



The Spirit of the Laws

BY
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TWO VOLUMES IN ONE



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MONTESQUIEU

"On the tenth of this month, died at Paris, universally and sincerely regretted, Charles Secondat, Baron de Montesquieu, and President à Mortier of the Parliament at Bordeaux. His virtues did honor to human nature, his writings to justice! A friend to mankind, he asserted their undoubted and inalienable rights with freedom, even in his own country, whose prejudices in matters of religion and government he had long lamented and endeavored, 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 fame and survive him as long as right reason, moral obligations, and the true spirit of laws shall be understood, respected, and maintained." With these words, Lord Chesterfield said farewell to his friend, Montesquieu.¹

This, however, is by no means the undivided opinion of the English. Macaulay thought differently about Montesquieu, who "enjoys perhaps a wider celebrity than any political writer of modern Europe. Something he doubtless owes to his merit, but much more to his fortune. He had the good luck of a Valentine. Specious but shallow, studious at effect, indifferent to truth . . . he constructed theories as rapidly and lightly as cardhouses, no sooner projected than completed, no sooner completed than blown away, no sooner blown away than forgotten."²

Whom are we to believe, the Whig politician or the Whig historian? We could multiply statements which would show how radically divergent are the views of scholars and politicians about Montesquieu. There is, however, almost complete agreement on

¹ Printed in *London Evening Post*, February 1755. Reprinted here from F. T. H. Fletcher, *Montesquieu and English Politics 1750-1800*, London, 1939, p. 23. Also in Churton Collins, *Voltaire, Montesquieu and Rousseau in England*, London 1908, p. 177.

² In: "Machiavelli" in *Critical and Historical Essays*, I, 180-81 (Boston and New York, n.d.).

the following points: that his influence was enormous, that he was the first after Aristotle to write a systematic treatise on politics, that this treatise was not derived from the principles of natural law but based on historical facts (even if distorted); but that its structure, if indeed *The Spirit of the Laws* has a structure, is very difficult to perceive.

Who was this man whose name appears in all textbooks of history, economic history, politics and social theory, who is still invoked by politicians and scholars, and whose formula of the "separation of powers" as the device for securing liberty enjoys more reverence today than perhaps ever before in history?

I

MONTESQUIEU: THE MAN

CHRONOLOGY

Charles Louis de Secondat³ was born on January 18, 1689, at the country seat de la Brède, the eldest son of Jacques de Secondat and his wife Marie Françoise de Pesnel. His father, who had been destined for orders, refused to assume his ecclesiastical studies, chose instead the army as his career, served in Hungary and returned to Bordeaux in 1686.

Charles lost his mother when he was seven years old. When eleven years old, he was sent, with two orphan cousins, to the Oratorians at Tuilly, near Paris, where he received, for the next five years, the usual classical education. Returned to Bordeaux, he studied law, received his license in 1708 and in the same year was admitted as advocate at the Parlement of Guyenne with its seat at Bordeaux. The selection of law as a career was due to the wish of his uncle, Jean Baptiste de Secondat, Baron de Montesquieu, President à Mortier,⁴ who, being childless, desired to leave his

³ The biographical sketch is based primarily on Joseph Dedieu, *Montesquieu L'homme et l'oeuvre*, Paris, 1943. Louis Vian, *Histoire de Montesquieu* (2nd ed. by E. Laboulaye) Paris, 1879, is not too good. Albert Sorel, *Montesquieu* (translated by G. Masson), London, 1887, is charming but inadequate.

⁴ So called because of the cap worn by the presidents. It had the form of the mortar.

office to his nephew. From 1709 to 1713, he lived at Paris but returned to Bordeaux in 1713. The same year his father died, and Charles Louis thus became the head of the family consisting of one brother, a priest, and two sisters. He now settled down. He married a Calvinist, Jeanne de Latrigue, who brought him a dowry of one hundred thousand livres. He seems to have felt affection and esteem toward her, but no love. In 1714, he was appointed counselor at the Bordeaux Parliament, and in 1716, his uncle having died, he succeeded him to his office as President à Mortier and, according to his uncle's terms, had to take the name of Montesquieu. But his scientific interests soon outweighed his legal ones. He joined the Academy of Science at Bordeaux, and became one of its most active members. His insatiable thirst for knowledge drove him ever to expand his scientific interests. A large number of his papers on physics, physiology, geology and other natural sciences are extant. They reveal the deep impress of the philosophies of Descartes and Malebranche, and a mind in constant search for truth. His position, his activities, his learning, his seriousness, and his wit, tempered however by his excessive timidity, made him a welcomed, though slightly mysterious, member of the salons of Bordeaux.

In 1721, the *Persian Letters* were published anonymously at Cologne under the imprint of Pierre Marteau. His authorship was not long hidden, and admiration and surprise greeted the book. Frequent trips to Paris followed. In its salons, during the remaining years, he found friendship with Maupertuis, Réaumur, Helvétius, D'Alembert, and many others, but encountered hostility from the Jesuits. When he applied for admission to the Académie Française, Cardinal De Fleury prevented his election under the pretext that Montesquieu was a resident of Bordeaux.

In 1724, he wrote the *Dialogue de Sylla et d'Eucrate* (published in 1745, in the *Mercure de France*), in the same year the *Réflexions sur la monarchie universelle* (published 1727) and in 1725 *Le temple de Gnide*, a frivolous book of which he himself was ashamed.

In 1726, he sold his office partly because he needed money, partly because it simply bored him, returned to Paris and was admitted to the Academy. His discourse was a disappointment. He had already begun work on *The Spirit of the Laws* which was

to occupy him for about twenty years. From 1720 to 1731, he traveled. He visited Austria, Hungary, Italy, Germany, and Holland. In 1729, he arrived in England and plunged into a study of English political institutions. As the author of the *Persian Letters*, a nobleman, and the friend of Lord Chesterfield, London was open to him.⁵ He became acquainted with most of the Whig leaders; he assiduously attended meetings of the House of Commons just at the height of the conflict between Walpole and Bolingbroke, and while he did not meet men of letters, he enjoyed an active correspondence with Hume and Robert Wallace. Perhaps his most valuable acquaintance was Pierre Coste, a refugee Frenchman, who had translated Locke, Shaftesbury, Newton, and other English writers, and placed his encyclopedic knowledge at Montesquieu's disposal. In 1730 the Royal Society elected him a member. Few of his notes on England are preserved, for they were destroyed in large part by his grandson Charles Louis, who, as a refugee from the French revolution, had settled in England as an English citizen, and feared that publication of the notes would offend English sensibilities.⁶ What is left, gives not too flattering a portrait of England under Walpole.

In 1731, he returned to la Brède, was admitted to the Free Masons, and published, in 1734, his *Considérations sur la grandeur et la décadence des Romains*. This book forms, in reality, an intrinsic part of *The Spirit of the Laws* and is vital to an understanding of his sociological and historical method. During all this time, work on his *magnum opus* continued. Books I-VIII (perhaps also Book IX) were completed before he started on his voyages, and were extended after 1731; Books XXX and XXXI were added while the book was in production. The title of the book, *Esprit des Lois*, is probably borrowed from Jean Domat's *Traité des Lois* (1689) whose eleventh chapter is thus named.⁷ Published in 1748, the success of *The Spirit of the Laws* was overwhelming;

⁵ Churton Collins, *Voltaire, Montesquieu and Rousseau in England*, pp. 118-177.

⁶ The extant portions are published in *Voyages* and in the Laboulaye edition of Montesquieu's works, VII, 183-196.

⁷ See Ernst Klimowsky, *Studien zur Entwicklungsgeschichte der englischen Gewaltenteilungslehre bis zu Montesquieu*, Königsberg, 1926, p. 67, and Sorel, *op. cit.*, p. 74.

according to Montesquieu, twenty-two editions were published. This success was due in part to the fact that it was the first systematic treatise on politics, and in part to his championship of the nobility and the Parlements, but above all to the brilliant style, "the lyricism of his prose."⁸

However, attacks commenced almost at once. The Sorbonne and the assembly of the Bishops threatened to ban the work. The philosophers, Helvétius and Voltaire, although paying homage to his love of freedom and his detestation for arbitrariness and intolerance, held it to be merely a partisan publication in defense of aristocratic privileges. In 1750, therefore, Montesquieu wrote his *Défense de l'Esprit des Loix et Eclaircissements*. It is followed by two unpublished papers, the *Mémoire sur la Constitution*.⁹ and a *Lettre sur le Parlement*, and, in 1754, by the addition of eleven letters to the *Persian Letters*. A year later, he died.

HIS PERSONALITY

These bare facts do little to explain his personality. Both friend and enemy liked him, his dignity, urbanity, his love for friendship, his taste, his sincerity and, above all, his moderation.¹⁰ He, himself, was greatly troubled by his timidity, which proved embarrassing to him on numerous occasions.¹¹ Even those who class him among the partisans of reaction and the opponents of revolution admit his abiding hatred of political despotism, arbitrariness, religious intolerance, and inquisition.

But beyond such fairly abstract description, his character comes to life but little in the many studies devoted to him. It is, perhaps, permissible to interpret the *Persian Letters* not merely as a social and cultural critique of France, as is usually done, but also as an autobiographical attempt, as a kind of self-analysis. The *Persian Letters* are letters exchanged by two Persian princes, on a visit to Europe, with each other and with their friends, lovers, and servants in Persia and among Persians. There is Rica, the

⁸ See the study by M. A. Chérel, quoted by Dedieu, *Montesquieu L'homme*, pp. 168-169.

⁹ This is the bull *Unigenitus* against the Jansenists.

¹⁰ H. Carré in Lavis, *Histoire de France* (Paris, 1911), VIII, 175.

¹¹ *Cahiers*, p. 8.

Violation of justice = razing relations between things = result of tyranny -

younger and light-hearted, and Usbek, the older and more reflective prince — the two main figures. There are some of Usbek's wives, Zachi, Fatme, Roxana; there are Rustan and Ibben, the friends at home, there are the chief eunuch and some others. The form of letters permitted Montesquieu to don several masks, to appear in many disguises, to identify himself with varying opinions and positions, to examine them in turn, and to reject each singly.

The concern of Montesquieu is by no means a mere social and cultural criticism of France. It is far deeper and goes, indeed, to man's basic problem, namely, man's dehumanization. The theme which links the *Letters* is his conviction that man's destiny, dignity, and freedom have been betrayed by and through all institutions — whether religious, political, social, or personal. The *Letters* provide no answer — or, at best, an inadequate one, to the problems of overcoming man's total corruption. To be sure, Montesquieu believes in God, but in a Cartesian fashion. God is — and here he uses Descartes' formula literally — “a spirit, immense and infinite” (P. 69) so that he has moved away from this world and is no longer concerned with it. Montesquieu believed in justice.

The concern with it is deep and passionate (P. 10 and P. 84).

Justice exists objectively; it is “a true relation between two things; a relation always the same, whoever contemplates it, whether it be God, or an angel, or, lastly, man himself. . . . Justice cries aloud; but her voice is barely heard in the tumult of the passions.”¹²

The sense of justice, innate in every man, is the sole protection that the weak has against the strong. “Without that we would be in continual terror; we would move among men as among lions.”

If justice were dependent upon human conditions “it would be a truth so terrible that we would be compelled to hide it from ourselves” (P. 84). But the concept of justice without concrete embodiment remained merely a passionately desired state of human relations. The form of letters permitted Montesquieu an

¹² I consider P. 84 crucial to the understanding of the much interpreted E. I, 1. This statement is generally interpreted as either meaningless or as indicating Montesquieu's relativism. P. 84 shows clearly the exact opposite. Victor Klemperer, *Montesquieu* (2 vols. Heidelberg, 1914-15), I, 114, has drawn attention to the central position of justice in Montesquieu's philosophy.

endless discussion about justice within himself,¹³ revealing a man of intense scientific curiosity and great scientific caution — always in doubt, but always in search of justice.

It is certain for him that revealed religion does not and cannot undo the dehumanization of man — indeed it has rather created it. "As a man, a citizen, a father of a family," he can trust none of the holy texts of the various religions, neither the Koran (P. 10, P. 18) nor the Scriptures (P. 29, P. 46, P. 57). "Religion is not so much a matter of holiness as it is the subject of a debate" (P. 75); it is the concern of grammarians, casuists, commentators, orators (P. 36, P. 135), but not a rule of life. The churches are merely vested interests. When it suited the church to gain adherents among the slaves in order to weaken the power of the great lords, it fought slavery; as soon as it had established itself as a secular power, it accepted and justified slavery (P. 75). The Pope is merely a magician and the Bishops first concoct faith in order to be able to dispense it through indulgences (P. 29).

What is true of the churches and of revealed religion is as true of political society. Montesquieu was no patriot in the proper sense of the word. He loved his country but he saw it most clearly manifested in its soil and its old family virtues.¹⁴ He loathed expansionist wars and the desire for glory, and admitted only wars for defense of the territory and for aiding one's allies (P. 96). Consequently, all principles of international law appeared to him corrupted. Its science is "a science which teaches princes to what length they may carry the violation of justice without injuring their own interests" (P. 95). Even severer were his judgments of

¹³ An actual example of such discussion in the "Responses and Explications given to the Faculty of Theology about the 17 Propositions extracted from *The Spirit of the Laws* which the Faculty had censured," printed in H. Barckhausen, *Montesquieu, L'Esprit des Lois et les Archives de la Brède*, Bordeaux, 1904, App. VII, pp. 93-117.

¹⁴ He loved his country seat, La Brède, because "my money is under my feet" (*Cahiers*, p. 12). "If I know of a thing useful for my nation which, however, would be ruinous to another, I would not propose it to my Prince, because I am man before being a Frenchman or, better, because I am a man by necessity and a Frenchman only by accident" (*Cahiers*, p. 9). He considered himself a good citizen "because I have always been content with the state in which I am . . . have never envied others" (*Cahiers*, p. 10).

*no "man of the world" - the cause of
balances . . .*

// p. 100

X the domestic political institutions: a corrupt monarchy, ruled by mistresses (P. 108) who have usurped "all authority wholesale but who retail it among themselves," and a monarch who sells honors for money (P. 93). The religious and political defects are but the manifestations of a totally corrupt society, a society of intense boredom (P. 111). There is, on the one hand, an arrogant and prejudiced aristocracy (P. 48) and, on the other hand, a perhaps worse group of parvenus.¹⁵ "The body of footmen . . . is a nursery of great lords; it fills up the vacancies in other ranks . . . they reestablish all the great families by means of their daughters which are like a kind of manure enriching barren and mountainous soil" (P. 99). This whole rotten society knows but one arbiter: fashion. "They confess with the greatest good will that the other nations are wiser if you grant them that they are better dressed; they are willing to submit themselves to the laws of a rival nation provided French wig-makers may decide, like legislators, the form of foreign perukes" (P. 101). Each man is driven only by egoism: "each man exalts himself at the expense of some other; the privileged classes, the church, the sword, and the gown have nothing but sovereign contempt for each other (P. 44). This intense egoism, the waste and luxury of the rulers, are made possible by exploitation — "that one man may live delicately, a hundred must labour without intermission" (P. 107).

X From this wholesale condemnation of contemporary society, however, there emerge for him a few positive principles. There is a natural religion¹⁶ which requires complete and absolute tolerance. Toleration which must include the Jews in Europe (P. 60) as well as the Armenians in Asia (P. 86) is not merely morally necessary but politically wise since the expulsion of these groups would deprive the countries of industry and trade, and, besides, "a new sect introduced into a state was always the surest means of correcting the abuses of the old faith" (P. 86). Truth can be arrived at

¹⁵ The same judgment is passed on the women in Genoa, who, being merely bats, aspire to be eagles (*Voyages* I, 138).

¹⁶ "He who attacks revealed religion attacks only revealed religion, but he who attacks natural religion, attacks all religions of the world." Montesquieu to Warburton, in 1754, on Bolingbroke, in *Correspondance de Montesquieu* (ed. Gebelin and Morize) Paris, 1914, 2 vols., II, 528.

only through inquiry by a "troubled mind" but not by "the universal decider" (P. 72). Truth, besides, is not merely a result of thinking, it does not belong to the realm of thought alone. "There are certain truths which it is not sufficient to know but which must be realized" (P. 11). It is the very split between "conviction and practice" (P. 75) which has led the church into the abyss.

Among the social institutions, only the family escapes the universal verdict of condemnation; "of all powers it [the paternal power] is that which is least abused; it is the most sacred of all magistracies — the only one which does not spring from a contract, which, indeed, precedes all contracts" (P. 79). The *Persian Letters* contain, besides, a few political principles foreshadowing the *Esprit des Lois* — they will be discussed in that connection.

But the most searching inquiry, and Montesquieu's deepest concern in the *Persian Letters*, is for the problem of love. Too often have the discussions of love been understood to cover nothing but his libertine attitude, and his descriptions of harem life are usually believed to be spicy anecdotes designed to increase the sales value of his book. That Montesquieu was capable of writing frivolous literature to the point of pure pornography, he demonstrated in his *Temple de Gnide*, a work he later regretted.¹⁷ The problem of love was raised in his *Persian Letters* — but never later. This focussing on love was undoubtedly due to his great perplexity of mind,¹⁸ to his inability to discover forms of social, political, and religious life in which man could indeed live truly. Love, monogamous, polygamous, and incestuous, were thus examined by him. Love as practised in Western Europe was scorned. "This court resounds with love: nothing is talked but enraged fathers, deluded daughters, faithless lovers, afflicted husbands" (P. 87). Marriage is made intolerable by prohibition of divorce; by tightening marriage, it is really loosened (P. 117). His description of the role of women in society has already been mentioned. Against this sordid picture of love and marriage in Western Europe, he analyzed polygamous love in the oriental seraglio. Many letters are devoted

¹⁷ Joseph Dedieu, *op. cit.*, p. 25.

¹⁸ According to Dedieu, *ibid.*, p. 25, Montesquieu seems to have been perplexed until about 1727.

to painting the happiness of the husband and of his wives derived from the seclusion and isolation of the harem and its total dedication to love. But even this love does not stand the test of reality. Jealousy and intrigues annoy the wives, and disturbing outside influences compel the husband to apply terroristic methods to harem life. With extraordinary psychological insight, patterned perhaps on Aristotle's analysis of the techniques of despotic rule, these *arcana* are explained by the Chief Eunuch (P. 64, P. 97): the need for destroying the bonds uniting the women, the playing off of one against the other, the gradual tightening of controls, the deliberate increase in their numbers (because it is easier to rule many than few) — all these techniques break their spirits and make them manageable. But even these refined techniques are of no avail. The very last letter (156, added in 1754) of Roxana, the favorite wife of Usbek, announcing her suicide, reveals that she betrayed him, never loved him, and because she always longed for freedom, took her own life.

Both of the traditional forms of love — monogamy and polygamy — are thus found to be wanting; yet there remains a third form, the incestuous love of brother and sister. The "History of Apheridon and Astarte" (P. 67) is the history of the fulfillment of brother and sister through love and marriage. It is the only solution that Montesquieu presents without any qualification and which he does not question. He later¹⁹ expressly remarked that he could not conceive of incest as sin.

His attitude toward life reveals a deeply felt pessimism. "Men should be bewailed at their birth and not at their death" (P. 40); consequently, "man has the right to suicide." "Why should I be forced to labour for a society to which I refuse to belong? Why in spite of myself should I be held to an agreement made without my consent?" (P. 76.) Perhaps the deepest influence is that of Montaigne,²⁰ an influence that he himself acknowledged and which no scholar denies but which appears inadequately stressed as against that of Locke, Descartes and Malebranche.

It is this skepticism which made him a conservative. It is this attitude toward life rather than specific views of the *Esprit des Lois*

¹⁹ *Pensées et Fragments*, II, 368.

²⁰ See Albert Sorel, *Montesquieu*. Trans. by G. Masson, London, 1887, p. 16.

and Bossuet.² To both, the monarchy was divine. But the divinity of that institution was no longer meant to imply, as it did in Bracton and almost all medievalists, limitations upon that power. There were none except those that the monarch's conscience imposed upon himself. Divine and natural law were in Bossuet's terms only a *puissance directive*, a counsel lacking the *puissance coactive*, the coercive power. Bossuet's formula "*Tout l'État est en la personne du prince*" merely generalizes Louis XIV's alleged slogan *L'État c'est moi*. In theory, the power of the monarch was as absolute as it was comprehensive. This monarchy set out to destroy all feudal and autonomous powers, for there is, according to Richelieu, nothing "more dangerous to the state than diverse authorities on equal terms in the administration of affairs." This principle of legal and political equalitarianism was, however, based on the recognition and strengthening of the traditional social stratification. "This great kingdom," said Richelieu, "can never flourish unless your majesty takes care to keep the bodies that compose it in their order: The church having the front rank; the nobility second; and the magistrates, which are at the head of the people, third." All three estates were, however, to live off the common people. "Unless they are kept under by some necessity they will hardly keep within the bounds prescribed by Reason and Law. . . . They may be compared to mules which, being used to burdens, are spoiled more by rest than by labour. . . . But there is a certain point which cannot be exceeded without injustice, common sense teaching every man there must be a proportion between the burden and the strength of those that bear it."

This amiable system did not work properly even under the Sun King. True, he won his fight with the *Fronde*, but he failed both to abolish the political and legal privileges of the nobility and to keep the traditional order of society intact. Hidden behind the glare of Louis XIV's power and prestige two important tendencies, each contradicting the other, grew constantly: the infeudation of society and the destruction of the traditional hierarchy of society.

The French monarchy, in perpetual need of money, practised

² *Politique tirée des propres paroles de l'Écriture Sainte*, Brussels, 1710. (Both quotations from John Bowle, *Western Political Thought*, New York, 1948.)

venality of offices on a large scale. This phenomenon was not adequately understood until Göhring and Mousnier published their respective studies.³ A "monarchy tempered by venality"⁴ is the type of government that arose. The offices became private property, and private property made offices. They could be sold and traded like any commodity and the prices fluctuated with the business cycle. At the end of Louis XIV's reign, the position of President à Mortier at a provincial Parliament was worth between seven hundred thousand and eight hundred thousand livres.⁵ All offices, except the relatively few royal offices, were traded. New offices were created whenever the fiscal situation required it. So glutted was the market with offices and so expensive did the high offices become that, in Louis XIV's late period, no buyers could be found for many of them.⁶ As a piece of property, the offices could be inherited or, through the technique of *resignatio in favorem*,⁷ could be made to remain in the families. Although the law set a minimum age for certain offices like that of the office of a President à Mortier, young men, sometimes of only eighteen years, were given special dispensation to assume them.⁸

The misuses inherent in such a system are obvious. Already Aristotle had castigated venality.⁹ The inflation of the number of officeholders and the high cost of investment made the administration and judiciary arbitrary and expensive. The morass of French law, the co-existence of numerous and conflicting jurisdictions,

³ Martin Göhring, *Die Ämterkäufllichkeit im Ancien Régime*. ("Historische Studien" No. 346). Berlin, 1938. A. de Tocqueville, *The Old Regime and the Revolution* (transl. by F. Bonner), New York, 1856, pp. 117ff. drew already attention to this.

Roland Mousnier, *La Vénalité des Offices sous Henri IV et Louis XIII*. Rouen, 1947.

⁴ Mousnier, *op. cit.*, p. 623.

⁵ Göhring, *op. cit.*, p. 283. Montesquieu sold his office in 1726 for an unknown price. Before the sale, he was in some financial difficulties. As a consequence of the sale, he had an income of 29,000 livres a year. (Dedieu, *Montesquieu, L'homme*, p. 39.) This would suggest a sales price of about 600,000 livres.

⁶ Mousnier, *op. cit.* p. 624.

⁷ Göhring, *op. cit.*, p. 283.

⁸ When Montesquieu inherited his office at Bordeaux in 1716, he had not yet reached the statutory age. He applied and received a dispensation but could assume his seat while the application was pending. (Dedieu, *op. cit.*, p. 9).

⁹ *Politics* II, 11, 1273 b.

and the extreme difficulties created by the various layers of law, were, of course, a fertile ground for numerous, long, and expensive law suits.¹⁰ A fourth estate,¹¹ the *gens de la robe*, made its appearance. No longer the fittest but the wealthiest became officeholders and judges. Richelieu saw the danger to the monarchy, but he was powerless to act in the face of growing fiscal difficulties.¹² The king could not abolish offices, nor could he, as a rule, depose an officeholder; he could only buy him out.

The vested interests created by venality were enormous. They naturally sought protection for their investments. A strong monarchy must, of necessity, appear to them the greatest danger. Support for this investment could come only from groups and theories that made the king subject to effective controls by the privileged. A new theory of feudalism corresponded to the growing process of infeudation.

But the consequence of that same process, and of Louis XIV's egalitarian policies, was the destruction of the traditional hierarchic structure of society and the entry, on a large scale, of the bourgeoisie into the ranks of the nobility. Patents of nobility were sold by the monarchy as early as the sixteenth century.¹³ The Goncourts, in the opening chapter of their life of Madame de Pompadour,¹⁴ have left us an impressive description. "From Philip of Valois to Louis XV it [the bourgeoisie] gains everything, buys everything, ascends to everything." Parliaments, courts, offices, the judiciary, the administration, the army (especially artillery, engineering, and supply services) — all is permeated by the bourgeoisie. "From counsel to chancellor, the magistracy belongs to it absolutely." This "Order of Money" bought offices wholesale.

Since many of the offices entitled the holder to nobility (all members of the Parliaments automatically became noblemen),

¹⁰ Montesquieu admitted that, after twelve years of service as counselor and president, he had never quite understood the procedure of his own court.

¹¹ Mousnier, *op. cit.*, p. 562.

¹² *Ibid.*, p. 604.

¹³ Henri Sée, *Economic and Social Conditions in France during the Eighteenth Century*. Trans. by H. Zeydel, New York, 1931, p. 83.

¹⁴ Edmond et Jules de Goncourt, *Madame de Pompadour*, Nouvelle Édition. Paris, 1881, pp. 1-4.

and since the title of nobility could frequently be acquired with the acquisition of a nobleman's estate,¹⁵ an increasing proportion of the bourgeoisie acquired the rank of nobility. It may thus be true to say that, during the *ancien régime*, France was actually split in two classes only: the nobility and the commoners.

Cutting across this class division, there existed the innumerable corporations, each with a life of its own, each out for its particular interests. "All your subjects," said Ségur to Louis XVI in 1776, in defense of this system, "are divided into as many corporations as there are classes in the kingdom. The clergy, the nobility, the high courts, the lower courts, and the officials belonging to them, the ministries, the academies, the fiscal corporations, tradesmen — these are all orders in the state which one may regard as links in a big chain."¹⁶

The institutions which defended the claims of the privileged were the Parliaments. These essentially judicial organs were, or at least claimed to be, not only courts but also legislative organs and hence maintained that they were the successors of the Estates General. Their claim was that no legislative act had validity without registration by them and they asserted it by their remonstrances. Time and again their claim was denied, their refusal to register overruled by a royal *lit de justice*; time and again they were dispersed or reorganized. But with the growing infeudation they advanced "the most audacious theories."¹⁷

The large scale taking over of all offices by the bourgeoisie, which was already far advanced in the first half of the eighteenth century, reached its climax shortly before the revolution when it encountered opposition by the old nobility.¹⁸ In 1789, not a single bishop came from the ranks of the common people.¹⁹ The bishop-

¹⁵ Sée, *op. cit.*, p. 13.

¹⁶ From Martin Göhring, *Weg und Sieg der modernen Staatsidee in Frankreich*. Tübingen, 1946, p. 24.

¹⁷ Dedieu, *op. cit.*, p. 43. See esp. Henry Sée, *L'Évolution de la pensée politique en France au XVIII^e siècle*. Paris, 1925, pp. 316-341.

¹⁸ Martin Göhring, *Die Frage der Feudalität in Frankreich am Ende des Ancien Régime und in der französischen Revolution*. ("Historische Studien" No. 247) Berlin, 1934, p. 94.

¹⁹ Sée, *op. cit.*, p. 63.

rics and most other high offices were then again in the hands of the old nobility.

Montesquieu's politics must be understood in this framework.²⁰ His sympathies were for a monarchy (VIII, 16-20) tempered by a *corps intermédiaire*, by "intermediary powers" (V, 19 and VIII, 16-20) composed of the Parliaments, aristocracy, corporations, etc.²¹ An independent judiciary, crucial in his system for the preservation of life, liberty, and property against arbitrary acts, is to be secured by the venality of the judicial offices (V, 19, 12). His theory of the origin of feudal rights in France (XXXI) follows closely the germanic and pro-feudal doctrines. Monarchic government becomes corrupted if it destroys the prerogatives of the intermediate powers and privileges of the cities (VIII, 6).

The significance of these statements will become clearer if Montesquieu's theory is placed within the conflicting ideologies of the eighteenth century. Two schools of thought were locked in a bitter struggle:²² the one, the *thèse royale*, saw the salvation of France in a strong monarchy, annihilating the intermediate powers and basing itself on the bourgeoisie; the other, the *thèse nobiliaire*, believed France's reconstruction to be dependent upon the recognition of autonomous powers of the nobility and of the corporations which were to limit the sovereignty of the king and to act as the guardians of the fundamental laws of France and of the rights of the citizens.

The issue was first stated in terms of the philosophy of history

²⁰ Basic is E. Carcassonne, *Montesquieu et le problème de la constitution Française au XVIIIe Siècle*. Paris, 1927.

This book has been savagely attacked by A. Mathiez in *Annales historiques de la révolution Française*, 1927, pp. 509-513. Carcassonne's reply in *op. cit.*, 1928, pp. 83-93. A. Mathiez thereupon formulated his views about Montesquieu's position in his article: "La place de Montesquieu dans l'histoire des doctrines politiques du XVIIIe siècle" in *op. cit.*, 1930, pp. 97-112; a brilliant, although rather overstated case for Montesquieu as a reactionary.

²¹ But his sympathies changed after his visit to England.

²² We do not discuss here: Helvétius, who was indifferent to the forms of government; Holbach, who largely shared this indifference; the democratic doctrine of Rousseau; the socialist theories of Mably and Morelly; and the pre-Marxist analyses of Linguet.

by Count Boulainvilliers and Abbé Dubos,²³ the former expressing the so-called Germanic, the latter the Roman view of the origin of France's monarchy, the former defending *la thèse nobiliaire*, the latter *la thèse royale*.

Fénélon had already demanded that the monarch share his power with an aristocratic assembly and Louis XIV had rejected him, *le bel esprit le plus chimérique*. But Boulainvilliers undertook to supply the historical evidence for the original and autonomous powers of the aristocracy. Feudality is for him as old as is the Frankish monarchy. When the Franks conquered Gaul, they brought with them from the Teutonic forests, not absolute monarchy, but a feudal monarchy, a kingship limited in its very origin by the original powers of the lords. The history of the French monarchy is thus the history of the usurpation of feudal powers by the monarch. This historicist approach is thus similar to that of Francis Hotman's *Francogallia* (1573), a pamphlet written at the behest of the Calvinist propaganda center in Geneva for the purpose of implementing Calvin's theory that only magistrates, endowed by positive constitutional law with the right of resistance, could lawfully resist a ruler. Hotman, therefore, set out to prove that the historic rights of the French magistrates had been unlawfully usurped by the monarch.²⁴ Boulainvilliers, however, wrote not a pamphlet but a learned work in three volumes to defend the strange thesis that while conquest by the Franks created law, conquest of the feudal powers by the king did not and could not make law.

Dubos' book was written for the purpose of destroying "the new pretensions of the feudality." Feudalism for him is a corruption of the monarchy which, in its origin, had inherited and had continued to practise the Imperium Romanum. The Frankish kings,

²³ See Carcassonne, *op. cit.*; Friedrich Meinecke, *Die Entstehung des Historismus*, Munich and Berlin, 1936, I, 125-193; A. Mathiez, *op. cit.* B's work is: *Histoire de l'ancien gouvernement de la France*, published in 1727; D's work: *Histoire critique de l'établissement de la monarchie Française*, published in 1734.

²⁴ Similar historic pretexts for resistance can be found in the English revolution, where Levellers and Diggers justified resistance by maintaining that the Norman conquerors had destroyed the germanic rights of the English — a kind of Robin Hood interpretation of English history.

seemed to reject Boulainvilliers' views as a conspiracy against the third estate, and Dubos' as one against the nobility; but in reality, he followed closely Boulainvilliers.²⁸ He thus identified himself with the reactionary trend of French politics, that trend which ultimately produced the French revolution. No contemporary of Montesquieu was in doubt about Montesquieu's position and his effect upon the scene of French politics. His *Esprit des Lois* became one of the bibles of the Parlements, and, indeed, a kind of handbook of the aristocracy, as Helvétius,²⁹ Voltaire,³⁰ Linguet clearly stated. "As to our aristocrats and our petty despots of all grades," wrote Helvétius to Montesquieu,³¹ "if they understand you, they cannot praise you too much, and this is the fault I have ever found with the principles of your work. . . . *L'esprit de corps* assails us on all sides; it is a power erected at the expense of the great mass of society. It is by these hereditary usurpations we are ruled. Under the name of the nation there exist only corporations of individuals and citizens who merit that title."

Even Montesquieu's veneration for England was challenged for the same reason.³² Helvétius believed that "balanced power" will only divide and not unite Frenchmen, and England's balance of power, if she indeed has it, will not be able to last. Since Linguet's³³ criticism centers primarily on the doctrine of the separation of powers, it will be considered below.

The suspicion that behind the admiration of English institutions there lurked in reality the defense of feudal privileges was not unjustified. In 1740, Samuel Harding,³⁴ of London, published the

²⁸ Best statement to this effect by Dedieu, *op. cit.*, p. 54.

See also Joseph Dedieu, *Montesquieu et la tradition politique Anglaise en France*, 1909, p. 158, and Meinecke, *op. cit.*

²⁹ *Op. cit.*

³⁰ Voltaire's criticisms are to be found in: *Oeuvres complètes* (ed. L. Moland) Paris, 1877-1885. XX, 1-15. (on *Esprit des Lois*); XXX, 405-464 (on *Esprit des Lois*); XIV, 106-108 (on *Lettres Persanes*); XXVI, 509-510 (tribute to M.); XXVII, 311-326 (tribute to M.).

³¹ *Op. cit.*

³² See Dedieu, *Montesquieu et la tradition . . . (op. cit.)*.

³³ Esp. in *La France plus qu'Angloise*, Brussels, 1788, pp. 111-121. On Linguet's criticism see especially Gabriel Bonno, *La constitution britannique devant l'opinion française de Montesquieu à Bonaparte*, Paris, 1931.

³⁴ See Dedieu, *Montesquieu, L'homme . . .* (p. 53).

Histoire de la pairie de France et du Parlement de Paris by "Monsieur D. B." "D. B." was in fact Jean de Laboureur, abbé de Fuvigné, a man who had been hired by the French peers in the 1660's to carry on research in support of their political claims.³⁵ He carried on these duties until 1704. His manuscript was freely circulated during the early Regency but not printed until 1740. Attached to this work there is a shorter one, *Traité de la pairie d'Angleterre* by "Mr. de G . . .," probably one of Laboureur's research associates. Here, the English peerage is set forth as a check on the crown (as Laboureur contends it should be in France), and consequently, English political institutions used to bolster the claims of the French aristocracy.

It is then unquestionable that Montesquieu propounded a conservative solution of France's political problem. But that does not make him a reactionary. He is set off from his feudal confrères by his tolerance, his awareness of the national obligations of the privileged groups, and his deep doubts about all perfect solutions. These are not mere ideologies hiding his egoistic class interests. Montesquieu did not want an office, nor did he aspire to riches. While he loved the salons of Paris, he preferred his country seat. Helvétius himself, who stayed with him at la Brède, praised his attitude toward life, his surroundings, and the peasants.

Besides, although the Physiocratic scheme looked beautiful on paper, it was essentially utopian. How was it to be realized? Neither Louis XV nor Louis XVI could possibly arouse the hope that a monarch could and would have the courage to cut himself loose from all ties with the aristocracy, to wipe out all privileges, to create economic freedom, to put the finances on a sound basis, to establish a reorganization of the administration, clean out the droves, and throw himself into the arms of the masses of the people. The memory of Louis XIV would have contributed nothing to make the royal thesis palatable to an intellectual, although the romantic distortions of his rule (like those of Napoleon I) may have made it palatable to politically uneducated masses. Turgot's short-lived administration proved the utopian character of the *thèse royale*.

³⁵ Admitted by Saint-Simon, *Écrits inédits*, III, 508. (I owe this reference to my friend Franklin Ford of Harvard University.)

It is Rousseau's historic merit to have reduced the *thèse nobiliaire* and the *thèse royale* to insignificance and to have put the political problem on an entirely new basis, that of pure democracy. Montesquieu was as far removed from the democratic as he was from the Physiocratic solution. His own contribution to France's political problem, honorable as his motives may have been, was unrealistic, and, in its effect, quite harmful.

III

MONTESQUIEU: THE POLITICAL SCIENTIST

It would be unfair to judge Montesquieu solely as a participant in the contemporary political struggle. His great contribution is that of a political scientist who, standing in the tradition of Aristotle, undertook to analyze governments on a cosmic scale and to derive from historical observations a system of politics. Let us admit at the outset that this enterprise failed, as it necessarily must. The scope was too big, the task too huge for his abilities. Promise and performance are not in proportion. The facts are frequently wrong, the interpretation often not warranted by the facts, the logic often faulty, and the language ambiguous. Yet with all these reservations, there remains the work of an original thinker, who uncovered thought structures and historical processes which prepared the way for, and still nourish, political scientists and historians. The *Esprit des Lois* may not be a great book on the level of the works of Plato, Aristotle, Marsilius, Hobbes, Rousseau, and Hegel, but it is an extraordinarily stimulating book whose riches have remained neglected because of the attention given to one of the most doubtful of his discoveries: the separation of powers as the instrument of securing political liberty.

A. SOURCES AND METHODS

1. *The arrangement of "The Spirit of the Laws"*

It is generally agreed that the arrangement of *The Spirit of the Laws* is difficult to perceive, if a systematic arrangement can be said to exist in it at all. A number of arrangements have

and not with the classic problem of the best government.⁴ He had very definite views about a good government, derived from his belief in an objective justice.

But a moralizing approach was totally alien to him. "It is useless," he said,⁵ "to attack politics directly by showing to which extent it runs counter to morality, reason and justice. This kind of discourse convinces everybody and affects nobody. There will be politics as long as there are passions not subjugated by laws. . . . The majority of events occur in such a singular manner or depend upon such imperceptible and far removed causes that one can hardly foresee them."

There is little doubt that Descartes, Malebranche, and Machiavelli were his three major inspirations, all viewed, however, through the skepticism of Montaigne. Descartes' system he admired; he very clearly perceived⁶ that it is the method of Descartes which underlies scientific analysis. "What makes the discoveries of this century so miraculous are not the simple discovered truths but rather the methods to discover them."⁷ The apparent chaos of the phenomena is thus capable of being rationally understood, the laws are amenable to discovery by reason. But the Cartesian philosophy admitted error; it admitted that there may be no correspondence between the subject's receiving experience and the objective phenomena of the outside world.

This doubt is further deepened by Malebranche's influence. Malebranche⁸ had warned against the overzealous identification

⁴ This is the thesis of the excellent doctoral dissertation of E. Durkheim, *Montesquieu: Sa part dans la fondation des sciences politiques et de la science des sociétés* (1892) (trans. from the Latin) in *Revue d'histoire politique et constitutionnelle*, I, (1937) pp. 405-463, esp. p. 421. I rather follow C. E. Vaughan, *Studies in the history of political philosophy before and after Rousseau*, 2 Vols. Manchester, 1939. I, 255.

⁵ In "De la Politique" printed in *Mélanges inédits*, p. 157, written in 1722 or 1723. I translate the passage a little freely.

⁶ Compare the careful study of E. Buss "Montesquieu and Cartesius" in *Philosophische Monatshefte*, IV (1869-70) 1; G. Lanson, *Études d'histoire littéraire*, Paris, 1929, pp. 84-90, and Klemperer, *op. cit.*, in many places.

⁷ Buss, *op. cit.*, p. 11.

⁸ *Recherche de la vérité*. (De l'imagination, Part II, Ch. V and VI.) On Malebranche's influence on Montesquieu see Hume, *An Inquiry concerning the Prin-*

of the perceiving subject with the stuff which is the object of perception. He felt that self-love and the desire for new discoveries often lead the interpreter to identify himself too closely with his object. To Malebranche, most things appear at first sight extraordinary and miraculous solely because they are not adequately known. Once one approaches these miraculous phenomena, one understands them "and is ashamed at having wondered at them." Lastly, Descartes and Malebranche prevented Montesquieu from accepting any final and finite causes. Their existence is not denied, but only God can perceive them. God, in turn, has moved out of the center of the world. He is not responsible for *choses particulières* which can be grasped solely by application of the scientific method. Consequently, Montesquieu could formulate: "All beings have their laws: the Deity has His laws, the material world its laws . . . man his laws" (I, 7).

It is thus Descartes and Malebranche far more than Locke who determined Montesquieu's scientific method. But the application of this method to history is probably due to Machiavelli's and Bodin's influences,⁹ who not only in this, but in many specific cases, supplied Montesquieu with formulations and problems. The Cartesian tradition induced him to start deductively.¹⁰ "I have laid down the first principles, and have found that the particular cases follow naturally from them" (Preface). Facts are consequently collected insofar as they are relevant for the elucidating of abstract principles. These, in turn, are interconnected. The principles are derived from the "nature of things."

What is meant by this formula? Are the principles arbitrary statements, mere working hypotheses to be discarded if induction proves them to be untenable? The answer is No. By "nature of things" is meant a logical structure of society,¹¹ an ideal type.¹²

ciples of Morals, sect. III, part II (H. D. Aiken, ed.) *Hume's Moral and Political Philosophy* ("Hafner Library of Classics") New York, 1948, p. 196.

⁹ E. Levi-Malvano, *Montesquieu e Machiavelli*, Paris, 1912, and Meinecke, *op. cit.*, p. 133. The book by Marc Duconseil, *Machiavel et Montesquieu. Recherches sur un principe d'autorité*, Paris, 1943, is worthless. The author himself (p. 15) does not claim to be objective.

¹⁰ Durkheim, *op. cit.*, p. 453; Meinecke, *op. cit.*, p. 128.

¹¹ Durkheim, *op. cit.*, p. 455.

¹² Fundamental: Ernst Cassirer, *Die Philosophie der Aufklärung*. Tübingen, 1932, pp. 17-28, 280-6, 325.

Each society has, according to him, a specific structure and follows its own inner logic. The inner logic can be grasped only through the medium of facts. A type of society (a republic, monarchy, or despotism) is thus not an addition or an aggregate of facts, but the expression of a structure. These ideal types are not arrived at by induction, that is by the collection of data and the elimination of irrelevant ones, but by reading into the historical facts a meaning that illuminates them and reveals their structural principles. Consequently, each ideal type is held together by one constitutive principle (republic — virtue; monarchy — honor; aristocracy — moderation; despotism — fear). It is these constitutive principles which integrate society. All phenomena must be interpreted in relation to this principle. Each nation being thus an essential unit, it is folly to isolate phenomena and to attempt to understand them if they are not seen in their interdependence and in their relation to the constitutive principle. The significance of his approach, its merit and its dangers, will be seen in the analysis of certain concrete problems which he discusses.¹³ cf. 110

The structures are, of course, static. There is still no answer as to how they emerge and how they change. The problem of social change occupied Montesquieu; the answer he provided is again quite original although fragmentary.

3. *The Historical Method and the Problem of Social Change*

While *The Spirit of the Laws* contains merely fragmentary contributions to the influence of time upon society (XXVII and XXVIII; XXX and XXXI), there is general agreement that the Considerations form an intrinsic part of *The Spirit of the Laws*. The historical laws of change follow from the structurized totality of society. Change of one element of the structure produces a change of the structure. If it is true, e.g., that a republic is held +

¹³ I should like to remark here that many of these methodological insights are to be found in Pufendorf, whose significance as a social scientist has never been properly appreciated. (M. knew Pufendorf's work well.) The *Elementorum Iurisprudentiae Universalis* and the *De Officio Hominis et Civis iuxta Legem Naturalem* do not only anticipate the Physiocratic theory but also much of the sociology of Montesquieu. P. is concerned with the factual validity of law and its relation to property, contract, family, and other social institutions.

together by virtue and is most effective in a small territory, then the Roman republic was corrupted by its physical growth.¹⁴ The collapse of Rome is thus due to too rapid a geographical expansion. There thus exists a strict and mechanistic causality.

Second, the forces of history assert themselves sometimes even against the will of the actors. "The faults committed by statesmen are not always free; often they are the necessary consequence of the situation in which one finds oneself, and the inconveniences in turn produce inconveniences."¹⁵ There exists, to use the famous term of Hegel, "a cunning of the idea." When, according to Montesquieu, Henry VIII, by his Act of Supremacy, started the reformation, he did so to strengthen the royal power against the church. But by doing so, he unleashed a liberating spirit among his subjects who, in the Revolution, turned it against royal power.¹⁶

The reason why the structures become unbalanced and thus produce changes lies in the psychology of men. The more power they have, the more greedy for power they become.¹⁷ But since totally unlimited power is impossible the striving for it produces the counter-trends which in turn change the structure.¹⁸ "There is in every nation a general spirit upon which power itself is founded. When it shocks this spirit, power disturbs its own foundations and thus necessarily checks itself."¹⁹

These may be considered the major principles of Montesquieu's historical method,²⁰ and we may hence agree with Meinecke,²¹ in considering him one of the founders of historicism.

More important than the originality of Montesquieu is the evaluation of the significance of his method for the problem of social change, which is the central philosophical problem of eight-

¹⁴ *Considerations*, ch. IX, p. 185.

¹⁵ *Ibid.*, ch. XVIII, p. 376.

¹⁶ "De la Politique," *op. cit.*, p. 158.

¹⁷ *Considerations*, ch. XI, p. 219-220.

¹⁸ *Ibid.*, ch. XXII, p. 460.

¹⁹ *Loc. cit.*

²⁰ He also formulated a cyclical theory (*P* and *F* I, p. 114): barbarism — conquest — consolidation — conquest — consolidation, beginning corruption — dissolution. But I cannot see that he ever used the cyclical theory in any relevant manner.

²¹ *Op. cit.*

eenth century France. England had had her revolution in the seventeenth century. The bourgeoisie had destroyed outmoded political forms and, after having merged with the nobility, could, on the basis of the constitution, produce the necessary changes without disturbing the social order as such. The rest of Europe was still too backward to have any possibility for drastic social changes. Only France, where the two traditional political solutions — the royal and the nobiliar theses — proved totally inadequate, faced the problem of social change. Here the tension between the rapidly progressing material culture and the obsolete social and political institutions made a revolutionary social change inevitable. This is the essence of Helvétius' theory and the kernel of his criticism of Montesquieu's *Spirit of the Laws*.²² Helvétius could not understand Montesquieu's concern with forms of government which, according to him, were either good or bad, the standard of judgment being their usefulness. A good government, he said, has yet to be created. The bad ones simply channel the money of the ruled into the pockets of the rulers. Helvétius' agnosticism toward political forms is thus the consequence of a radical attitude toward the problems of social change. The primary aim of men being happiness, all social and political institutions must be adapted to this goal. Change, therefore, is not the slow and gradual adaptation of old institutions, but their destruction. As against Montesquieu, Helvétius believes that the veneration for ancient laws and institutions is not only stupid but dangerous.²³ For him the individual alone is capable of determining his interest, and the integration of the various individual interests into a common political organization is dependent upon their equality through distribution of wealth, labor, and education.²⁴ To a greater or less degree the *philosophes* shared these views. It was their conviction that man knows his interests, that the political and social institutions prevent him from acting according to his knowledge and that, once these institutions are changed, happiness will prevail.

²² See above p. xxvii

²³ *De l'esprit*, particularly Discourse III, ch. XXX, and Discourse II, ch. XV and XVII. London, 1777.

²⁴ *De l'homme*, II, 119. (Section VII, ch. 1).

led to romanticism and the historical school, on the other, to positivism and Marxism.

B. THE PRINCIPLES OF THE SPIRIT OF THE LAWS

1. *Law and Society*

In the opening statement of *The Spirit of the Laws* (I, 1), Montesquieu defines laws generally as "the necessary relations resulting from the nature of things." This definition has been held to be either meaningless²⁸ or tautological, expressing either a complete relativism or the acceptance of an objective standard of justice. Those who actually read Chapter I and compare it with Persian Letter No. 84²⁹ will, I believe, invariably come to the conclusion that Montesquieu expressed his conviction that justice exists as an objective rule, and that its validity, therefore, is not dependent upon human actions. Justice is the supreme criterion of the laws. But since society "is far from being so well governed as the physical" world (I. 1), it followed for him that no human society is capable of fully realizing objective justice. It is for this reason also that we arrived at our view³⁰ that Montesquieu did not believe in an ideal solution of the conflict between might and right. If one accepts this interpretation, then his discussions of the various types of political society are all oriented toward finding an approximation to the standard of justice by taking into account all factors that shape society.

The impossibility of realizing the standard of justice in civil societies is due to civil society itself (I, 3). In contrast to Hobbes, Spinoza, and Locke, the entry of man into civil society marks for Montesquieu the beginning of a state of war. Man in the state of nature is weak. His entry into the civil society makes him strong, and it is this newly gained strength that produces conflict — within the state and between states. This conception, although it still has all the marks of natural law, is in our view extraordinarily fruitful. It is here that Montesquieu stands with Helvétius, Holbach and Rousseau: society itself becomes an agent of his-

²⁸ The controversy is discussed by Vaughan I, 258, and Hume, *op. cit.*

²⁹ See above p. xiv.

³⁰ See p. xxxii.

tory.³¹ Consequently the structure of society must be examined.

2. *The Nature and Principle of Government*

It is essential for Montesquieu to distinguish between the nature of governments and the constitutive principles of the different societies. The "nature" is defined in a fairly traditional manner, namely by the number of the rulers. A republic is governed by the people or a part of it; a monarchy by a monarch ruling through established laws; despotic government by a single person ruling arbitrarily. The republic thus comprises democracy and aristocracy (II. 1). That this classification is not very convincing is obvious, and has often been said. Since in a democracy it is the people that rule, the most crucial concern of a democracy is the determination of suffrage (II. 2). In the definition of the nature of monarchy, his political prejudices mar his scientific objectivity (II. 4). The term "monarchy" is arbitrarily defined as rule through intermediate powers, the "most natural" of them being the aristocracy. The history of England, e.g., proves that a monarchy which destroys aristocratic privileges destroys itself. Parlements must, in addition, be the depositories of royal laws. This chapter has thus to be read in conjunction with the elaborate historical discussions on the origin of feudalism, and is, in the form of an objective analysis, a simple political tract against Dubos and the royal thesis. Democracy, aristocracy, and monarchy are for him "moderate" forms which are sharply distinguished from despotism (II. 5).

Quite different from the nature of government is the structure of society, the ideal type, what he calls the "principles" of government (III. 1), and what Jefferson correctly translated as the "energetic principles."³² These are, for a democracy, virtue; for aristocracy, moderation; for monarchy, honor; for despotism, fear. The principles are thus the "ought" of the government. A democracy must thus have laws and constitutions conforming to the principle of virtue, which is love for the republic, for equality, and

³¹ On the significance of this idea which Rousseau fully developed see Ernst Cassirer "Das Problem Jean Jacques Rousseau" in *Archiv für Geschichte der Philosophie*, Vol. 41 (1932), p. 210.

³² Jefferson's *Commonplace Book* (ed. by Gilbert Chinard). Baltimore and Paris, p. 259.

sobriety; respect for laws and the acting according to them (III, 3; IV, 5; V, 2; V, 3). It is thus more the Machiavellian virtue than Christian virtues. It is in Jefferson's words the "*amor patriæ*,"³³ and implies the same idea of identification of individual interests and general will that Rousseau made the cornerstone of his democratic doctrine. It is that virtue that Robespierre was prone to invoke whenever it suited his purpose. Quite logically, compulsory "public employment" in government and army follows from the principle of democracy but not from that of a monarchy (V, 19). Quite in line with Rousseau, yet sharply differing from him, equality (V, 3) becomes, consequently, essential for democracy. This equality is, however, essentially one of frugality rather than, as with Helvétius, the equal share of abundance. Again (V, 5) the caution inherent in Montesquieu compelled him to reiterate his general conviction that a perfect and pure democracy being impossible, only an approximation to this ideal is attainable, so that perfect equality being impossible and undesirable, democratic legislation should merely prevent excessive differences in wealth and private power. This, to him, is quite difficult (V, 6). For democracy is usually the political form of a commercial civilization which, however, leads to the "acquisition of vast riches." The corrective is contained in the very nature of commerce which stimulates "frugality, economy, moderation, labor, prudence, tranquility, order and rule." This is an almost accurate description of the puritan conception of civil society.

Moderation, as the principle of an aristocratic society (V, 8; III, 2) is a principle to be applied by the aristocratic ruling class against itself and, through it, against the people. Self-discipline of the aristocracy is essential for its preservation; this self-discipline should prevent them from engaging in commerce, should compel them to abide by the laws and to chain their pride. The material basis for moderation is the happy medium between excessive poverty and excessive wealth.

Honor, as the principle of a monarchy (V, 10, 11; III, 7, 3, 6), is objectively the respect of the monarch for the laws and the intermediate institutions through which his executive power should be

³³ *Op. cit.*

exercised. Richelieu's conception of monarchy (V, 10) is thus not that of monarchy but of despotism. Without nobility, therefore, no monarchy can be a true monarchy; monarchy must look to its appearances, as well as to its laws and intermediate institutions.

Fear (V, 13, 14), the constitutive principle of despotism, is a simple principle, its end being tranquillity. But that tranquillity is not peace, "it is only the silence of towns which the enemy is ready to invade" (V, 14).³⁴ It is maintained by the army.

These principles cannot be mixed (VIII, 21). In view of the later discussion of the English government, this statement is surprising and is hardly compatible with his blending of democracy and aristocracy.³⁵

Book V then treats in detail and in the usual haphazard and repetitious manner the type of legislation corresponding to the principle of government. Books VI and VII are special applications of Book V. In the three approved types of government, laws, in general, should protect life and property of the citizen. Life and property are best preserved by rational law and a rational administration. Three types of law administration emerge: The Kadi justice — Pasha jurisprudence (VI, 2) — as the one marginal case (for despotic governments); an independent judiciary applying rigid and fixed rules — the other marginal case for republics; and a combination of individual and differentiated creation of law for particular cases — with the application of fixed rules — for the monarchy. Despotism, by its very principle, cannot know law. Law-making and its execution are thus one and the same. The closer a government comes to a republic, "the more the manner of judging becomes settled and fixed" (VI, 3), while a monarchy has to combine both elements in view of the hierarchic structure of society (VI, 1) which requires particular laws for the various strata. The dichotomy — fixed rule and its application — implies, consequently, a division of functions between legislation (or monarchical power) and the judiciary (VI, 6). In a monarchy,

³⁴ One is here reminded of Spinoza's famous definition of peace which he does not want to define as the mere absence of war. *Tractatus Theologico-Politicus* (1670), V, 2.

³⁵ This point well made by Walter Struck, *Montesquieu als Politiker*. ("Historische Studien" No. 228), Berlin, 1933.

at least, the independence of the judiciary is to be secured by the venality of judicial offices (V, 19). His humanitarian spirit is clearly revealed in his discussion of crime and punishment, his insistence on moderation and on a fitting proportion between crime and punishment,³⁶ and his rejection of informers and of torture.

It is my conviction that Book VI contains insights into legal sociology which anticipate Max Weber's famous treatise,³⁷ and which have found but little attention.³⁸

"The corruption of each government generally begins with that of its principles" (VIII, 1). Democracy suffers corruption either by excessive equality or by its total loss (VIII, 2). Aristocracy corrupts through arbitrary use of power (VIII, 5), and monarchy by the abrogation of the intermediary powers (VIII, 6, 7, 8). Despotic government will destroy itself by its own inner logic (VIII, 10), while in all other types correction can prevent corruption.

All this is a mere repetition and by no means a very logical demonstration of the value of his own typology. But while the logic is faulty, the meaning is quite clear. There is a sharp dividing line between despotism and all other forms of government. There is not and cannot be a defense of despotism, but all other forms may, provided they fulfill the conditions set out below, be made to work. But even despotism is rationally understandable in backward countries or where climate makes man accept this form of rule (II, 15).

Montesquieu insists that "it is natural to a republic to have only a small territory."³⁹ Otherwise it cannot long subsist" (VIII, 16), and for a monarchy to have a "moderate extent" (VIII, 17). While this view may suit Rousseau's construction of direct democracy, it hardly follows from Montesquieu's own analysis of demo-

³⁶ For Bentham's criticism see Bowring edition, I, 311, 383, 391.

³⁷ Only Pufendorf has made equally important contributions.

³⁸ Except for Eugen Ehrlich, "Montesquieu and Sociological Jurisprudence," *Harvard Law Review*, 1906, Vol. 29. I have discussed the social function of the rational rule in my *Behemoth: The Structure and Practice of National Socialism* 2nd ed. New York 1944, pp. 440-52.

³⁹ On the significance of this for Jefferson, see *Commonplace Book*, p. 267, and *Federalist*, No. IX.

cratic government. He became a victim of his philosophy of history, as expressed in his *Considerations*.

3. *External Security*

Democracy and aristocracy thus find themselves in a quandary. "If a republic is small, it is destroyed by a foreign power; if it be large, it is ruined by an internal imperfection" (IX, 1). Consequently, a monarchy is better. But since he was well aware that such a statement could not possibly stand the test of experience, he gave the republics another chance: the confederation (IX, 2). Confederations, without abolishing the internal strength of the republics derived from smallness, give them external strength through association. External security is, of course, the business of the army. Generally, defensive wars alone are justified by the law of nations; an offensive war only if it is objectively necessary for the preservation of the nation's integrity (X, 2). Conquest is permissible but subject to the law of nature, of reason, to political law, and to "the law derived from the nature of the thing itself" (X, 3). As against Grotius,⁴⁰ who, however, is not mentioned by name, self-interest of the conqueror and humanitarian considerations require moderation in the treatment of conquered people (X, 34).

4. *The Concept of Space*

Climate

Montesquieu now introduces the factor of space (climate and soil) into the discussion of the nature and principles of government. If, as he claims, character and passions vary according to climate, the laws ought to take these external factors into account (XIV, 1). It is undoubtedly true that Montesquieu did not invent the idea that climatic conditions had some bearing upon the structure of society. Bodin in his *Six Books of the Republic*,⁴¹ and Chardin's *Les Voyages de Chevalier Chardin en Perse et autres lieux de l'Orient* had undoubtedly directed attention to the problem. But if Montesquieu for this reason is to be a plagiarizer, then almost all scholars are plagiarizers. Montesquieu tried, unsuccessfully to be

⁴⁰ *De Jure Belli et Pacis*, Bk. III, ch. IV-VIII.

⁴¹ V, 1.

sure, to determine scientifically the exact role of the factor of space in political science. That he did not attempt to derive political conditions exclusively or even primarily from climatic conditions is clear to everyone who takes the trouble of reading what he wrote. He was not a geopolitician. In his *Pensées et Fragments*¹² is found the first formulation of a theory.

Climate operates more directly on the lower stage of development than on the higher — a statement that will hardly be challenged. If history is man's attempt to control nature, clearly then, in the lower stage of civilization, the blind forces of nature had a more direct effect on society and politics than in the higher forms where man could begin to emancipate himself from them. What Montesquieu did not state, and where Vico had a much deeper insight, is that the increasing control of nature by man is not necessarily accompanied by an increasing freedom of man, but may result in a relapse into serfdom. But Montesquieu stated the problem correctly. He was, in spite of his pessimism and relativism, a believer in justice and thus held to the view that political freedom ought to be the result of man's increasing power over nature. He may be blamed for his lack of realism, but not for his convictions. It may readily be admitted that the discussion of the influences of climatic conditions is primitive. He tries to establish a direct, causal relationship between climate, the physiological condition of man, his character, and the structure of political society (XIV, 2, 3, 4, 10). He thus sees direct, causal relationships between climate, slavery, the relation of the sexes, and the forms of political control (XV-XVII).

Soil

Climate influences are modified by differences in the quality of the soil (XIX). Statements like "Thus monarchy is more frequently found in fruitful countries, and a republican government in those which are not so" (XIX, 1), are clearly untenable. But other observations on the relations between the character of the space and the character of a nation, and, consequently, its political organization, still have great value — e.g., mountain dwellers and liberty; and the character of the American space on Indian tribes, etc.

¹² II, 361. Similar formulation in *Cahiers*, p. 99.

in Books XXVIII, XXX, and XXXI the history and development and theory of the civil and feudal laws of France receive a more extended treatment than any other subject of *The Spirit of the Laws*, for reasons already stated.

7. *The Law and Legislative Practice*

In the body of *The Spirit of the Laws* there are two books (XXVI and XXIX) which ought to stand at the beginning of the work and whose actual place can be explained only by the length of time spent on the composition of his work and his reluctance to change radically the order of his work. Book XXVI distinguishes the following several layers of law: law of nature; divine law (that of religion); canon law (religious policy); law of nations (civil law of the universe); general political law (sum of human wisdom); particular political laws; law of conquest; civil law (protection of life and liberty against attack by other citizens); domestic law (family law) (XXVI, 1). These layers do not form (as in the Thomistic philosophy) a hierarchy. There exists rather a division of functions among them (XXVI, 2), meaning that a particular social phenomenon should be regulated by a corresponding layer of law and not by a law that is not related to the phenomenon. Laws of inheritance, e.g., should not be governed by natural law but by political and civil law. This division of functions might even cut across a unified social institution. The family could thus be the object of religious law — namely, as to its form and nature — and of civil law — namely, as to the consequences of marriage (XXVI). One may, with justice, reject the nine-fold division of laws as arbitrary, although I believe it to have a very good meaning, but we are compelled to admit the intrinsic soundness of this approach. We would, if we could go deeper into the problem, show that Montesquieu, although not giving us a systematic analysis, yet foreshadows a dual development in legal science: the legal theory of German idealism culminating in Kant's rigid division of morality and legality,⁴⁴ and the sociological theory of law initiated by Bentham. This concludes the general survey of *The Spirit of the Laws*, except for Books XI and XII which are

⁴⁴ "The influence of religion proceeds from its being believed; that of human laws, from their being feared" (XXVI, 2).

discussed in the following chapter. The understanding of his work is frequently rendered difficult by the intrusion of many historical references, the bulk coming from the classics. His scholarship in the use of sources is decidedly second-rate, even if eighteenth century standards are applied.⁴⁵ Many are wrong, others totally irrelevant, their great number, instead of helping, merely obscure the meaning. But the general significance of these books is clear, and the approach new. The positive suggestions are at least as numerous as the errors, and the fact that many of his ideas have not been examined at all is a testimony to discontinuity of modern scholarship. Almost all attention has been centered on the celebrated Book XI "Of the laws that form political Liberty with regard to the Constitution."

C. LIBERTY AND THE SEPARATION OF POWERS

1. *The Concept of Liberty*

Books XI and XII are merely illustrations of his general method and aim: to devise a moderate government in which liberty can best prevail. It is thus the reconciliation between might (government) and right (liberty) with which he was concerned.

To this end, the concept of liberty is defined. The definitions and distinctions are by no means clear and convincing. Political liberty "does not consist in an unrestrained freedom. In governments . . . 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" (XI, 3). This, in turn, must not be confused with "independence"; liberty "is a right of doing whatsoever the laws permit; and if a citizen could do what they forbid, he would no longer be possessed of liberty because all his fellow citizens would have the same power." Liberty is, therefore, not "philosophical" liberty (XII, 2).

⁴⁵ A careful analysis of Montesquieu's use of classical sources has been made by Levin, *op. cit.* He quoted what suited his purpose and did not mention what was counter to his views — demonstrating one of the vices of the deductive method.

W. Oncken, *Das Zeitalter Friedrichs des Grossen*, Berlin, 1881, Vol. I, 457, asserts that *The Spirit of the Laws* shows no trace of 20 years' preparation. Voltaire (*op. cit.*) objected to the arbitrary use of sources and to the acceptance of the most incredible fables.

But what is it? If we are to take Montesquieu at his word, the concept of liberty would be either meaningless or even quite dangerous. Who determines "what we ought to will" and "what we ought not to will"? It is, clearly, not the individual but the law, that is, the government. Consequently, my whole liberty would consist in doing what the law requires me to do and doing this not simply under compulsion, but with my full and hearty approval. Such a concept of liberty would be identical with that of Rousseau, except for the great difference that Rousseau's conception follows logically from his democratic doctrine, whereas Montesquieu's stands quite unrelated to his system. However, if we approach Montesquieu benevolently, we shall have no difficulty in reformulating his conception in such a manner that, without falsifying his ideas, it will fit into the system of Books XI and XII. He rejects "unrestrained" liberty and criticizes the attempts to define liberty as the unlimited exercise of one's choices, including that of "wearing a long beard." In XI, 4, par. 2, indeed, an approximation to the correct definition of constitutional liberty is achieved. Consequently, his emphasis is on restraints by law. Liberty then would be the freedom to act unless the act is prohibited by law. I have no doubt that he meant just that, because it is in harmony with his equation of liberty and security in Book XII. Only in this reinterpretation do Books XI and XII have any meaning whatever, because both Books are exclusively connected with the laws that restrain liberty⁴⁶ — Book XI with the making of the laws, Book XII with criminal law as, one is inclined to say with Franz von Liszt, the Magna Carta of the Criminals. To be free, thus meant for Montesquieu, as Voltaire put it, to depend on nothing but the law.

If liberty is the freedom to act unless such act is prohibited by law, then the character of the restraining laws must necessarily move into the center of his theory.

⁴⁶ This re-interpretation had already been performed by the influential Genevan De Lolme (T. L. De Lolme, *The Constitution of England*, London, 1790, pp. 451 seq.) who, a great admirer of Montesquieu, saw the inadequacy of his definition of liberty. See Fletcher, *op. cit.* De Lolme's book was extremely influential on the continent.

2. *The Separation of Powers in England*⁴⁷

Laws are made by governments, more specifically, by the legislative branch of government. Each government⁴⁸ thus has three powers: a legislative; an executive in regard "to things dependent upon the law of nations"; and an executive "in respect to things that depend upon the civil law." Legislative power entails the making and unmaking of temporary or perpetual laws; the executive: public security and the conduct of foreign relations, the declaration of war and peace; the judicial — as it is later called (XI, 3) — the administration of criminal and civil law. Liberty is threatened if the same person (or agency) concentrates all three or two powers in his hand.

While the legislative and executive can be given permanently to a person or body, the judicial should be exercised by a jury, meeting only when required and not to permanent courts; but the judgments should be fixed and "conformable to the exact letter of law." The judicial power being actually next to nothing (*en quelque façon nulle*), there remain really the two others.

The executive power should remain in the hands of a monarch, who should also convene and prorogue the legislature and should veto legislation. The legislature, in turn, should be composed of two parts, a peers' body and one of commons, the Lords vetoing legislation of the Commons.

"These three powers would naturally form a state of repose of inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert" (XI, 6). One nation has realized this ideal of political liberty — England (XI, 5).

Liberty, therefore, consists in doing what is not prohibited by a law enacted by a government which realizes the separation of powers;

⁴⁷ No adequate study of the separation of powers and of mixed government exists. The two doctrines are, of course, not identical. But they merge imperceptibly in modern history. The best discussion, although confined to the constitutional problem is that by R. Carré de Malberg, *Contribution à la théorie générale de l'état*, 2 Vols. Vol. II (Paris, 1922), pp. 1-108). A good survey of the problem is Carl J. Friedrich, *Constitutional Government and Democracy*, Boston, 1941, pp. 170-186, from whom, however, I differ.

⁴⁸ He discusses only "moderate" governments, not "despotic" ones.

where the law is made by a legislative body, administered by a separate executive, and applied against citizens only by an independent judiciary.

This idea, as all ideas, has of course forerunners⁴⁹ and, consequently, to many Montesquieu appears as a mere plagiarizer. Among the strongest literary influences may have been that of Rapin de Thoiras,⁵⁰ who had summed up the essence of British government in the following way: "The respective prerogatives of the sovereign, the lords, and of the people are there tempered, the one by the other, so that they contain each other. At the same time each of the three powers participating in the government can put invincible obstacles against the enterprises of each of the others or even against all the others in order to render itself independent."

Bolingbroke's definition of the balance of power doctrine may have been equally influential. In his *Remarks on the History of England*⁵¹ (1730) Bolingbroke had written: "A King of Great Britain is that supreme magistrate who has a negative voice in the legislature; and several other powers and privileges, which we call prerogatives, are annexed to this trust. The two Houses of Parliament have their rights and privileges, some of which are common to both, others particular to each. . . .

"If the legislature as well as the executive power was wholly in the King . . . he would be absolute; if in the Lords, our government would be an aristocracy . . . ; if in the Commons, a democracy. It is division of powers . . . which constitutes a limited monarchy. . . . If any of the three . . . should at any time usurp more power than the law gives, or make ill use of a legal power, the other two parts may . . . by exerting their strength, reduce this power into its proper bounds. This is that balance which has been so much talked of. . . . This proposition is therefore true; that in a constitution like ours, the safety of the whole depends

⁴⁹ These are discussed among others by: Joseph Dedieu, *Montesquieu et la tradition etc.*, Ernst Klimowsky, *op. cit.*; and Walter Struck, *op. cit.*

⁵⁰ *Dissertation sur les Whigs et les Tories*, 1717. He was a French refugee who was thought highly of by Voltaire and Guizot. See Klimowsky, *op. cit.*, and Eugène d'Eichthal, *Souveraineté du peuple et gouvernement*, Paris, 1895, p. 114. This is a most important book.

⁵¹ *Works* (a new ed. London, 1809). II, 188-189.

on the balance of its parts." It is this "independent interdependence"⁵² which according to Bolingbroke keeps the country going.

Bolingbroke did not invent this theory. He himself says that it was "much talked of." Certainly Locke, Swift, and Sidney, all, in varying degrees, had shaped this doctrine. Having no antiquarian interests, it makes but little difference to us who among the many influenced Montesquieu most directly. Moving in London's aristocratic society,⁵³ being acquainted with many political actors, listening to the fight between Walpole and Bolingbroke during the famous Dunkirk debate in the House of Commons, he is likely to have heard this doctrine explained to him day after day.

The doctrine was certainly an ideology and not even a consistent one. There was no "balance of power" and no separation of powers in England. True, the parliamentary system was not yet fully developed.⁵⁴ The monarch still had considerable powers. He had his civil list voted for life, had considerable funds for corruption; he appointed ministers on his own advice, and army and foreign affairs were still considered to be subject to his direct control. But the pendulum of power had swung to Parliament. The King did not and had not vetoed bills, and his freedom to select ministers was limited by the explicit or implicit sanction of the House. Indeed, the prestige of Parliament was at its zenith, while the King was looked upon with contempt, and no objective observer could have failed to see where the true political power rested — in the oligarchy.

The balance of power between Lords and Commons was equally a myth. The oligarchy of the Lords controlled a considerable slice of the Commons. The eighty county members were, in fact, appointees of the aristocracy, the Duke of Newcastle alone was said to control fifty votes.⁵⁵ True, England enjoyed prosperity. But the age of Walpole has been described as "mercantile and mean beyond merchandise and meanness," and only the reflection that this period is also the age of Berkeley, Wesley, and Pitt is said to

⁵² So named by Walter Sichel, *Bolingbroke and his Times*. London, 1912, p. 332.

⁵³ Samuel Shellabarger, *Lord Chesterfield*, New York, 1935, p. 138.

⁵⁴ Basil Williams, *The Whig Supremacy*. Oxford, 1939, pp. 15-32.

⁵⁵ *The Cambridge Modern History*. VI (1907), p. 41.

redeem it from total condemnation.⁵⁶ Indeed, corruption rather than any other element provided the sinews for English politics.

Montesquieu was fully aware of this, as his Notes on England indicate.⁵⁷ "Corruption has put itself," he said, "into all conditions. Money is here sovereignly esteemed; honor and virtue, little. The English are no longer proud of their liberty. They sell it to the King, and if the King would return it to them, they would sell it to him once more." A harsher judgment is hardly possible — and yet there is no trace of it in *The Spirit of the Laws*.

Linguet,⁵⁸ who, more than forty years later, went to England to study Montesquieu's "holy trinity" in action, also preferred England to France, but for opposite reasons: because there were no intermediary powers and no balance of powers. "I do not know who was the first visionary who has dared to say that *The Spirit of the Laws* is always exhibited on the table of the House of Commons at Westminster, as one exposes the Decalogue in the synagogues to the veneration of the assembly."⁵⁹ He maintained that the principles of *The Spirit of the Laws* were destructive of the English constitution. The political power of England is unified, "embracing all the individuals of the nation and excluding every intermediary." Nor was he blind to the corruption of England.

How are we to explain Montesquieu's analysis, contradicted as it is by his own observations and by the objective facts of English political life? Part of this distortion was undoubtedly due to his aristocratic prejudices, but perhaps more to his method: the defect of his approach, the deductive method and the construction of ideal types. Deduction necessitated the acceptance of certain abstract general principles from which concrete phenomena were then logically deduced. The formation of ideal types implied the need for distinguishing relevant and irrelevant facts, selecting the relevant, and discarding the irrelevant ones. The selection was, of course, determined by the abstract principles adopted in advance,

⁵⁶ *Ibid.* p. 40.

⁵⁷ In Laboulaye edition, VII, 183-196, and I, 225.

⁵⁸ *La France plus qu'Angloise*, Brussels, 1788. Other comments of Linguet on Montesquieu are to be found in Bonno, *op. cit.* On the significance of Montesquieu's travels for the formation of his political theory see Dedieu, *Montesquieu et la tradition*, pp. 131-159.

⁵⁹ *Op. cit.*, p. 116.

which were not realistic but ideological ones. Honor, virtue and moderation do not describe realities. A realistic analyst may have come to the conclusion that the constitutive principle of England was money and not honor or virtue. But this fact did not fit with his conception and was hence relegated into the travel notes. Yet a second consideration must prevent us from passing so harsh a judgment. In the first place, in spite of, and perhaps because of, the rule of money and of corruption, England did enjoy a high degree of liberty.⁶⁰ It did possess stability; it had religious toleration; its society was saturated; and the state interfered but little with its operations. Besides, Montesquieu's concern was not primarily with England. It was the discovery of a constitutional principle which was applicable wherever moderate governments existed, and which to him was the sole means of assuring political liberty.

Therefore, we cannot discard his principle merely because the historical material which he employed was inadequate or wrongly interpreted. We have to examine the intrinsic validity of the doctrine of the separation of powers.

3. *Montesquieu's Conception of Separation of Powers*

English political thought was dominated by Locke. Much of Montesquieu's analysis is directly influenced by him.⁶¹ But Locke had no doctrine of a separation of powers. He knew and, for the first time⁶² in the history of political thought, distinguished functions of the state's power, and defined their role and relationships. Nor did he develop a balance of power theory. The legislative power enacts the general rules⁶⁴ (standing laws) and since the laws

⁶⁰ This also Montesquieu expressed in his *Notes on England*.

⁶¹ See the detailed analysis by Dedieu, *Montesquieu et la tradition*, pp. 132-191.

⁶² No doctrine of separation of powers is contained in Aristotle's famous distinction between deliberation, magistracy, and judicial activity (*Politics*, IV, 14, 1298). A. was concerned with the distinction between the various activities of the state organs, but not with an apportionment of their functions, nor was he opposed to an assembly which legislated, administered, and administered justice. See Carré de Malberg, p. 2; Eichthal, p. 105.

⁶³ But not in political practice. Cromwell's *Instrument of Government*, (1653) did clearly distinguish legislative and executive power.

⁶⁴ *The Second Treatise of Civil Government*, XII, 143-148; XIII, 149-158; XIV, 159-161.

are general and the legislature is not always in being, a permanent executive power is necessary. This division is, besides, desirable because men are "apt to grasp power," and a legislature which also controls the executive may use the combined power for private advantages. Since states live in relation to each other in a state of nature which is not capable of being governed by standing laws, a federative power exists which is the power to protect the external security of the state. But all three powers, even the legislative, stand at the service of the people and "thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, wherever they shall be so foolish or so wicked as to lay or carry on designs against the liberty and properties of the subject." The power of the state is thus unified in the people. Popular sovereignty is the actual or potential force that unifies the state which, for convenience, divides its functions. Within the division, moreover, the parts are by no means equal. The legislature can always resume (153) the executive and federative powers, for the legislature "in a constituted commonwealth is supreme." But where a distinction between legislative and executive power is made, and where action for the good of the commonwealth is necessary, then the holder of the prerogative power can act "without the prescription of law and sometimes even against it" until the legislature convenes and can act. One may thus say that Locke knows four powers. This is no separation of powers and no balance of power theory. There is, in Locke's theory, always one agent authorized to act: the king, as the holder of the prerogative; the legislature, as the elected organ of the people; the people directly (although Locke does not and cannot specify how) if they feel their natural rights to be threatened.

Montesquieu differs radically from Locke, not only in the doctrine of the origin of the state, but more specifically in the definition of the separation of powers and the role attributed to it. It is he, and not Locke, who must be called the father of the doctrine. In Locke, the executive power means more and less than what we understand by it today. Less — in that foreign relations are excluded; more — in that executive and judicial

Locke

separate
in nature
action

What looks like right, can also show its defect of being might: the liberty of movement.

powers are merged because both are conceived solely as the application of general laws to specific cases.⁶⁵

Montesquieu, however, delimits the executive power from the judicial and gives it, in quite a modern fashion (although not foreseeing its positive aspects) the dual function of maintaining external and internal security.⁶⁶

These three powers are, indeed, separated. It is true that Montesquieu does not use the word separation, but division. But the meaning is clear.⁶⁷ It was his separating of powers that made his theory original. Their rigid separation is, of course, not incompatible with their interconnection which is provided for by Montesquieu, but only in a negative manner so that one can always check the other.⁶⁸ But in spite of this interconnection, the separation of the three powers and the equal weight given to the legislative and executive powers stand out clearly.

Why did he advocate it? The answer is clearly given in XI, 4. According to him, power can be checked only by power — a statement with which few will be willing to quarrel. It is not ideologies and beliefs that can check power but only a counter-power. In this, he applies Cartesian principles and stands in the tradition of Spinoza, who saw no way of limiting the state's absoluteness (which was the logical consequence of his assumptions and of his geometric method) except by a counter-power through his famous formula that right equals might.

⁶⁵ Erich Kaufmann, *Auswärtige Gewalt und Kolonialgewalt in den Vereinigten Staaten von Amerika*. Leipzig, 1908, p. 32, maintains that "this fully corresponded to actual British practice."

⁶⁶ This is by no means clearly said. The definitions do not quite fit the statement and, consequently, opinions are divided. See Dedieu, *Montesquieu et la tradition*, pp. 177-180, as against H. Barckhausen, *Montesquieu. Ses idées et ses oeuvres d'après les papiers de la Brède*, Paris, 1907, pp. 267-272. The difficulty consists in reconciling XI, 6, par. 1 with par. 2. In par. 1, executive power is defined as the power to act in "things dependent on the law of nations" — that is merely Locke's federative power; in par. 2, public security is introduced. If we were to accept merely par. 1, M. would not recognize administrative functions at all. This seems inconceivable especially for a French President of a Parlement who certainly knew the significance of administration. XI, 6, par. 42, and others indicate the correctness of the above interpretation.

⁶⁷ I follow here Carré de Malberg, p. 3.

⁶⁸ *Op. cit.*, p. 43.

Thus accepting the sociological basis of the separation doctrine, we must necessarily ask whether the doctrine as such fulfills and can fulfill its promise to be an instrument of checking power. It can live up to its promise only if the three (or two powers) are not only legally and organizationally, but also socially, separate, i.e., different social groups dominate the different powers. But what possible guarantee of freedom can there be in separate powers if all three are controlled by one group? That objection has already been raised by Bentham.⁶⁹ Montesquieu was not completely blind to this objection, because he, indeed, although inadequately, related the three powers to social groups. To him the monarch, who was to have the executive power, represented social interests different from those of the legislature; the legislature, in turn, composed of two houses, was to represent the aristocracy and the bourgeoisie respectively; while the judiciary, being "*en quelque façon nulle*," was to represent everybody, and hence nobody, since the judges ought to be the accused peers.

The constitutional principle of separate powers is thus implemented by the sociological principle of balancing social forces. This insistence on the balance of social forces, manifested in separate political powers, raises the obvious question of the locus of sovereignty in the state. Is the sovereign power fragmentized and what happens if the three powers do not agree? To Montesquieu the answer is simple: They must agree. Political change can thus come about only by a "move in concert" (XI, 6).⁷⁰ Sovereignty rests, therefore, in the composite of the three powers. The need for action is subordinated to the need for agreement among the three powers. This had not always been his position. In the *Persian Letters* (103) he had stated more realistically: "Authority can never be equally divided between the people and the prince; it is too difficult to maintain an equilibrium. Power must diminish on one side while it increases on the other, but the

⁶⁹ For a discussion of Bentham's critique of Montesquieu see Élie Halévy, *The Growth of Philosophic Radicalism* (Transl. by M. Morris), London, 1937, pp. 408-9.

⁷⁰ Many, and particularly German, theorists maintain therefore that Montesquieu destroyed sovereignty. See especially Max Landmann, *Der Souveränitätsbegriff bei den französischen Theoretikern von Jean Bodin bis auf Jean Jacques Rousseau*, Leipzig, 1896, pp. 110-119.

in review: Authority - Legislative power
Executive: means of authority

They were
right in
some way

advantage is usually with the prince as he commands the army." Now his concern was far more with the security of the person than with the need for government action. This agreed with his general attitude toward legislative change.

To the security of the individual he therefore devoted the entire Book XII, which examines criminal law in its role of the Magna Carta of the citizen, and contains ideas that directly affected American conceptions of high treason.

D. MONTESQUIEU AND CONSTITUTIONALISM

The effect of Montesquieu's *Spirit of the Laws* on modern constitutionalism has been and still is deep and is, perhaps, still growing. His influence was either a direct one (as in the United States) or came to Europe via the United States (as to France), or was transmitted through his interpretation of the English constitution (as in Germany).

There is little doubt that Montesquieu was widely read in the United States. Spurlin's⁷¹ investigations have shown that many newspaper articles contained lengthy extracts, that clergymen, patriots, college professors, and law students used and quoted the book, that Samuel Adams, Charles Carroll, John Marshall, Jefferson, Madison⁷² all knew and used it. Yet it would be premature to draw from the wide dissemination of Montesquieu's ideas the inference that they shaped decisively either the thought of the American constitution-makers or the structure of the constitution. The decisive influence on the constitution was probably the experience of colonial government, which already supplied a pattern of balancing and separate powers; but for this very reason Montesquieu's theoretical justification for what the colonists had learned by experience was doubly welcome. Their direct experi-

⁷¹ Paul M. Spurlin, *Montesquieu in America*. Baton Rouge 1940; also: Albert Bushnell Hart, *American History as Told by Contemporaries*. New York 1899, Vol. II, pp. 144. Merle Curti, *The Growth of American Thought*. New York 1943, p. 123. Fernand Cattelain, *Etude sur l'influence de Montesquieu sur les constitutions Américaines*. Besançon, 1927. H. Knust, *Montesquieu und die Verfassungen der Vereinigten Staaten von Amerika*. Munich and Berlin, 1922.

⁷² William S. Carpenter, *The Development of American Political Thought*. Princeton, 1930, p. 84.

Right: Montesquieu's real action is not administrative!
Administrative legislature means rule by force.

permissible; and the need for precision in legal enactments, thus securing the maximum of calculability. But the exclusive concentration of the constitutional doctrine on restraints on power led to a total neglect of administration as the major instrument of social change. The conception that administration is the primary instrument for the utilization of political power for social purposes is still leading an uphill fight against Montesquieu's influence.

Modern political science must emancipate itself from the deadweight of the separation of powers doctrine which, much against Montesquieu's conception, has been transformed into a dogma. Montesquieu demanded the separation of powers merely because he believed that it alone could enable a counter-power to check power, so that a maximum of liberty could be assured. It is not the constitutional form that stands in the center of his theory, but its social substructure. No one was less inclined than Montesquieu to make a fetish of the constitution.

While the independent judiciary can be considered the irreducible minimum of the doctrine of separate powers, the separation of administrative and legislative functions not only does not guarantee freedom, but hampers the utilization of the state's power for desired social ends. The power of the state is unified while a division of labor may and always will lead to a distinction between various functions of the state, based on expedience and not on dogma. Liberty is not threatened by legislative activity of the administration but by such a structure of society that makes the rise of contending political forces impossible or difficult. A pluralistic social structure and a flexible multi-party system are far more important to liberty than the monopolization of legislation by the legislature and the reduction of the administrative power into a law-enforcing agency. The threat to liberty, inherent in the ascendancy of administration, cannot be curbed by curtailing administrative activity but by subjecting it to parliamentary control and assuring popular participation in administration.

Montesquieu had changed his conception after a study of English political institutions. He would equally have changed it after a study of a mass democracy in action.

FRANZ NEUMANN

MONTESQUIEU'S ESSAYS

The Spirit of the Laws

VOLUME ONE

MONTESQUIEU'S PREFACE

If amidst the infinite number of subjects contained in this book there is anything 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 the gods that he was born in the same age with Socrates; and for my part I give thanks to the Supreme 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 favor 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 labor 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 in 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 follow naturally from 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 endeavored 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 alike. //

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 characterize the works of the present age. When things are examined with never 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 anything 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 the entire constitution of a state.

It is not a matter of indifference that the minds of the people be enlightened. The prejudices of magistrates have arisen from national prejudice. In a time of ignorance they have committed even the greatest evils without the least scruple; but in an enlightened age they even tremble while conferring the greatest blessings. They perceive the ancient abuses; they see how they must be reformed; but they are sensible also of the abuses of a reformation. They let the evil continue, if they fear a worse; they are content with a lesser good, if they doubt 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 prince, his country, his laws; new reasons to render him more sensible in every nation and government of the blessings he enjoys, I should think myself the most happy of mortals.

Could I but succeed so as to persuade those who command to increase their knowledge in what they ought to prescribe, and those who obey to find a new pleasure resulting from 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 prejudices I here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves.

It is in endeavoring to instruct mankind that we are best able

to practice 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 had written to the winds:^a I, every day, felt my paternal hands fall.^b I have followed my object without any fixed plan — I have known neither rules nor exceptions; I have found the truth, only to lose it again. But when I once discovered my first principles, everything I sought for appeared; and in the course of twenty years I have seen my work begun, growing up, advancing to maturity, and finished.

If this work meets with success I shall owe it chiefly to the grandeur and majesty of the subject. However, I do not think that I have been totally deficient in point of genius. When I have seen what so many great men, in France, in England, and in Germany, have said before me, I have been lost in admiration; but I have not lost my courage: I have said with Correggio, "And I also am a painter."^c

^aLudibria ventis.

^bBis patriæ cecidere manus.

^cEd io anche son pittore.

AUTHOR'S EXPLANATORY NOTES

1. For the better understanding of the first four books of this work, it is to be observed that what I distinguish by the name of virtue, in a republic, is the love of one's country, that is, the love of equality. It is not a moral, nor a Christian, but a political virtue; and it is the spring which sets the republican government in motion, as honor is the spring which gives motion to monarchy. Hence it is that I have distinguished the love of one's country, and of equality, by the appellation of political virtue. My ideas are new, and therefore I have been obliged to find new words, or to give new acceptations to old terms, in order to convey my meaning. They, who are unacquainted with this particular, have made me say most strange absurdities, such as would be shocking in any part of the world, because in all countries and governments morality is requisite.

2. The reader is also to notice that there is a vast difference between saying that a certain quality, modification of the mind, or virtue, is not the spring by which government is actuated, and affirming that it is not to be found in that government. Were I to say such a wheel or such a pinion is not the spring which sets the watch going, can you infer thence that it is not to be found in the watch? So far is it from being true that the moral and Christian virtues are excluded from monarchy, that even political virtue is not excluded. In a word, honor is found in a republic, though its spring be political virtue; and political virtue is found in a monarchical government, though it be actuated by honor.

To conclude, the honest man of whom we treat in the third book, chapter five, is not the Christian, but the political honest man, who is possessed of the political virtue there mentioned. He is the man who loves the laws of his country, and who is actuated by the love of those laws. I have set these matters in a clearer light in the present edition by giving a more precise meaning to my expression: and in most places where I have made use of the word virtue I have taken care to add the term political.

justice is what keeps this
relations in order.
The thief breaks the rela-
tion between man &
thing.

THE SPIRIT OF LAWS

BOOK I

reports

OF LAWS IN GENERAL

cf. XIV -
justice

1.—Of the Relation of Laws to different Beings

LAWS, in their most general signification, are the neces-
sary 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.

Book
XIV
11 p. 53

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

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

reports

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 in relation of His Wisdom
and power.

Since we observe that the world, though formed by the mo-
tion 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, supposes
laws as invariable as those of the fatality of the Atheists. It

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

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, or lost, according to the relations of the quantity of matter and velocity; each diversity is uniformity, each change is constancy.

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

We must therefore acknowledge relations of justice antecedent to the positive law by which they are established: as, for instance, 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 show their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence; if one intelligent being injures another, it deserves a retaliation; and so on.

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

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

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

Brutes are deprived of the high advantages which we have; but they have some which we have not. They have not our hopes, but they are without our fears; they are subject like us to death, but without knowing it; even most of them are more attentive than we to self-preservation, and do not make so bad a use of their passions.

Man, as a physical being, is like other bodies governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loses; 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.

2.—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 towards Him, is the first in importance, though not in order, of natural laws. Man in a state of nature would have the faculty of knowing, before he had acquired any knowl-

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

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

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

Besides 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. Man-

^b Witness the savage found in the forests of Hanover, who was carried

over to England during the reign of George I.

^c In præfat. lib. "De Cive."

kind have, therefore, a new motive of uniting; and a fourth law of nature results from the desire of living in society.

3.—Of *Positive Laws*

As soon as man enters into a state of society he loses the sense of his weakness; equality ceases, and then commences the state of war.^d

Each particular society begins to feel its strength, whence arises a state of war between different nations. The individuals likewise of each society become sensible of their force; hence the principal advantages of this society they endeavor to convert to their own emolument, which constitutes a state of war between 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 relating 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 relating to the governors and the governed, and this we distinguish by the name of politic law. They have also another sort of laws, as they stand in relation to each other; by which is understood the civil law.

The law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good they can, and in time of war as little injury as possible, without prejudicing their real interests.

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

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

^d Interpreter and admirer of the social instinct as he was, Montesquieu has not hesitated to avow that war takes simultaneous rise with society. But the true philosophy of this unhappy truth, which Hobbes took advantage of in order to vaunt the serenity of despotism, and

Rousseau to celebrate the independence of savage life, gives birth to the wholesome necessity of laws which are an armistice between states, and a treaty of perpetual peace for the citizens (Eloge de Montesquieu).

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 Gravinae well observes, "constitutes what we call the body politic."

The general strength may be in the hands of a single person, or of many. Some think that nature having established paternal authority, the most natural government was that of a single person. But the example of paternal authority proves nothing. For if the power of a father relates to a single government, that of brothers after the death of a father, and that of cousins-german 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 humor and disposition of the people in whose favor it is established.

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

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

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

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

They should be in relation 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 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 of 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, 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 bear to different objects, it is not so much my business to follow the natural order of laws as that of these relations and objects.

I shall first examine the relations which laws bear 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 thence as from their source. I shall proceed afterwards to other and more particular relations.

BOOK II

OF LAWS DIRECTLY DERIVED FROM THE NATURE OF GOVERNMENT

1.—*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 everything 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.

2.—*Of the Republican Government, and the Laws in relation to Democracy*^a

When the body of the people is possessed of the supreme power, it 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

^a Compare Aristotle's "Polit." lib. VI. cap. ii., wherein are exposed the fundamental laws of democratic constitutions.—Ed.

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^b 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.^c

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 at ten thousand. But Rome, designed by Providence to rise from the weakest beginnings to the highest pitch of grandeur; Rome, doomed to experience all the vicissitudes of fortune; Rome, who had sometimes all her inhabitants without her walls, and sometimes all Italy and a considerable part of the world within them; Rome, I say, never fixed the number; ^d 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 everything within their reach: that which 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.^e

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

^b Declam. 17 and 18.

^c Libanius himself gives the reason for this law. "It was," he avers, "in order to prevent the secrets of the republic from being divulged."—Ed.

^d See the "Considerations on the Causes of the Grandeur and Decline of the Romans," chap. ix.

^e The Roman senators were invariably chosen by magistrates in whom the people had vested the power.—Crévier.

tell when a person has fought many battles, and been crowned with success; they are, therefore, 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 edile. These are facts of which they can have better information in a public forum than a monarch in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this surpasses their abilities.

Should we doubt 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 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,^e when the common people petitioned for employments which could endanger either their security or their glory.

As most citizens have sufficient ability 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 Tullius followed the spirit of aristocracy in the distribution of his classes. We find in Livy^f and in Dionysius

^e Pages 691 and 692. Edit. Wechel. Ann. 1596.

^f Lib. I.

bribery and corruption: in this case they grow indifferent to public affairs, and avarice becomes their predominant passion. Unconcerned about the government and everything 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 the 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^d had the force of laws for the space of a year, but did not become perpetual till they were ratified by the consent of the people.

3.—*Of the Laws in relation 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 inconveniences 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 the 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 cipher.

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^e gives them a certain influence in the government, whence their whole prosperity is derived.

The senators ought by no means to have the right of naming their own members; for this would be the only way to per-

^d See Dionys. Halicarn. lib. IV and IX.

^e See Mr. Addison's "Travels to Italy," p. 16.

petuate 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.^b

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,^c 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 extraordinary 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 short duration, as the people acted through passion and not with design. It was necessary that a magistracy of this kind should be exercised with lustre and pomp, the business being to intimidate, and not to punish, the multitude. It was also proper that the dictator should be created only for some particular affair, and for this only should have an unlimited authority, as he was always created upon some sudden emergency. On the contrary, at Venice they have occasion for a permanent magistracy; for here it is that schemes may be set on foot, continued, suspended, and resumed; that the ambition of a single person becomes that of a family, and the ambition of one family that of many. They have occasion for a secret magistracy, the crimes they punish being hatched in secrecy and silence. This magistracy must have a general inquisition, for their business is not to remedy known disorders, but to prevent the unknown. In a word, the

^b They were named at first by the consuls.

^c This is what ruined the republic of

Rome. See "Considerations on the Causes of the Grandeur and Decline of the Romans."

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

Aristocratic 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 perfection: and, in proportion as it draws towards monarchy, the more is it 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.

4.—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, ↑ X

^d Tournefort's "Voyages."
^e At Lucca the magistrates are chosen only for two months.

^f Diodorus, lib. XVIII, p. 601, Rhodoman's edition.

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.^g

There are men who have endeavored 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 favor of the privileges of the clergy; however, I should be glad if 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 in relation 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 have been prescribed to his authority.

Though the ecclesiastic power be so dangerous in a republic, yet it is extremely proper in a monarchy, especially of the absolute kind. What would become of Spain and Portugal, since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power? a barrier ever useful when there is no other: for since a despotic government

^g This maxim brings to mind the unfortunate Charles I. who said, "No bishop, no monarchy"; while Henry

IV of France declared to the Seize, "No nobility, no monarch!"—Voltaire.

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,^k 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 favor their liberty, have abolished all the intermediate powers of which their monarchy was composed.ⁱ 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^j the monarchy by his chimerical reimbursements, and seemed as if he even wanted to redeem the constitution.

It is not enough to have intermediate powers in a monarchy; there must be also a depository of the laws. This depository can only be the judges of the supreme courts of justice, who promulgate the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence and contempt of civil government, require that there should be a body invested with the power of reviving and executing the laws, which would be otherwise buried in oblivion. The prince's council are not a proper depository. They are naturally the depository 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 of setting them right in difficult conjunctures, or of reducing them to proper obedience.

Despotic governments, where there are no fundamental laws, have no such kind of depository. Hence it is that religion has generally so much influence in those countries, because it

^k Voltaire is inclined to doubt the justice of this comparison.—Ed.

ⁱ On the contrary, the English have rendered the power of their spiritual and temporal lords more legal, and have

augmented that of the Commons.—Voltaire.

^j Ferdinand, King of Aragon, made himself grand-master of the orders, and that alone changed the constitution.

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.

5.—*Of the Laws in relation 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 everything and that his subjects are nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs. But were he to commit the administration to many, there would be continual disputes among them; each would form intrigues to be his first slave; and he would be obliged to take the reins into his own hands. It is, therefore, more natural for him to resign it to a vizier,^k and to invest him with the same power as himself. The creation of a vizier 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 surprise, 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 even of their high rank, when drawn forth in order to be placed on the throne, are at first confounded: but as soon as they have chosen a vizier, and abandoned themselves in their seraglio to the most brutal passions, pursuing, in the midst of a prostituted court, every capricious extravagance, they would never have dreamed that they could 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.

^k The Eastern kings are never without viziers, says Sir John Chardin.

what makes it be what it is (essence), its rel. table

= the 4 causes: form = shape

matter = wood

end = will

cause = carpenter = what makes the cause come into existence.

BOOK III

OF THE PRINCIPLES OF THE THREE KINDS OF GOVERNMENT

1.—Difference between the Nature and Principle of Government

HAVING examined the laws in relation to the nature of each government, we must investigate those which relate to its principle.

[There is this difference between the nature and principles of government, that the former is that by which it is constituted, 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 no less to relate to the principle than to the nature of each government. We must, therefore, inquire into this principle, which shall be the subject of this third book.

2.—Of the Principle of different Governments

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

^a This is a very important distinction, whence I shall draw many consequences;

for it is the key of an infinite number of laws.

3.—*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.^b 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 intrusted with the execution of the laws is sensible of his being subject to their direction.

Clear is it 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 inflamed by the success of the most daring of their members; as the prevailing parties were successively animated by the spirit of faction, the government was continually changing: the people, amazed at so many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed.

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

^b It has always been argued against Montesquieu that he has said that there can only be virtue in republics, and honor in monarchies, or vice versa:

whereas he has said nothing of the sort, and to allege it even is to suppose him capable of a great absurdity.—La Harpe.
c Cromwell.

diminishing. Instead of being roused from her lethargy by Cæsar, Tiberius, Caius Claudius, Nero, and Domitian, she riveted every day her chains; if she struck some blows, her aim was at the tyrant, not at the tyranny.

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 has 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, that which was a maxim of equity he calls rigor; that which was a rule of action he styles constraint; and to precaution he gives the name of fear. Frugality, and not the thirst of gain, now passes for avarice. Formerly the wealth of individuals constituted the public treasure; but now this has 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 license of many.

Athens was possessed of the same number of forces when she triumphed so gloriously as when with such infamy she was enslaved. She had twenty thousand citizens,^d 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,^e 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,^f she had even then lost nothing but time. We may see in Demosthenes how difficult it was to awaken her; she dreaded Philip, not as the enemy of her liberty, but of her pleasures.^g This famous city, which had withstood so many defeats, and having been so often destroyed had as often risen out

^d Plutarch, "Life of Pericles"; Plato, in "Critia."

^e She had at that time twenty-one thousand citizens, ten thousand strangers, and four hundred thousand slaves. See Athenæus, book VI.

^f She had then twenty thousand citizens. See Demosthenes in "Aristog."

^g 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.

of her ashes, was overthrown at Chæroneæ, 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 forces of Athens 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, endeavored 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 be beholden for their riches to their very destroyers! Rome soon insisted upon having three hundred of their principal citizens as hostages; she obliged them next to surrender their arms and ships; and then she declared war.^k From the desperate efforts of this defenceless city, one may judge of what she might have performed in her full vigor, and assisted by virtue

4.—Of the Principle of Aristocracy

As virtue is necessary in a popular government, it is requisite also in 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 that they are acting against themselves. Virtue is therefore necessary in this body, from the very nature of the constitution.

An aristocratic government has an inherent vigor, 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.ⁱ Such is the nature of this constitution, that it seems to subject the very same persons to the power of the laws, and at the same time to exempt them.

^k This lasted three years.

ⁱ 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.

Now such a body as this can restrain itself only in 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 upon 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.

5.—*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 tradition.

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

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

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

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

Let us compare what the historians of all ages have asserted

ⁱ I speak here of political virtue, which is also moral virtue as it is directed to the public good; very little of private moral virtue, and not at all of

that virtue which relates to revealed truths. This will appear better, book V., chap. 2.

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 exceedingly 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^k among the people, Cardinal Richelieu, in his political testament, seems to hint that a prince should take care not to employ him.^l 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.

6.—*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. Honor, that is, the prejudice of every person and rank, supplies the place of the political virtue of which I have been speaking, and is everywhere 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,^m a good intention is necessary,ⁿ and we should love our coun-

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

^l We must not, says he, employ people of mean extraction; they are too rigid and morose.

^m This word "good man" is understood here in a political sense only.

ⁿ See note j, page 23.

try, not so much on our own account, as out of regard to the community.

7.—Of the Principle of Monarchy

A monarchical government supposes, as we have already observed, pre-eminences and ranks, as likewise a noble descent. Now, since it is the nature of honor to aspire to preferments and titles,^a 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 in 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 centre, and a power of gravitation that attracts them to it. Honor 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 honor which moves all the parts of the government; but even this false honor is as useful to the public as true honor could possibly be to private persons.

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

8.—That Honor is not the Principle of Despotic Government

Honor 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 honor has its laws and rules; as it knows not how to submit; as it depends in a great measure on a man's own caprice, and not on that of another person: it can be found only

^a These preferments, distinctions, and honors, in the days of the Roman republic, were worth quite as much as the *débris* which goes to constitute a king-

dom of to-day. Prefectures, consulates, axes, fasces, and triumphs were valued at the price of so many colored ribbons. —Voltaire.

in countries in which the constitution is fixed, and where they are governed by settled laws.

How can despotism abide with honor? The one glories in the contempt of life; and the other is founded on the power of taking it away. How can honor, 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.

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

9.—Of the Principle of Despotic Government

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

Here the immense power of the prince devolves entirely 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 for one single moment to uplift his arm, when he cannot instantly demolish those whom he has intrusted with the first employments,^d 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 Seigneur was not obliged to keep his word or oath, when he limited thereby his authority.^e

^b See Perry, p. 447.

^c It has been thought that Montesquieu anticipated innumerable difficulties, if he entered upon his plan, and in his own style began to refute objections. It is evident that his only desire was to

construct a series of his ideas, and that his motives should be conceived.

^d As it often happens in a military aristocracy.—Ed.

^e Ricaut on the Ottoman Empire.

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 subject should be safe, and the pasha'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 resolution, because he had been too sparing of blood.^f

History informs us that the horrid cruelties of Domitian struck such a terror into the governors, that the people recovered themselves a little during his reign.^g 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.

10.—*Difference of Obedience in Moderate and Despotic Governments*

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

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

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

Little does it then avail to plead the sentiments of nature, filial respect, conjugal or parental tenderness, the laws of honor, 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 favor. Even if the prince were intoxicated, or *non compos*, the decree must be executed; ^h 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

^f See the history of this revolution by Father Ducerceau.

^g His was a military constitution,

which is one of the species of despotic government.

^h See Sir John Chardin.

Ahasuerus gave, to exterminate the Jews, could not be revoked,ⁱ they were allowed the liberty of defending themselves.^j

One thing, however, may be sometimes opposed to the prince's will,^k 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 honor, which, like a monarch, reigns over the prince and his people. They will not allege to their sovereign the laws of religion, a courtier would be apprehensive of rendering himself ridiculous. But the laws of honor will be appealed to on all occasions. Hence arise the restrictions necessary to obedience; honor 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.

II.—*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 honor, or in a particular despotic government by fear; but that they ought to be directed by these principles, otherwise the government is imperfect.

ⁱ This order was revoked by a new edict. See Esther, xvi., 7.—Ed.

^j The Jews were not allowed to defend themselves, as the author avers, but to exterminate their enemies, as it had been permitted their enemies to exter-

minate them. So terrible was the success of the Jews that it was in memory of the event that the feast of Purim was instituted.—De Dupin.

^k See Sir John Chardin.

BOOK IV

THAT THE LAWS OF EDUCATION OUGHT TO BE IN RELATION TO THE PRINCIPLES OF GOV- ERNMENT

1.—*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 honor for their object ; in republics, virtue ; in despotic governments, fear.

2.—*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 honor, that universal preceptor which ought everywhere 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 behavior.

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

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

When honor here meets with anything noble in our actions, it is either a judge that approves them, or a sophist 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 finesses of which it is far from being offended.

It does not forbid adulation, save when separated 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 behavior. Man, a sociable 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 origin from so pure a source. It arises from a desire of distinguishing ourselves. It is pride that renders us polite; we are flattered with being taken notice of for behavior that shows we are not of a mean condition, and that we have not been bred with those who in all ages are considered the scum of the people.

Politeness, in monarchies, is naturalized at court. One man excessively great renders everybody 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 courtly 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 shows 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 honor, a man possessed of all the qualities and virtues requisite in this kind of government.

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

To this whimsical honor it is owing that the virtues are only just what it pleases; it adds rules of its own invention to everything 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 honor, as submission to the prince's will; but this very honor tells us that the prince never ought to command a dishonorable 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 Huguenots to be murdered, Viscount Dorte, who commanded at Bayonne, wrote thus to the king:^a "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.

^a See D'Aubigny's "History."

There is nothing that honor more strongly recommends to the nobility than to serve their prince in a military capacity. And, indeed, this is their favorite profession, because its dangers, its success, and even its miscarriages are the road to grandeur. Yet this very law of its own making honor 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.

Honor, therefore, has its supreme laws, to which education is obliged to conform.^b 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 anything which may seem to imply that we look upon ourselves as inferior to the rank we hold.

The third is, that those things which honor 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.

3.—Of Education in a Despotic Government

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

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

In despotic states, each house is a separate government. As education, therefore, consists chiefly in social converse, it must be here very much limited; all it does is to strike the heart with

^b We mention here what actually is, and not what ought to be: honor is a prejudice, which religion sometimes endeavors to remove, and at other times to regulate.

^c By excessive obedience, Montesquieu intends blind obedience.—De Du pin.

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^d cannot think that there is any one virtue belonging to slaves; ^e 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.

4.—*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 vigor they performed actions unusual in our times, and at which our narrow minds are astonished.

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

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

^d "Polit." lib. I.

^e How can this be, asks one, when slaves have no will?—Ed.

^f The Christian religion forbids vengeance and prescribes humility; this is perhaps the point of contrast which the author notes. But these precepts have

not made of Europe a world of poltroons. It is well known that officers most attached to the laws of this religion are commonly the most exact in fulfilling the duties of their state, and the most intrepid in danger.—D.

5.—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 arises of itself amidst threats and punishments; the honor of monarchies is favored by the passions, and favors them in its turn; but virtue is a self-renunciation,^g which is ever arduous and painful.

This virtue may be defined as 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, a government is like every thing else: to preserve it we must love it.

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

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

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

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

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

6.—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 his-

^g This virtue, which Montesquieu defines as "love of country," is not self-renunciation; far from urging man to abnegation of his interests, it permits him to see the state flourishing and tranquil. In this public prosperity the

citizen often finds his own peace of mind and independence, the peaceable possession and enjoyment of his property, the hope of increasing it by liberty of commerce, and of being raised to posts of dignity.—D.

7.—*In what Cases 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 honor in monarchies, or to inspire fear in despotic governments, less trouble is necessary.

Besides, they can take place but in a small state,^g in which there is a possibility of 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 entangled.

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

8.—*Explanation of a Paradox of the Ancients in respect to Manners*

That judicious writer, Polybius, informs us^r 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 debauchery. Plato^s 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.^t This was also the opinion of Theophrastus, of Plutarch,^u and of all the ancients—an opinion grounded on mature reflection; being one of the principles of their polity.^v

^g Such as were formerly the cities of Greece.

^r "Hist." iv. 20 and 21.

^s "De Repub." lib. IV.

^t Lib. VIII. cap. v.

^u "Life of Pelopidas."

^v Plato, in his fourth book of laws, says that the prefectures of music and

cause that renders the order insupportable. Their rule debars them from 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.

3.—*What is meant by a Love of the Republic in a Democracy*

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

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

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

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

The love of frugality limits the desire of having to the study of procuring necessities 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 expenses, 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 upon 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.

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

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

In monarchies and despotic governments, nobody 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 by pleasure that are fond of a frugal life; were this natural and common, Alcibiades would never have been the admiration of the universe.^a 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.

5.—*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 except upon the foundation of a new republic; or when the old one is so corrupt, and the minds of the people are so disposed, that the poor think themselves obliged to demand, and the rich obliged to consent to, a remedy of this nature.

If the legislator, in making a division of this kind, does not enact laws at the same time to support it, he forms only a

^a Voltaire takes exception to this adulation of Alcibiades, and holds that Plutarch and Montesquieu do not pre-

vail, since his standard of admiration is filled by such men as Cato and Marcus Aurelius.—Ed.

ments. The laws must, therefore, endeavor 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 controlled 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.

8.—*In what Manner the Laws should relate to the Principle of Government in an Aristocracy*

If the people are virtuous in an aristocracy, they enjoy very nearly the same happiness as in a popular government, and the state grows powerful. But as a great share of virtue is very rare where men's fortunes are so unequal, the laws must tend as much as possible to infuse a spirit of moderation, and endeavor 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.^v When

* 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.—Salust. "de bello Catil."

^v 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 precedence in a church, by declaring that out of Venice a noble Venetian had no pre-eminence over any other citizen.

* The instance is by no means isolated. See Dion. lib. XXXVII. 35.—Ed.

self-discipline

to act as a body.

equality among the nobles; nobility; distance of a group.

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 aristocratic 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 honorable only as they are ignominious to the people. Such was the law at Rome by which the patricians were forbidden to marry plebeians;^w 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 thence in their harangues.

This inequality occurs likewise when the condition of the citizens differs with regard to taxes, which may happen in four different ways: when the nobles assume the privilege of paying none; when they commit frauds to exempt themselves;^x 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 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, more heavily; and sometimes the taxes fell upon them alone. In fine, far from sharing among themselves the revenues of the state, all they could

^w It was inserted by the decemvirs in the two last tables. See Dionys. Halicarn., lib. X.

^x As in some aristocracies in our time; nothing is more prejudicial to the government.

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 honors.^y

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

If the revenues of the state are not distributed among 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 the 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 neighbors, but even their own subjects, have been surprised at it.

The laws should likewise forbid the nobles all kinds 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.

^y See in Strabo, lib. XIV., in what manner the Rhodians behaved in this respect.

The laws of Venice debar^a 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^b 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,^c which of its own nature is equally independent. And, indeed, the censors ought to be subject to no inquiry 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,^d except the censors.^e

There are two very pernicious things in an artistocracy—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,^f to the end that by a continual division of the inheritances their fortunes may be always upon a level.

^a Amelot de la Housaye, "Of the Government of Venice," part III. The Claudian law forbade the senators to have any ship at sea that held above forty bushels.—Liv., lib. XXI. cap. lxiii.

^b The informers throw their scrolls into it.

^c Their vote is secret; whereas at Rome it was public.—Ed.

^d See Livy, lib. XLIX. 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.

^e At Athens the Logistæ, who made all the magistrates accountable for their conduct, gave no account themselves.

^f It is so practised at Venice.—Amelot de la Housaye, pp. 39 and 31.

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.^g

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 favor 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 upon Sparta; there we may see how the Ephori contrived to check the foibles of the kings,^h as well as those of the nobility and common people.

9.—*In what Manner the Laws are in relation to their Principle in Monarchies*

As honor is the principle of a monarchical government, the laws ought to be in relation to this principle.

They should endeavor to support the nobility, in respect to whom honor 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 land of the nobility ought to have privileges as well as their persons. The monarch's dignity is inseparable from that

^g The main design of some aristocracies seems to be less the support of the state than of their nobility.

^h These were not kings of Sparta, but pretenders. The true sovereigns were the Ephori, since royalty itself was subservient to them.—Ed.

The error is corrupted
by acting people, i.e.
principles.

BOOK VIII

OF THE CORRUPTION OF THE PRINCIPLES OF THE THREE GOVERNMENTS

1.—General Idea of this Book

THE corruption of every government generally begins
with that of its principles.

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2.—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 everything 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 license will soon become general, and the trouble of command be as fatiguing as that of obedience. Wives, children, slaves will shake off all subjection. No longer will there be any such thing 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 have grown poor, I have acquired authority; nobody threatens me; I rather threaten others. I can go or stay where I please. The rich already rise from their seats and give me the way. I am a king, I was before a slave: I paid taxes to the republic, now it maintains me: I am no longer afraid of losing: but I hope to acquire."

The people fall into this misfortune, when those in whom they confide, desirous of concealing their own corruption, endeavor 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 corruptors, 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 surprised to see their suffrages given for money. It is impossible to make great largesses to the people without great extortion: and to compass this, the state must be subverted. The greater the advantages they seem to derive from their liberty, the nearer they approach towards the critical moment of losing it. Petty tyrants arise who have all the vices of a single tyrant. The small remains of liberty soon become insupportable; a single tyrant starts up, and the people are stripped of every thing, even of the profits of their corruption.

Democracy has, 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. Be-

sides 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,^a and being governed by a senate^b 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,^c or oppression, equally laboring under the sudden and alternate succession of liberty and servitude, and notwithstanding her external strength, constantly determined to a revolution by the least foreign power—this city, I say, had in her bosom an immense multitude of people, whose fate it was to have always this cruel alternative, either of choosing a tyrant to govern them, or of acting the tyrant themselves.

3.—*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 everybody should command, or that no one should be commanded, but that we obey or command our equals. It endeavors 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.

^a See Plutarch in the lives of Timoleon and Dio.

^b It was that of the Six Hundred, of whom mention is made by Diodorus.

^c Upon the expulsion of the tyrants, they made citizens of strangers and mercenary troops, which gave rise to civil wars.—Aristot. "Polit." lib. V. cap. iii.

The people having been the cause of the victory over the Athenians, the republic was changed.—Ibid. cap. iv. 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. VII. cap. iv.

4.—*Particular Cause of the Corruption of the People*

Great success, especially when chiefly owing to the people, intoxicates them to such a degree that it is impossible to contain them within bounds. Jealous of their magistrates, they soon become jealous likewise of the magistracy; enemies to those who govern, they soon prove enemies also to the constitution. Thus it was that the victory over the Persians in the straits of Salamis corrupted the republic of Athens;^d and thus the defeat of the Athenians ruined the republic of Syracuse.^e

Marseilles never experienced those great transitions from lowness to grandeur; this was owing to the prudent conduct of that republic, which always preserved her principles.

5.—*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 forms two of the most heterogeneous bodies in the world.

The extremity of corruption is when the power of the nobles becomes hereditary;^f for then they can hardly have any moderation. If they are only a few, their power is greater, but their security less: if they are a larger number, their power is less, and their security greater, insomuch that power goes on increasing, and security diminishing, up to the very despotic prince who is encircled with excess of power and danger.

The great number, therefore, of nobles in an hereditary aristocracy renders the government less violent: but as there is less virtue, they fall into a spirit of supineness and negligence, by which the state loses all its strength and activity.^g

^d Aristot. "Polit." lib. V. cap. iv.

^e Ibid.

^f The aristocracy is changed into an oligarchy.

^g Venice is one of those republics that has enacted the best laws for correcting the inconveniences of an hereditary aristocracy.

An aristocracy may maintain the full vigor 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.^k 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!

6.—Of the Corruption of the Principle of Monarchy

As democracies are subverted when the people despoil the senate, the magistrates, the judges of their functions, so monarchies are corrupted when the prince insensibly deprives societies or cities of their privileges. In the former case the multitude usurp the power, in the latter it is usurped by a single person.

"The destruction of the dynasties of Tsin and Soui," 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."ⁱ

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 shows 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 judgment.

Again, it is destroyed when the prince, directing everything entirely to himself, calls to the state his capital, the capital to his court, and the court to his own person.

^k Justin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no further emulation, they spent their revenues in feasts, frequentius cenam, quam castra viden-

tes. Then it was that the Macedonians emerged from obscurity, l. 6.

ⁱ Compilation of works made under the Mings, related by Father Du Halde.

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.

7.—*The same Subject continued*

The principle of monarchy is corrupted when the first dignities are marks of the first servitude, when the great men are deprived of public respect, and rendered the low tools of arbitrary power.

It is still more corrupted when honor is set up in contradiction to honors, and when men are capable of being loaded at the very same time with infamy ^j 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;^k and when he assumes that menacing and terrible air which Commodus ordered to be given to his statues.^l

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 shown 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?

8.—*Danger of the Corruption of the Principle of monarchical Government*

The danger is not when the state passes from one moderate to another moderate government, as from a republic to a mon-

^j During the reign of Tiberius statues were erected to, and triumphal ornaments conferred on, informers; which debased these honors to such a degree, that those who had really merited them disdained to accept them. Frag. of Dio, book LVIII., taken from the "Extract of Virtues and Vices," by Constantine Porphyrogenitus. 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 XIV. See likewise how the generals refused to serve, because they condemned the military honors: *pervulgatis triumphis insignibus*.—Tacit. "Annal." book XIII.

^k In this state the prince knew extremely well the principle of his government.

^l Herodian.

archy, or from a monarchy to a republic; but when it is precipitated 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.

9.—*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 II endeavored to tempt the French with the allurements of liberty, the crown was constantly supported by a nobility who think it an honor 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 endeavors 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 the highest glory bravely to die and to forgive.

10.—*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.

II.—*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 everything 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,^m put the magistrates to flight, and obliged them to return to a private life. This was supposed to be done in consequence of the law. One would have imagined that an institution of this nature, which established sedition to hinder the abuse of power, would have subverted any republic whatsoever; and yet it did not subvert that of Crete. The reason is this.ⁿ

When the ancients would cite a people that had the strongest affection for their country, they were sure to mention the inhabitants of Crete: "Our Country," said Plato,^o "a name so dear to the Cretans." They called it by a name which signifies the love of a mother for her children.^a Now the love of our country sets everything right.

The laws of Poland have likewise their Insurrection: but the inconveniences thence arising plainly show that the people of Crete alone were capable of using such a remedy with success.

The gymnastic exercises established among the Greeks had the same dependence on the goodness of the principle of government. "It was the Lacedæmonians and Cretans," said Plato,^b "that opened those celebrated academies which gave them so eminent a rank in the world. Modesty at first was alarmed;

^m Aristot. "Polit." book II. chap. 10.
ⁿ They always united immediately against foreign enemies, which was called "Syncretism."—Plut. "Mor." p. 88.

^o "Repub." lib. IX.
^a Plutarch's "Morals," treatise "whether a man advanced in years ought to meddle with public affairs."
^b "Repub." lib. V.

but it yielded to the public utility." In Plato's time these institutions were admirable: as they bore a relation to a very important object, which was the military art. But when virtue fled from Greece, the military art was destroyed by these institutions; people appeared then on the arena, not for improvement, but for debauch.^d

Plutarch informs us^e that the Romans in his time were of opinion that those games had been the principal cause of the slavery into which the Greeks had fallen. On the contrary, it was the slavery of the Greeks that corrupted those exercises. In Plutarch's time,^f 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.^g

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."

12.—*The same Subject continued*

In Rome the judges were chosen at first from the order of senators. This privilege the Gracchi transferred to the knights; Drusus gave it to the senators and knights; Sylla to the senators only: Cotta to the senators, knights, and public treasurers; Cæsar excluded the latter; Antony made decuries of senators, knights, and centurions.

When once a republic is corrupted, there is no possibility of remedying any of the growing evils, but by removing the corruption and restoring its lost principles; every other correction is either useless or a new evil. While Rome preserved her principles entire, the judicial power might without any abuse be lodged in the hands of senators; but as soon as this city became corrupt, to whatsoever body that power was transferred,

^c 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 ("Laws," book VII.). 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.*

^d "Aut libidinosæ."
Ladæas Lacedæmonis palæstras."

—Mart. lib. IV. ep. 55.
^e Plutarch's "Morals," in the treatise entitled "Questions concerning the affairs of the Romans."

^f *Ibid.*

^g *Ibid.*, Table propositions, book II.

to the consuls, that they would follow them into the field.^j 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.^k 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.

14.—*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^l that there was this inconvenience at Carthage in the second Punic war, that the senate had lost almost all its 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 burdensome; but still it was supported because there was more luxury than corruption. Claudius^m weakened its authority, by which means the corruption became greater than the luxury, and the censorship dwindled away of itself.ⁿ After various interruptions and resumptions, it was entirely laid aside, till it became altogether useless—that is, till the reigns of Augustus and Claudius.

^j "Livy," book III.

^k "The people here referred to were several young officers, who, in despair, proposed to retire, but were restrained by Scipio."—Crévier.

^l About a hundred years after.

^m See Book XI. chap. xii.

ⁿ See "Dio," book XXXVII. Cicero's life in Plutarch, Cicero to Atticus, book IV. letters 10 and 15. Asconius on Cicero, de divinatione.

15.—*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.

16.—*Distinctive Properties of a Republic*

It is natural for a republic to have only a small territory; otherwise it cannot long subsist. In an extensive republic there are men of large fortunes, and consequently of less moderation; there are trusts too considerable to be placed in any single subject; he has interests of his own; he soon begins to think that he may be happy and glorious, by oppressing his fellow-citizens; and that he may raise himself to grandeur on the ruins of his country.

In an extensive republic the public good is sacrificed to a thousand private views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen; abuses have less extent, and, of course, are less protected.

The long duration of the republic of Sparta was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty, glory.

It was the spirit of the Greek republics to be as contented with their territories as with their laws. Athens was first fired with ambition and gave it to Lacedæmon; but it was an ambition rather of commanding a free people than of governing slaves; rather of directing than of breaking the union. All was lost upon the starting up of monarchy—a government whose spirit is more turned to increase of dominion.

Excepting particular circumstances,^o 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 endeavor 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

^o As when a petty sovereign supports himself between two great powers by means of their mutual jealousy; but then he has only a precarious existence.

be easily crushed by a foreign or even a domestic force; the people might any 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.

17.—*Distinctive Properties of a Monarchy*

A monarchical state ought to be of 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 scarcely founded his empire when he was obliged to divide it; whether the governors of the provinces refused to obey; or whether, in order to keep them more under subjection, there was a necessity of parcelling the empire into several kingdoms.

After the decease of Alexander his empire was divided. How was it possible for those Greek and Macedonian chiefs, who were each of them free and independent, or commanders at least of the victorious bands dispersed throughout that vast extent of conquered land—how was it possible, I say, for them to obey?

Attila's empire was dissolved soon after his death; such a number of kings, who were no longer under restraint, could not resume their fetters.

The sudden establishment of unlimited power is a remedy which in those cases may prevent a dissolution: but how dreadful the remedy, which after the enlargement of dominion opens a new scene of misery!

The rivers hasten to mingle their waters with the sea; and monarchies lose themselves in despotic power.

18.—*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 de-

stroyed 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.^p

In Italy she maintained her ground, merely by exhausting herself and by enriching that country. For those who would have been pleased to have got rid of the King of Spain were not in a humor to refuse his gold.

19.—*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.

20.—*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.

21.—*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, honor, and virtue. Consequently I must have given an idle distinction in establishing the principles of the three governments.

^p See the "History of the United Provinces," by M. Le Clerc.

L. liberty: innumerable only political liberty
not just as liberty: 211 2 = liberalism abolition

BOOK XI

OF THE LAWS WHICH ESTABLISH POLITICAL LIBERTY WITH REGARD TO THE CONSTITUTION.

1.—*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.

2.—*Different Significations of the word Liberty*

There is no word that admits of more various significations, and has made more varied impressions on the human mind, than that of liberty. Some have taken it as a means of depositing 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 A certain nation for a long time thought liberty consisted in the privilege of wearing a long beard.^b Some have annexed this name to one form of government exclusive of others: those who had a republican taste applied it to this species of polity; those who liked a monarchical state gave it to monarchy.^c 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

^a "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 a free people."

^b The Russians could not bear that Czar Peter should make them cut it off.

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

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.

3.—*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,^d 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.

4.—*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 shows 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 that 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.

5.—*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

^d "Omnes legum servi sumus ut liberi esse possimus."—Cicero, "pro Cluentio," 53.

Sparta; religion, that of the Jewish laws; commerce, that of Marseilles; public tranquillity, that of the laws of China: navigation, that of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general, the pleasures of the prince, that of despotic states; that of monarchies, the prince's and the kingdom's glory; the independence of individuals is the end aimed at by the laws of Poland, thence results the oppression of the whole.^f

One nation there is also in the world that has for the direct end of its constitution political liberty. We shall presently examine the principles on which this liberty is founded; if they are sound, liberty will appear in its highest perfection.

To discover political liberty in a constitution, no great labor 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.

6.—Of the Constitution of England

In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same

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

^f Inconvenience of the "Liberum veto."

^g The greater part of the principles produced in this chapter by Montesquieu is derived from Locke's "Treatise upon Civil Government," xii.—Ed.

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 control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

X / There would be an end of everything, 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,^h 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 in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

The whole power is here united in one body; and though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

Hence it is that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting in their own persons all the branches of magistracy, and all the great offices of state.

I allow indeed that the mere hereditary aristocracy of the

of a right to imprison those subjects who can give security for their good behavior, there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime, in which case they are really free, being subject only to the power of the law.

But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it forever.

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 despotic.

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 neighbors 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.^j

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

^j See Aristotle, "Polit." III. cap. vii.

power of controlling the assembly; and, on the most urgent and pressing occasions, the wheels of government might be stopped by the caprice of a single person.

When the deputies, as Mr. Sidney well observes, represent a body of people, as in Holland, they ought to be accountable to their constituents; but it is a different thing in England, where they are deputed by boroughs.

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation as to be deemed to have no will of their own.

One great fault there was in most of the ancient republics, that the people had a right to active resolutions, such as require some execution, a thing of which they are absolutely incapable. They ought to have no share in the government but for the choosing of representatives, which is within their reach. For though few can tell the exact degree of men's capacities, yet there are none but are capable of knowing in general whether the person they choose is better qualified than most of his neighbors.

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 honors: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have, therefore, in the legislature ought to be proportioned to their other advantages in the state; which happens only when they form a body that has a right to check the licentiousness of the people, as the people have a right to oppose any encroachment of theirs.

The legislative power is therefore committed to the body of the nobles, and to that which represents the people, each having their assemblies and deliberations apart, each their separate views and interests.

Of the three powers above mentioned, 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 a hereditary power might be tempted to pursue its own particular interests, and forget those of the people, it is proper that where a singular advantage may be gained by corrupting the nobility, as in the laws relating to the supplies, they should have no other share in the legislation than the power of rejecting, and not that of resolving.

By the power of resolving I mean the right of ordaining by their own authority, or of amending what has been ordained by others. By the power of rejecting I would be understood to mean the right of annulling a resolution taken by another; which was the power of the tribunes at Rome. And though the person possessed of the privilege of rejecting may likewise have the right of approving, yet this approbation passes for no more than a declaration, that he intends to make no use of his privilege of rejecting, and is derived from that very privilege.

The executive power ought to be in the hands of a monarch, because this branch of government, having need of despatch, 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 then 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

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 intrusted 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 was to settle the subsidies, not from year to year, but forever, it would run the risk of losing its liberty, because the executive power would be no longer dependent; and when once it was possessed of such a perpetual right, it would be a matter of indifference whether it held it of itself or of another. The same may be said if it should come to a resolution of intrusting, not an annual, but a perpetual command of the fleets and armies to the executive power.

To prevent the executive power from being able to oppress, it is requisite that the armies with which it is intrusted should

consist of the people, and have the same spirit as the people, as was the case at Rome till the time of Marius. To obtain this end, there are only two ways, either that the persons employed in the army should have sufficient property to answer for their conduct to their fellow-subjects, and be enlisted only for a year, as was customary at Rome; or if there should be a standing army, composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortress should be suffered.

When once an army is established, it ought not to depend immediately on the legislative, but on the executive power; and this from the very nature of the thing, its business consisting more in action than in 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,"^a 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

^a De minoribus rebus principes consultant de majoribus omnes; ita tamen ut ea quoque quorum penes plebem

arbitrium est, apud principes pertractentur.

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 further.

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 inquired 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.

7.—Of the Monarchies we are acquainted with

The monarchies we are acquainted with have not, like that we have been speaking of, liberty for their direct view: the only aim is the glory of the subject, of the state, and of the sovereign. But hence there results a spirit of liberty, which in those states is capable of achieving as great things, and of contributing as much, perhaps, to happiness, as liberty itself.

Here the three powers are not distributed and founded on the model of the constitution above mentioned; they have each a particular distribution, according to which they border more or less on political liberty; and if they did not border upon it, monarchy would degenerate into despotic government.

8.—Why the Ancients had not a clear Idea of Monarchy

Aristocracy
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 govern-

Liberty: a) = Distribution of powers
b) = Security = freedom for many reasons
= habeas corpus
as. false imprisonment.

BOOK XII

OF THE LAWS THAT FORM POLITICAL LIBERTY, IN RELATION TO THE SUBJECT

1.—*Idea of this Book*

IT is not sufficient to have treated of political liberty in relation 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.

Further, 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.

2.—*Of the Liberty of the Subject*

Philosophic 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 ^a 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 Tullius pronounced sentence against the children of Ancus Martius, who were charged with having assassinated the king, his father-in-law.^b Under the first kings of France, Clotarius made a law,^c that nobody should be condemned without being heard; which shows 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.^d When the subject has no fence to secure his innocence, he has none for his liberty.

The knowledge already acquired in some countries, or that may be hereafter attained in others, concerning the surest rules to be observed in criminal judgments, 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 pasha enjoys in Turkey.

3.—*The same Subject continued*

Those laws which condemn a man to death on the deposition of a single witness are fatal to liberty. In reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must decline the scale.

The Greeks ^e and Romans ^f required one voice more to condemn: but our French laws insist upon two. The Greeks pre-

^a "Polit." book II.

^b Tarquinius Priscus. See Dionys. Halicarn. book IV.

^c As early as the year 560.

^d Aristot. "Polit." book II. chap. xii.

He gave his laws at Thurium in the 84th Olympiad.

^e See Aristid. Orat. "in Minervam."

^f Dionys. Halicarn. on the Judgment of Coriolanus, book VII.

tend that their custom was established by the gods;^g but this more justly may be said of ours.^h

4.—*That Liberty is favored by the Nature and Proportion of Punishments*

Liberty is in perfection when criminal laws derive each punishment from the particular nature of the crime. There are then no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.

There are four sorts of crimes. Those of the first species are prejudicial to religion, the second to morals, the third to the public tranquillity, 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 tranquillity 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,ⁱ 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 tranquillity 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 between 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.

^g Minervæ calculus.

^h Voltaire declares that it is England, and not France, that is deserving of this high praise; for it is in the former that the juries must agree in order to condemn a man.—Ed.

ⁱ St. Louis 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 honor 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 *j* 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 flayed 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 honor of the blessed Virgin. I do not here choose to anticipate the reflections of the reader.

The second class consists of those crimes which are prejudicial to morals. Such is the violation of public or private continence, that is, of the police directing the manner in which the pleasure annexed to the conjunction of the sexes is to be enjoyed. The punishment of those crimes ought to be also derived from the nature of the thing; the privation of such advantages as society has attached to the purity of morals, fines, shame, necessity of concealment, public infamy, expulsion from home and society, and, in fine, all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect these things are less founded on malice than on carelessness and self-neglect.

We speak here of none but crimes which relate merely to morals, for as to those that are also prejudicial to the public security, such as rapes, they belong to the fourth species.

The crimes of the third class are those which disturb the public tranquillity. The punishments ought therefore to be derived from the nature of the thing, and to be in relation to this tranquillity; 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 tranquillity 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 men's 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 favorable to the liberty of the subject.

5.—*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 exceptional 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.

6.—Of the Crime against Nature = 6:10

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 in no way 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,^a "published a law against this crime; he ordered an inquiry to be made not only against those who were guilty of it, after the enacting of that law, but even before. The deposition of a single witness, sometimes of a child, sometimes of a slave, was sufficient, especially against such as were rich, and against those of the green faction."

It is very odd that these three crimes, witchcraft, heresy, and that against nature, of which the first might easily be proved not to exist; the second to be susceptible of an infinite number of distinctions, interpretations, and limitations; the third to be often obscure and uncertain—it is very odd, I say, that these three crimes should amongst us be punished with fire. //

I may venture to affirm that the crime against nature will never make any great progress in society unless people are prompted to it by some particular custom, as among the Greeks, where the youths of that country performed all their exercises naked; as amongst us, where domestic education is disused; as amongst 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

by the politeness it procures, inspiring us with a taste of the world, and, above all, for the conversation of the fair sex.

Let them leave us as we are; our indiscretions joined to our good nature would make the laws which should constrain our sociability not at all proper for us.

7.—*Of the Athenians and Lacedæmonians*

The Athenians, this gentleman adds, were a nation that had some relation to ours. They mingled gayety 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 character of the Spartans was one of gravity, seriousness, severity, and silence. It would have been as difficult to bring over an Athenian by teasing as it would a Spartan by diverting him.

8.—*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 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 fashion is a subject of importance; by encouraging a trifling turn of mind, it continually increases the branches of its commerce.^a

9.—*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 everything—in fine, the

^a Fable of the Bees.

destruction of the nations which have happened to fall under their government, as well as of their own. Laziness is the effect of pride; *i* labor, a consequence of vanity. The pride of a Spaniard leads him to decline labor; the vanity of a Frenchman to work better than others.

All lazy nations are grave; for those who do not labor 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 *j* 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 dishonored if they carried it themselves.

In many places people let their nails grow, that all may see they do not work.

Women in the Indies *k* believe it shameful for them to learn to read: this is, they say, the business of their slaves, who sing canticles in the pagodas. 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.

10.—*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 whence great evils arise—evils which one would not suspect.

The Spaniards have been in all ages famous for their hon-

i The people who follow the khan of Malacamber, those of Carnataca and Coromandel, are proud and indolent; they consume little, because they are miserably poor; while the subjects of the Mogul and the people of Hindostan employ themselves, and enjoy the con-

veniences of life, like the Europeans.—
"Collection of Voyages for the Establishment of an India Company," vol. i. p. 54.

j See Dampier, vol. iii.
k "Edifying Letters," 12th collect. p. 80.

26.—*The same Subject continued*

The law of Theodosius and Valentinian ⁿ drew the causes of repudiation from the ancient manners and customs of the Romans.^o It placed in the number of these causes the behavior of the husband who beat his wife ^p in a manner that disgraced the character of a free-born woman. This cause was omitted in the following laws: ^q 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.

27.—*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 ^r of a free people, and have given the principles of their constitution: let us now see the effects which follow from this liberty, the character it is capable of forming, and the customs which naturally result from it.

I do not deny that the climate may have produced a 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 show an equal affection to both.

And as the executive power, by disposing of all employ-

ⁿ Leg. 8 cod. "de Repudiis."

^o And the law of the Twelve Tables.

See Cicero's ad "Philippic."

^p "Si verberibus quæ ingenuis alieni sunt, afflictiorem probaverit."

^q In Nov. 117, cap. xiv.

^r Chap. vi.

ments, may give great hopes, and no fears, every man who obtains any favor 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 honors, appear in their 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 humor, frequently changes parties; he abandons one where he left all his friends, to unite himself to another in which he finds all his enemies: so that in this nation it frequently happens that the people forget the laws of friendship, as well as those of hatred.

The sovereign is here in the same case with a private person; and against the ordinary maxims of prudence is frequently obliged to give his confidence to those who have most offended him, and to disgrace the men who have best served him: he does that by necessity which other princes do by choice.

As we are afraid of being deprived of the blessing we already enjoy, and which may be disguised and misrepresented to us; and as fear always enlarges objects, the people are uneasy under such a situation, and believe themselves in danger, even in those moments when they are most secure.

As those who with the greatest warmth oppose the executive power dare not avow the self-interested motives of their opposition, so much the more do they increase the terrors of the people, who can never be certain whether they are in danger or not. But even this contributes to make them avoid the real dangers, to which they may, in the end, be exposed.

But the legislative body having the confidence of the people,

and being more enlightened than they, may calm their uneasiness, and make them recover from the bad impressions they have entertained.

This is the great advantage which this government has over the ancient democracies, in which the people had an immediate power; for when they were moved and agitated by the orators, these agitations always produced their effect.

But when an impression of terror has no certain object, it produces only clamor and abuse; it has, however, this good effect, that it puts all the springs of government into motion, and fixes the attention of every citizen. But if it arises from a violation of the fundamental laws, it is sullen, cruel, and produces the most dreadful catastrophes.

Soon we should see a frightful calm, during which everyone 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 favor 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 consist 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 enterprises contrary to their true interest.

This nation is passionately fond of liberty, because this lib-

The Spirit of the Laws

VOLUME TWO

1. *Divine law = relation between God & man (God); cannot change because God does not change*
2. *Human law = relation between man & man; changeable.*
3. *Natural law; preserves human nature (family)*
civil law: human & common worldly (inheritance, etc.)
(natural law = self preservation in the world (law))
3. *natural & canon law: eg. natural law under religious precepts (?)*

BOOK XXVI

OF LAWS IN RELATION TO THE ORDER OF THINGS WHICH THEY DETERMINE

1.—*Idea of this Book*

MEN are governed by several kinds of laws; by the law of nature; by the divine law, which is that of religion; by ecclesiastical, otherwise called canon law, which is that of religious polity; by the law of nations, which may be considered as the civil law of the whole globe, in which sense every nation is a citizen; by the general political law, which relates to that human wisdom whence all societies derive their origin; by the particular political law, the object of which is each society; by the law of conquest founded on this, that one nation has been willing and able, or has had a right to offer violence to another; by the civil law of every society, by which a citizen may defend his possessions and his life against the attacks of any other citizen; in fine, by domestic law, which proceeds from a society's being divided into several families, all which have need of a particular government.

There are therefore different orders of laws, and the sublimity of human reason consists in perfectly knowing to which of these orders the things that are to be determined ought to have a principal relation, and not to throw into confusion those principles which should govern mankind.

2.—*Of Laws divine and human*

We ought not to decide by divine laws what should be decided by human laws; nor determine by human what should be determined by divine laws.

These two sorts of laws differ in their origin, in their object, and in their nature.

It is universally acknowledged, that human laws are, in their

not own him; but it cannot be approved with respect to the third, where the father had only violated a civil institution.

6.—*That the Order of succession or Inheritance depends on the Principles of political or civil Law, and not on those of the Law of Nature*

The Voconian law ordained that no woman should be left heirless to an estate, not even if she had an only child. Never was there a law, says St. Augustine, more unjust.^j A formula of Marculfus treats that custom as impious which deprives daughters of the right of succeeding to the estate of their fathers.^k Justinian gives the appellation of barbarous to the right which the males had formerly of succeeding in prejudice to the daughters.^l These notions proceeded from their having considered the right of children to succeed to their father's possessions as a consequence of the law of nature; which it is not.

The law of nature ordains that fathers shall provide for their children; but it does not oblige them to make them their heirs. The division of property, the laws of this division, and the succession after the death of the person who has had this division can be regulated only by the community, and consequently by political or civil laws.

True it is, that a political or civil order frequently demands that children should succeed to their father's estate; but it does not always make this necessary.

There may be some reasons given why the laws of our fiefs appoint that the eldest of the males, or the nearest relatives of the male side, should have all, and the females nothing, and why, by the laws of the Lombards,^m the sisters, the natural children, the other relatives; and, in their default, the treasury might share the inheritance with the daughters.

It was regulated in some of the dynasties of China, that the brothers of the emperor should succeed to the throne, and that the children should not. If they were willing that the prince should have a certain degree of experience, if they feared his being too young, and if it had become necessary to prevent eunuchs from placing children successively on the throne, they might very justly establish a like order of succession, and when some

^j "De Civitate Dei," lib. IV.
^k Lib. II. cap. xii.

^l "Novell." 21.
^m Lib. II. tit. 14, sec. 6, 7, and 8.

writers have treated these brothers as usurpers, they have judged only by ideas received from the laws of their own countries.ⁿ

According to the custom of Numidia,^o Desalces, brother of Gala, succeeded to the kingdom, not Massinissa, his son. And even to this day, among the Arabs in Barbary, where each village has its chief, they adhere to this ancient custom, by choosing the uncle, or some other relative to succeed.^p

There are monarchies merely elective; and since it is evident that the order of succession ought to be derived from the political or civil laws, it is for these to decide in what cases it is agreeable to reason that the succession be granted to children, and in what cases it ought to be given to others.

In countries where polygamy is established, the prince has many children; and the number of them is much greater in some of these countries than in others. There are states *q* where it is impossible for the people to maintain the children of the king; they might therefore make it a law that the crown shall devolve, not on the king's children, but on those of his sister.

A prodigious number of children would expose the state to the most dreadful civil wars. The order of succession which gives the crown to the children of the sister, the number of whom is not larger than those of a prince who has only one wife, must prevent these inconveniences.

There are people among whom reasons of state, or some maxims of religion, have made it necessary that the crown should be always fixed in a certain family: hence, in India, proceeds the jealousy of their tribes,^r and the fear of losing the descent; they have there conceived that never to want princes of the blood royal, they ought to take the children of the eldest sister of the king.

A general maxim: it is an obligation of the law of nature to provide for our children; but to make them our successors is an obligation of the civil or political law. Hence are derived the different regulations with respect to bastards in the different countries of the world; these are according to the civil or political laws of each country.

ⁿ Du Halde "on the Second Dynasty."

^o Livy, decad. 3. lib. VI.

^p Shaw's "Travels," vol. i. p. 402.

^q See the "Collection of Voyages that contributed to the establishment of an East India Company," vol. iv. part I.

p. 114. And Mr. Smith's "Voyage to Guinea," part II. p. 150, concerning the kingdom of Judia.

^r See "Edifying Letters," Let. 14. and the "Voyages that contributed to the establishment of an East India Company," vol. iii. part II. p. 644.

7.—*That we ought not to decide by the Precepts of Religion what belongs only to the Law of Nature*

The Abyssinians have a most severe fast of fifty days, which weakens them to such a degree, that for a long time they are incapable of business: the Turks do not fail to attack them after their Lent.^s Religion ought, in favor of the natural right of self-defence, to set bounds to these customs.

The Jews were obliged to keep the Sabbath; but it was an instance of great stupidity in this nation not to defend themselves when their enemies chose to attack them on this day.^t

Cambyzes laying siege to Pelusium, set in the first rank a great number of those animals which the Egyptians regarded as sacred; the consequence was, that the soldiers of the garrison durst not molest them. Who does not see that self-defence is a duty superior to every precept?

8.—*That we ought not to regulate by the Principles of the canon Law Things which should be regulated by those of the civil Law*

By the civil law of the Romans ^u he who took a thing privately from a sacred place was punished only for the guilt of theft; by the canon law, he was punished for the crime of sacrilege.^v The canon law takes cognizance of the place; the civil laws of the fact. But to attend only to the place is neither to reflect on the nature and definition of a theft, nor on the nature and definition of sacrilege.

As the husband may demand a separation by reason of the infidelity of his wife, the wife might formerly demand it, on account of the infidelity of the husband.^w This custom, contrary to a regulation made in the Roman laws,^x was introduced into the ecclesiastic court,^y where nothing was regarded but the maxims of canon law; and indeed, if we consider marriage as a thing merely spiritual, and as relating only to the things of another life, the violation is in both cases the same, but the political and civil laws of almost all nations have, with reason, made a distinction

^s "Collection of Voyages that contributed to the establishment of an East India Company," vol. iv. pp. 35 and 103.

^t As they did when Pompey besieged the Temple. Dio. XXXVI.—Ed.

^u Leg. ff. "ad leg. Juliam peculatus."

^v Capite quisquis 17, questione 4.

^w "Cujas" observat. lib. XIII. cap. xix. tom. iii.

^x Beaumanoir "on the ancient customs of Beauvoisis," chap. xviii.

^y Law of the first Code, "ad leg. Juliam de adulteriis."

^z At present they do not take cognizance of these things in France.