances*, chap. ii. printed at Paris by Briaſſon, 1740.

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

† 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.

cities.

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.

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# 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.

* This appears even in the countenance: in cold weather people look thinner.
† We know it ſhortens iron.

People

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

‡ Thoſe for the ſucceſſion to the Spaniſh monarchy.
‖ For inſtance, in Spain.

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

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.

## 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

* 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.

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 § conſiſts in

‡ 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.

not

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.

¶ 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.

## 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

¶ 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.

public

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,

† *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,*

fore, 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 forbad 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 coun-

*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.

tries

tries 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

† 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.

ſufficient

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

‖ Book 2. tit. 1. §. 3. & tit. 18. §. 1.

light

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 §, 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.

§ Ricaut on the Ottoman empire, p. 284.

## 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 unea-

* 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.

ſineſs 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 negociations: in theſe they are more unlikely

* 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.

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

† Chap. 58. §. 1. and 2.

ſlaves

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 judgements, 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

‡ Law of the Viſigoths, book 3. tit. 4. §. 9.
§ Ibid. book 3. tit. 4. §. 6. ‖ Ibid. book 3. tit. 4. §. 13.

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!

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# 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

¶ 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.

over

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. †

† Juſtinian's Inſtitutes, book 1.

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

* Excepting a few Canibals.

‡ I mean ſlavery in a ſtrict ſenſe, as formerly among the Romans, and at preſent in our colonies.

ſeller.

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,

ciety, 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, graſhoppers, 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.

¶ Biblioth. Ang. tom. 13. p. 2. art. 3.

* See Hiſt. of the Conqueſt of Mexico, by Solis, and that of Perú, by Garcilaſſo de la Vega.

Lewis

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?

† Labat's new voyage to the iſles of America, vol. 4. p. 114. in 1752. 12mo.

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.

* Preſent State of Ruſſia.
† Dampier's voyages, vol. 3.

This

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.

‡ Polit. lib. 1. c. 1.

CHAP.

## 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.

* As may be ſeen in the mines of Hartz, in Lower Saxony, and in thoſe of Hungary.

CHAP.

## 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.

† *De moribus Germanorum.*

‡ Tacitus, *De morib. German.* ſays, the maſter is not to be diſtinguiſhed from the ſlave, by any delicacy of living.

CHAP.

## 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

‖ 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.

mirable 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 bo-

* 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.

dy;

dy; 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.

§ Law of the Allemands, c. 5. §. 3.
¶ Law of the Allemands, c. 5. §. 5. *per virtutem.*

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 ‖ or-

* 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.

dered

dered 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 fidelity. 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.

§ Leg. 1. §. 22. ff. *de ſenat. conſult. Syllan.*
¶ Leg. 1. §. 31. ff. ibid.

## 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.

* Xiphilin. *in Claudio.*

† See law 3, in the code *de patriâ poteſtate*, by the emperor Alexander.

‡ Lev. c. xxi. v. 20.

By

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

‖ 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.

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 infranchiſement, 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

‡ Annals of Tacitus, lib. 13.
‖ Freinſhemius's ſupplement, 2d decad. lib. 5.

term

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 infranchiſement.

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 * freed-men from being united by marriage with the families of the free-born; but they were not permitted to

§ Exodus xxi.
¶ Annals of Tacitus, lib. 3.
* Auguſtus's ſpeech, in Dio, l. 56.

mix

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 freedmen 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

† 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.

marry.

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.

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# 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.

## 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

* 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 Logiers de Taſſis*, p. 61.

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

† 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.

thoſe

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 §; 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

‖ 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. Arbuthnot 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.

either

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.

‡ Collection of Voyages for the Establishment of an India Company, vol. 1.

‖ 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.

CHAP.

## 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 § 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,

§ This is the reaſon why women, in the Eaſt, are ſo carefully concealed.

¶ Life and actions of Juſtinian, p. 403.

when

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 cre-

* Hiſt. of Algiers, by Logier de Taſſis.
† See Pirard, c. 12. ‡ Exod. xxi. 10. 11.

ditors. 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

‖ "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.

where

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.

† 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 huſ"bands, 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 them"ſelves to be caught *in flagranti*."

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

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.

* 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.

## 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,

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 ‡ forbad 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.

* 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.

As

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

§ 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.

space

ſpace of five hundred and twenty years, ever made† uſe 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 repu-"diated 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 ſteri-

† 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,

"lity

" lity 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.

§ Book 23. c. 3.

BOOK

# 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

¶ Du Halde, vol. i. p. 112.
* The Chineſe books make mention of this. *Ibid.*

line;

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 ex- "tends 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 unſuſcep- "tible of cultivation; and that, though the Ruſ- "ſians 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 oppo- "ſition; that this wind, which renders Nova Zembla "uninhabitable, blowing in Siberia, makes it a bar- "ren waſte: that, in Europe, on the contrary, the "mountains of Norway and Lapland are admi- "rable bulwarks, which cover the northern coun- "tries from the wind; ſo that at Stockholm, which "is about fifty-nine degrees latitude, the earth

† See Travels to the North, vol viii. the Hiſt. of the Tartars: and Du Halde, vol. iv.

"produces

" 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 ſil- " ver, and the land is fruitful enough."

We ſee alſo, in theſe relations, " that Great-Tar- " tary, ſituated to the South of Siberia, is alſo ex- " ceeding cold; that the country will not admit of " cultivation; that nothing can be found but paſ- " turage 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 nei- " ther 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 ima- " gined, 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."

* Tartary is, then, a kind of a flat mountain.

Theſe

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

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 deſarts that ſervile ſpirit which

* As Vouty V. emperor of the fifth dynaſty.

they

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

† 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.*

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 § 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

§ The waters loſe themſelves, or evaporate before or after their ſtreams are united.

of

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.

¶ 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 huſ-"bandry? 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

* Lib. 17. † Life of Solon.

there

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 deſart 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 Gre-"cian 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 de-"cay; for the Carthaginians, becoming their maſ-"ters, deſtroyed every thing proper for the nou-"riſhment of man, and forbade the cultivation of

‡ Or he who wrote the book *De mirabilibus.*

"the

"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.

‖ Japan is an exception to this, by its great extent as well as by its ſlavery.

CHAP.

## 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 Kiang-nan 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 wife, 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.

## 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 § 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.

§ Polybius, l. 10.

CHAP.

## 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

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,

ing, 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.

## 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.

¶ It is thus that Diodorus tells us the ſhepherds found gold in the Pyrenean mountains.

When

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

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.

* Edifying Letters, 20th collection.

## 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 flocks, 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

† 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.

enjoy

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 deſart.

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 them-

ſelves 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.

§ Tit. 62.

To

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

¶ *Nullas Germanorum populis urbes habitari ſatis notum eſt, ne pati quidem inter ſe junctas ſedes; colunt diſcreti, ut nemus placuit. Vicos locant, non in noſtrum morem connexis et cohærentibus ædificiis; 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.

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.

‡ 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.

We

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 mo-"ther has no ſiſter, the ſiſter of his father ſhall ſuc-"ceed him. 5. If his father has no ſiſter, the near-"eſt relation by the male ſide ſhall ſucceed. 6. Not § "any part of the Salique land ſhall paſs to the fe-"males; 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

§ *De terrâ verò Salicâ in mulierem nulla portio hereditatis tranſit, 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 arbitrantur, & in accipiendis obſidibus magis exigunt, tanquam ii & animum firmius & domum latius teneant.* De moribus Germanorum.

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

* 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 hereditatem ſuccedat.* Tit. 56. §. 3.

Salique

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.

§ Tit. 56.

¶ Tit. 7. §. 1. *Pater aut mater defuncti, filio non filiæ hereditatem relinquant*; §. 4. *qui defunctus, non filios, ſed filias, reliquerit, ad eas omnis hereditas pertineat.*

* In Marculfus, l. 2. form. 12. and in the Appendix to Marculfus, form. 49.

5. Another

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

† Lindembroek's collection, form. 55.
‡ Ducange, Pithou, &c.
‖ Tit. 62. § Tit. 1. §. 3. tit. 14. §. 1. & tit. 51.

ſucceeding

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.

¶ 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 Amalaſuntha, 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 Amalaſuntha reigned after the death of Athalaricus; nay, even after the election of Theodat, and in conjunction with that prince. See Amalaſuntha'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.

CHAP.

## 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 man-"ners, 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 Ger-"mans, 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 po-"pulous 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.

‡ *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.

CHAP.

## 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

‡‡ *Nihil, 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, l. 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.

capable

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

† 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.

not

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 Gondovald 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

* 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 luſtro ætatis uno jam peracto, qui die Dominicæ natalis regnare cœpit.*

‡ See Gregory of Tours, book 7. c. 23.

"my

" 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 cuſ- " tom 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 igno- " minious. Therefore, in compliance with the na- " tional uſage, and becauſe you are a man of cou- " rage, 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.

‖ In Caſſiod. lib. 4. ep. 2.
§ Gregory of Tours, l. 2. ¶ Ibid.

CHAP.

## 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.

* *Nec regibus libera aut infinita poteſtas. Cæterum neque animadvertere, neque vincire, 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.

## 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.

* *Silentium per ſacerdotes, quibus & coercendi jus eſt, imperatur.* De mor. Germ.

† *Nec legibus libera aut infinita poteſtas. Cæterum neque animadvertere, neque vincire, neque verberare, niſi ſacerdotibus eſt permiſſum, non quaſi in pœnam, nec duce juſſu, ſed velut Deo imperante, quem adeſſe bellatoribus credunt.* De morib. Germ.

‡ See the conſtitutions of Clotarius, in the year 560, art. 6.

BOOK

# 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

‖ 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.

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

‡ 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.

preſerve

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, chearful, 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

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, ſerioufneſs, ſeverity, and ſilence. It would have been as difficult to bring over an Athenian by teazing 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 im-

portance; 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 § 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.

‖ 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.

Women,

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 forunes 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

* Edifying Letters, 12th collect. p. 80.
† Lib. 43.

are

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 precarioufneſs 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 call-

‡ By the nature of the ſoil and climate.
‖ Du Halde, vol. ii.

ed

ed 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 § letters may be known by his eaſy addreſs.

§ Du Halde.

Theſe

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

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.

## 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

¶ Moſes made the ſame code for laws and religion. The old Romans confounded the ancient cuſtoms with the laws.

peace

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.

* See Du Halde.

CHAP.

## 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

† 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.

cut

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 man-

‖ See the reaſons given by the Chineſe magiſtrates, in their decrees, for proſcribing the Chriſtian religion. *Edifying Letters, 17th collect.*

ners 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 conſiſtent ¶ 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.

§ See book 4. c. 3. and book 9. c. 12.

¶ See book 24. c. 3.

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 at-

* Lange's Journal in 1721 and 1722, in Voyages to the North, vol. 8. p. 363.

tentive

tentive 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.

† Of laws, lib. 12. ‡ Of laws, lib. 12.

## 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,

‖ *In ſimplum.* § Livy, l. 38.

when

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 Spa-

¶ Inſtitut. lib. tit. 2. 6. §. 2. Ozel's compilement, 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.

niards, 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 †, of a free people, and have given the principles of their conſti-

‖ Leg. 8. cod. *de repudiis.*
§ And the law of the 12 tables. See Cicero's 2d Philippic.
¶ *Si verberibus, quæ ingenuis aliena ſunt, afficientem probaverit.*
* In Nov. 117. c. 14. † Chap. 6.

tution:

tution: 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,

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

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

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

come 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

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 whereever 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

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 negociations 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 negociations 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 ſtraiteſt 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,

ver, 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

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

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.

THE END OF THE FIRST VOLUME.