NF.1183.c.13.

THE SPIRIT OF LAWS.

IN TWO VOLUMES.

Translated from the French of

M. DE SECONDAT,

BARON DE MONTESQUIEU.

VOLUME THE FIRST.

——Prolem ſine matre creatam.

THE TENTH EDITION.

LONDON:

Printed for S. CROWDER, C. WARE, and T. PAYNE.

M.DCC.LXXIII.

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AN

ACCOUNT

OF THE

LIFE AND WRITINGS

OF THE

AUTHOR:

Extracted from *Eloge de M. de* MONTESQUIEU, *par M. de* MAUPERTUIS, late Preſident of the Royal Academy at Berlin.

M. MONTESQUIEU was born in the year 1689, in the Chateau de la Brede, within three leagues of Bourdeaux, of an ancient and noble family. He applied himſelf almoſt from his infancy to the ſtudy of civil law. The firſt product of his early genius was a work, in which he undertook to prove, that the idolatry of moſt part of the Pagans did not deſerve eternal puniſhment. But this book his prudence thought fit to ſuppreſs. In 1714 he was made counſellor of the parliament of Bourdeaux, and in 1716 preſident à mortier. In this year he was alſo created a member of the new-founded academy of the ſame city. In 1725 he opened the parliament with a ſpeech, the depth and eloquence of which were convincing proofs of his great abilities as an orator. The year following he quitted his charge, which in ſo excellent a magiſtrate would have been inexcuſable, if, in ceaſing to execute the law, he had not put it in his power to render the law itſelf more perfect.

In 1728 he offered himſelf a candidate for a ſeat in the *Academie François*, to which his *Lettres Perſannes* (publiſhed in 1721) ſeemed to give him a ſufficient title: yet ſome rather too bold ſtrokes in that work,

together with the great circumſpection of that ſociety, rendered the matter dubious. Cardinal Fleury, alarmed with what he had heard concerning theſe letters, wrote to let the academy know, that the king would not have them admit the author, unleſs he thought proper to diſavow the book. M. MONTESQUIEU declared that he had never owned himſelf to be the author of it, but that he ſhould never diſavow it. The Cardinal read the *Lettres Perſannes*, found them more agreeeable than dangerous, and MONTESQUIEU was admitted.

When he left France, he accompanied his intimate friend, Lord Waldgrave, in his embaſſy to Vienna; and, after ſeeing alſo Hungary, Italy, Switzerland, and Holland, he ended his tour in Great Britain; where, meditating upon the ſpring of that government, in which, ſays M. Maupertuis, ſo many ſeemingly incongruous advantages are united, he found all the materials that were wanting to complete the great works which lay wrapped in his imagination.

No ſooner was he returned to France, than he retired to La Brede, where, for the ſpace of two whole years, ſeeing nothing but books and trees, he wrote his Conſiderations on the cauſes of the grandeur and decline of the Roman empire, which was publiſhed in 1733. To this work he deſigned to have added a book on the Engliſh government; but this moſt excellent treatiſe has ſince found a more proper place in his *Eſprit des Loix*, with which he obliged the world in the year 1748. The preceding works of M. MONTESQUIEU may be regarded as ſo many ſteps leading up to this great temple which he erected to the felicity of mankind. From the firſt page to the laſt of this book, the nature of M. MONTESQUIEU's ſoul is diſtinctly viſible; his great love of mankind, his deſire for their happineſs, and his ſentiments of liberty. His picture of Aſiatic deſpotiſm, of that horrid government where one ſees but one lord, and all the reſt in ſlavery, is one of the beſt preſervatives from ſuch an evil. The ſame wiſdom appears in his advice how to guard againſt the evils that may ariſe from too extenſive an equality

The *Dialogue between Sylla and Eucrates, Lysimaque, and the Temple de Gnyde*, were also written by M. MONTESQUIEU, and, though of a different kind, do not less indicate their author, than his more profound compositions. They prove to us that wisdom is no enemy to mirth.

The same candour which distinguished M. MONTESQUIEU in his writings, was also his characteristic in his conversation with the world. He was the same man, viewed in all lights. He appears even, if possible, more extraordinary, when we consider him as a member of society, than as an author. Profound, sublime, in his simplicity, he charmed, instructed, and never offended. I myself, says M. Maupertuis, having had the happiness to frequent those societies of which he was a member, have been frequent witness of the impatience with which he was always expected, and the universal joy that appeared on his arrival. The modesty and openness of his mien bore great resemblance to his conversation. He was well-proportioned; and, though he had almost entirely lost the sight of one eye, yet that defect was scarce observable.

He was extremely negligent of his dress, despising every thing that went beyond being decent. His cloaths were always of the plainest kind, without any ornament of gold or silver. The same simplicity reigned at his table, and in every other part of his œconomy. His paternal estate he left, as he found it, neither encreased nor diminished. On the 10th of Feb. 1755, he died, as he had lived, without either ostentation or pusillanimity, acquitting himself of every duty with the greatest decency. During his indisposition his house was incessantly crouded with people of the first distinction in France, and such as were most deserving of his friendship. The Duchess d'Aiguillon, who will permit me to mention her name upon this occasion, (M. MONTESQUIEU's memory would lose too much were I not to name her), scarce ever left him a moment; she received his last sighs. It was in her house that I first saw him, and there began the friendship that hath afforded me so much

delight. To this lady I am alſo indebted for theſe circumſtances of his death. The ſweetneſs of his diſpoſition, ſhe tells me, continued to his very laſt moment. Not a ſingle complaint eſcaped his lips, nor even the leaſt ſign of impatience. Theſe were his words to thoſe that ſtood around him: *I always paid great reſpect to religion: The morality of the goſpel is a moſt excellent thing, and the moſt valuable preſent that could poſſibly have been received by man from his Creator.* The Jeſuits, who were near him, preſſing him to deliver up his corrections of the *Lettres Perſannes*, " he gave to " me," adds the Ducheſs, " and to Madame du Pré, " his manuſcript, with theſe words.——*I will ſacri-* " *fice every thing to reaſon and religion: conſult with* " *my friends, and decide whether this ought to appear.* " He had a pleaſure in the preſence of his friends, " and, as often as an interval of eaſe would permit, " he would join the converſation. *His ſituation*, he " told me, *was cruel, but not without many cauſes of* " *conſolation*; ſo ſenſible was he of the public con- " cern, and the affection of his friends. Myſelf and " Madame du Pré were his attendants almoſt day " and night; the Duke de Nivernois, M. de Bucley, " the family of Fitzjames, the Chevalier de Jeau- " court, &c. In ſhort, the houſe was always full, " and even the ſtreet was ſcarce paſſable. But all our " care and anxiety was as ineffectual as the ſkill of " his phyſicians. He died the thirteenth day of his " illneſs, of an inflammatory fever, which had ſeized " every part of him."

M. MONTESQUIEU was married in 1715 to Jeanne de Lartigue, daughter to Pierre de Lartigue, Lieutenant-Colonel of the regiment de Maulevrier. By this lady he had a ſon and two daughters. His ſon M. de Secondat, diſtinguiſhed for his phyſical and mathematical knowledge, was named to fill his father's place in the academy of Berlin, of which the father had been admitted a member in 1746.

PREFACE.

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

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

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

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

When I have been obliged to look back into antiquity, I have endeavoured to aſſume the ſpirit of the ancients, leſt I ſhould conſider thoſe things as alike, which are really different; and leſt I ſhould miſs the difference of thoſe which appear to be 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 characteriſe the works of the preſent age. When things are examined with ever ſo ſmall a degree of extent, the fallies of imagination muſt vaniſh; theſe generaly ariſe from the mind's collecting all its powers to view only one ſide of the ſubject, while it leaves the other unobſerved.

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

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

Could I but ſucceed ſo as to afford new reaſons to every man to love his duty, his prince, his country, his laws; new reaſons to render him more ſenſible in

every nation and government of the bleſſings he enjoys, I ſhould think myſelf the moſt happy of mortals.

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

The moſt happy of mortals I ſhould 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 thing, but whatever renders them ignorant of themſelves.

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

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

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

* "Ludibria ventis."

† "Bis patriæ cecidere manus."——

great men, both in France and Germany, have wrote before me, I have been loſt in admiration but I have not loſt my courage: I have ſaid with Corregio, "And I alſo am a painter ‡."

‡ Ed io anche ſon pittore.

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THE

SPIRIT

OF

LAWS.

BOOK I.

Of Laws in general.

CHAP. I.

Of Laws as they relate to different beings.

LAWS, in their moſt general ſignification, are the neceſſary relations reſulting from the nature of things. In this ſenſe all beings have their laws, the Deity has * his laws, the material world its laws, the intelligences ſuperior to man have their laws, the beaſts their laws, man his laws.

Thoſe who aſſert, that a "blind fatality produced "the various effects we behold in this world," are guilty of a very great abſurdity; for can any thing be more abſurd, than to pretend that a blind fatality could be productive of intelligent beings!

* The law, ſays Plutarch, is queen of the Gods and men. See his treatiſe entitled, "The neceſſity of a prince being a "man of learning."

There is then a primitive reaſon; and laws are the relations which ſubſiſt between it and different beings, and the relations of theſe beings among themſelves.

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

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

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

Theſe rules are a fixed and invariable relation between two bodies moved. According to the relations of the quantity of matter and velocity, all the motions are received, augmented, diminiſhed, loſt; 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 intelligent beings exiſted, they were poſſible; they had therefore poſſible relations, and conſequently poſſible laws. Before laws were made, there were relations of poſſible juſtice. To ſay that there is nothing juſt or unjuſt but what is commanded or forbidden by poſitive laws, is the ſame as ſaying that, before the deſcribing of a circle, all the radii were not equal.

We muſt therefore acknowledge relations of juſtice, antecedent to the poſitive law by which they are eſtabliſhed: as for inſtance, that if human ſocieties exiſted, it would be right to conform to their laws; if there were intelligent beings that had received a bene-

fit of another being, they ought to be grateful; 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 merits a retaliation of the injury, 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 in their own nature are invariable, yet it does not conform to them ſo exactly as the phyſical world. This is becauſe, on the one hand, particular intelligent beings are of a finite nature, and conſequently liable to error; and, on the other, their nature requires them to be free agents. Hence they do not ſteadily conform to their primitive laws; and even thoſe of their own inſtituting they frequently infringe.

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

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

Brutes are deprived of the high advantages we enjoy; but they have ſome which we want. They have not our hopes, but they are without our fears; they are ſubject like us to death, but without knowing it; moſt of them are even 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, go-

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

CHAP. II.

Of the Laws of Nature.

PRIOR to all thoſe laws are thoſe of nature, ſo called, becauſe they derive their force entirely from our frame and being. 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 by imprinting on our minds the idea of a Creator inclines us to him, is the firſt in importance, though not in order, of natural laws. Man, in a ſtate of nature, would poſſeſs the faculty of knowing, before he had enjoyed any acquired knowledge. It is evident that his firſt ideas would not be of a ſpeculative nature; he would think of the preſervation of his being, before he would inveſtigate its original. Such a man would feel nothing in himſelf at firſt but impotency and weakneſs; his fears and apprehenſions would be exceſſive; as appears from inſtances (were there any neceſſity of proving it) of

ſavages found in foreſts, trembling at the motion of a leaf, and flying from every ſhadow *.

In this ſtate every man would fancy himſelf inferior; ſcarcely would he think of his being equal. 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 that would occur to human underſtandings.

Hobbes inquires, "For what reaſon do men go "armed, and ſecure their doors with locks and keys, "if they be not naturally in a ſtate of war? But is it not obvious, that he attributes to men before the eſtabliſhment of ſociety, what can happen only 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 diſcover that of his wants. Hence another law of nature would prompt him to ſeek for nouriſhment.

Fear, I have obſerved, would incline men to ſhun one another; but the marks of this fear being reciprocal, would ſoon induce 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 different ſexes would enhance this pleaſure, and the natural inclination they have for each other would form a third law.

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

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

CHAP. III.

Of poſitive Laws.

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

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

Theſe two different kinds of hoſtile ſtates give riſe to human laws. As inhabitants of ſo great a planet, which neceſſarily implies a variety of nations, they have laws relative to their mutual intercourſe, which is what we call the LAW OF NATIONS. As members of a ſociety that muſt be properly ſupported, they have laws relative to the governors and the governed; and this we call POLITICAL LAW. They have alſo another ſort of laws relating to the mutual communication of citizens: 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 harm as poſſible, without prejudicing their real intereſts.

The object of war is victory; victory aims at conqueſt; conqueſt at 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 misfortune attending their law of nations is, that it is not founded on true principles.

Beſides the law of nations relating to all ſocieties, there is a POLITICAL LAW for each particularly conſidered. No ſociety can ſubſiſt without a form of government. "The conjunction of the particular "forces of individuals," as Gravina well obſerves, "conſtitutes what we call the POLITICAL STATE."

The general force may be in the hands of a ſingle perſon, or of many. Some think that nature having eſtabliſhed paternal authority, the government of a ſingle perſon was moſt conformable to Nature. But the example of paternal authority proves nothing. For if the power of a father is relative to a ſingle government, that of brothers after the death of a father, or that of couſin germans after the deceaſe of brothers, are relative 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 whoſe particular conſtitution beſt agrees with the humour and diſpoſition of the people in whoſe favour it is eſtabliſhed.

The particular force of individuals cannot be united without a concurrence 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 this human reaſon is applied.

They ſhould be adapted in ſuch a manner to the people for whom they are framed, as to render it very unlikely for thoſe of one nation to be proper for another.

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

They ſhould be adapted to the climate of each country, to the quality of the ſoil, to its ſituation and extent, to the manner of living of the natives, whether huſbandmen, huntſmen, or ſhepherds; they ſhould

have a relation to the degree of liberty which the conſtitution will bear; to the religion of the inhabitants, to their inclinations, riches, number, commerce, manners, and cuſtoms. In fine, they have relations to each other, as alſo to their origin, to the intent of the legiſlator, and to the order of things on which they are eſtabliſhed; in all which different lights they ought to be conſidered.

This is what I have undertaken to perform in the following work. Theſe relations I ſhall examine, ſince all theſe together form what I call the SPIRIT OF LAWS.

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

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

BOOK II.

Of Laws directly derived from the Nature of Government.

CHAP. I.

Of the nature of the three different governments.

THERE are three ſpecies of government; the 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: A mo- " narchical, that in which a ſingle perſon governs by " fixed and eſtabliſhed laws: A deſpotic government, " that in which a ſingle perſon, without law and " without rule, directs every thing by his own will " and caprice."

This is what I call the nature of each government; we muſt examine now which are thoſe laws that follow this nature directly, and conſequently are the firſt fundamental laws.

CHAP. II.

Of the republican government, and the laws relative to Democracy.

WHEN the body of the people in a republic are poſſeſſed of the ſupreme power, this is called a Democracy. When the ſupreme power is lodged in the hand 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.

They can no way exerciſe 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. In fact, it is as important to regulate in a republic in what manner, by whom, to whom, and concerning what, ſuffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern.

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

* Declam. 17. & 28.

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

The people in whom the ſupreme power reſides ought to do of themſelves whatever conveniently they can; and what they themſelves cannot rightly perform, they muſt do by their miniſters.

The miniſters are not properly theirs, unleſs they have the nomination of them; it is therefore a fundamental maxim in this government, That the people ſhould chuſe their miniſters; that is, their magiſtrates.

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

The people are extremely well qualified for chuſing thoſe whom they are to entruſt with a part of their authority. They have only to be determined by circumſtances which they cannot be ſtrangers to, and by facts that are obvious to ſenſe. They can tell when a perſon has been in ſeveral engagements, and has had particular ſucceſs; they are therefore very capable of electing a general. They can tell

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

when a judge is aſſiduous in his office, when he gives general ſatisfaction, and has never been charged with bribery; this is ſufficient for chuſing a prætor. They are ſtruck with the magnificence or riches of a fellow-citizen; this is as much as is requiſite for electing an ædile. Theſe are all facts of which they can have better information in a public forum, than a monarch in his palace. But are they able to manage an intricate affair, to find out and make a proper uſe of places, occaſions, moments? No, this is beyond their capacity.

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

We know, that tho' the people of Rome aſſumed to themſelves the right of raiſing plebeians to public offices, yet they could not reſolve to chuſe them; and though at Athens the magiſtrates were allowed by the law of Ariſtides to be elected from all the different claſſes of inhabitants, yet there never was a caſe, ſays Xenophon *, that the common people petitioned for employments that could endanger their ſecurity or glory.

As moſt citizens have a capacity of chuſing, though they are not ſufficiently qualified to be choſen, ſo the people, though capable of calling others to an account for their adminiſtration, are incapable of 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

* P. 691 and 692. edit. Wechel. anno 1596.

diviſion, that great legiſlators have ſignalized themſelves; and it is on this the duration and proſperity of democracy have always depended.

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

Solon divided the people of Athens into four claſſes. In this he was directed by the ſpirit of democracy, his intention not being to fix thoſe who were to chuſe, but thoſe who were capable of being choſen; wherefore, leaving to each citizen the right of election, he made the judges ‖ eligible from each of thoſe four claſſes; but the magiſtrates he ordered to be choſen only out of the three firſt, which conſiſted of citizens of eaſy fortunes.

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

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

The ſuffrage by lot is a method of electing that offends no one; it allows each citizen to entertain reaſonable hopes of ſerving his country.

† Lib. i.

‡ Lib. iv. art. 15 et ſeq. edit. Wechel. Pollux, lib. viii. cap. 10. art. 130.

* See in the Conſiderations on the Cauſes of the Grandeur and Decline of the Romans, chap. ix. how this ſpirit of Servius Tullius was preſerved in the republic.

‖ Dionyſius Halicar. elog. of Isocrates, p. 97. tome 2.

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

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

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

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

The law which determines the manner of giving the ſuffrages is likewiſe fundamental in a democracy. It is a queſtion of ſome importance, whether the ſuffrages ought to be public or ſecret? Cicero obſerves ‡, that the laws ‖ which rendered them ſecret towards the cloſe of the republic were the cauſe of its decline. But as this is differently practiſed in different republics, I ſhall offer here my thoughts concerning this ſubject.

The people's ſuffrages ought doubtleſs to be pu-

* See the oration of Demoſthenes *de falſa legat.* and the oration againſt Timarchus

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

‡ Lib. 1. et 3. de leg.

‖ They were called *leges tabulares*; two tables were preſented to each citizen; the firſt marked with an *A* for *Antiqua* or, "I forbid it;" and the other with an *U* and *R* for *Uti Rogas*, or, "Be it as you deſire."

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

Intriguing in a ſenate is dangerous; dangerous it is alſo in a body of nobles, but not ſo in the people, whoſe nature it is to act through paſſion In countries where they have no ſhare in the government, we often ſee them as much inflamed on the account of an actor, as ever they could be for any concern of the ſtate. The misfortune of a republic is, when intrigues ceaſe; and this happens when the people are corrupted by dint of money; in which caſe they grow indifferent to public concerns, and paſſionately deſirous of lucre. Careleſs of the government, and of every thing belonging to it, they quietly wait for their ſalary.

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

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

* As at Venice.

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

‡ See Dion. Halicar lib 4 and 9.

CHAP. III.

Of the laws relative to the nature of Ariſtocracy.

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

They do not vote here by lot; for this would be attended only with inconveniencies. In fact, in a government where the moſt diſtinctions are already eſtabliſhed, though they were to vote by lot, ſtill they would not ceaſe to be odious; it is the nobleman they envy, and not the magiſtrate.

When the nobility are numerous, there muſt be a ſenate to regulate the affairs which the body of nobles are incapable of deciding, and to prepare thoſe they decide. 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 nothing at all.

It would be a very happy thing in an ariſtocracy, if by ſome indirect method the people could be emancipated from their ſtate of annihilation. Thus at Genoa the bank of St George, being adminiſtered by the people, gives them a certain influence in the government, from whence their whole proſperity ariſes.

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

An exorbitant authority ſuddenly conferred upon

* They were named at firſt by the Conſuls.

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

There is an exception to this rule when the conſtitution is ſuch as to have immediate need of a magiſtrate inveſted with an exorbitant power. Such was Rome with her dictators; ſuch is Venice with her ſtate-inquiſitors; theſe are formidable magiſtrates, who reſtore, as it were by violence, the ſtate to its liberty. But how comes it that theſe magiſtrates are ſo very different in theſe two republics? Is it becauſe Rome ſupported the remains of her ariſtocracy againſt the people, whereas Venice employs her ſtate-inquiſitors to maintain her ariſtocracy againſt the nobles? The conſequence was, that at Rome the dictatorſhip could be only of a ſhort duration, becauſe the people act through paſſion and violence, and not with deſign. It was neceſſary that a magiſtracy of this kind ſhould be exerciſed with luſtre and pomp, becauſe the buſineſs was to intimidate, and not to puniſh the people. It was alſo neceſſary that the dictator ſhould be created only for ſome particular affair, and for this only ſhould have an unlimited authority, becauſe 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 deſigns may be commenced, continued, ſuſpended, 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, becauſe the crimes they puniſh are hatched in ſecrecy and

* This is what ruined the republic of Rome. See Conſiderations on the Cauſes of the Grandeur and Decline of the Romans.

ſilence. This magiſtracy muſt have a general inquiſition, by reaſon their buſineſs is not to put a ſtop to known evils, but to prevent the unknown. In fine, the latter magiſtracy is appointed in order to puniſh ſuſpected crimes, and the former uſed rather menaces than puniſhment even for crimes that were openly avowed by their authors.

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 the thing; for who is it that in the management even of his own domeſtic affairs would be thus confined? At Raguſa * the chief magiſtrate is changed every month, the other officers every week, and the governor of the caſtle every day. But this can take place only in a ſmall republic environed † by formidable powers, who might eaſily corrupt ſuch petty and inſignificant magiſtrates.

The beſt ariſtocracy is that in which thoſe who have no ſhare in the legiſlature are ſo few and inconſiderable, that the governing party have no intereſt in oppreſſing them. Thus, when Antipater ‡ made a law at Athens, that whoſoever was not worth two thouſand drachms ſhould have no power to vote, he formed by this means the beſt ariſtocracy poſſible, becauſe this was ſo ſmall a ſum as excluded very few, and not one of any rank or conſideration in the city. Ariſtocratical families ought therefore, as much as poſſible, to level themſelves in appearance with the people. The more an ariſtocracy borders on democracy, the nearer it approaches to perfection; and the more is it imperfect, in proportion as it draws towards monarchy.

But the moſt imperfect of all is that, in which the part of the people that obeys is in a ſtate of civil

* Tournefort's Voyages.
† At Lucca the magiſtrates are choſen only for two months.
‡ Diodorus, lib. xviii. p. 601. Rhodoman's edition.

ſervitude to thoſe who command, as the ariſtocracy of Poland, where the peaſants are ſlaves to the nobility.

CHAP. IV.

Of the relation of laws to the nature of monarchical government.

THE intermediate, ſubordinate, and dependent powers, conſtitute the nature of monarchical government, I mean of that in which a ſingle perſon governs by fundamental laws. I ſaid the intermediate, ſubordinate and dependent powers. In fact, 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 can be no fundamental law.

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

There are men who have endeavoured in ſome countries in Europe to aboliſh all 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, of the clergy, and of the 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.

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

Though the eccleſiaſtic power is 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 that is always uſeful when there is no other; for, as a deſpotic government is productive of the moſt frightful calamities to human nature, the very evil that reſtrains it is beneficial to the ſubject.

As the ocean, which ſeems to threaten to overflow the whole earth, is ſtopped by weeds and by little pebbles that ly ſcattered along the ſhore, ſo monarchs whoſe power ſeems unbounded are reſtrained by the ſmalleſt obſtacles, and ſuffer their natural pride to be ſubdued by ſupplication and prayer.

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

Mr Law, through ignorance both of a republican and monarchical conſtitution, was one of the greateſt promoters of abſolute power that ever was known in Europe. Beſides the violent and extraordinary changes owing to his direction, he wanted to ſuppreſs

all the intermediate ranks, and to aboliſh the political communities. He was diſſolving * the monarchy by his chimerical reimburſements, and ſeemed as if he wanted to buy again even the very conſtitution.

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

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

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

CHAP. V.

Of the laws relative to the nature of a deſpotic government.

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

It is related of a pope, that he had raiſed an infinite number of difficulties againſt his election from a thorough conviction of his incapacity. At length he was prevailed on to accept 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 bred in that priſon where their eunuchs enervate both their hearts and underſtandings, and where they are frequently kept ignorant even of their high rank, when drawn forth in order to be placed upon the throne, they are at firſt amazed; but, as ſoon as they have choſen a vizir, they abandon themſelves in their ſeraglio to the moſt brutal paſſions, purſuing, in the midſt of a proſtituted court, the moſt

* The eaſtern kings are never without vizirs, ſays Sir J. Chardin.

capricious extravagancies; they could then never have dreamed to find matters ſo eaſy.

The greater the extent of an empire, the greater is the ſeraglio, and conſequently ſo much the more is the prince intoxicated with pleaſure. Hence the more nations ſuch a prince has to govern, the leſs he attends to the government; the greater his affairs, the leſs he makes them the ſubject of his deliberations.

BOOK III.

Of the Principles of the three Kinds of Government.

CHAP. I.

Difference between the nature and principle of government.

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

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

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

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

CHAP. II.

Of the principle of different governments.

I HAVE already obſerved that it is the nature of a republican government, that either the collective body of the people, or particular families, ſhould be poſſeſſed of the ſovereign power; of a monarchy, that the prince ſhould have this ſovereign 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. I require no more to enable me to diſcover their three principles: theſe are from thence moſt naturally derived. I ſhall begin with a republican government, and in particular with that of democracy.

CHAP. III.

Of the principle of Democracy.

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

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

Clear it is alſo, that a monarch, who through bad advice or indolence ceaſes to enforce the execution of the laws, may eaſily repair the evil; he has only to follow other advice, or to ſhake off this indolence.

But, when in a popular government there is a ſuſpenſion of the laws, as this can proceed only from the corruption of the republic, the ſtate is certainly undone.

A very curious ſpectacle it was in the laſt century to behold the impotent efforts the Engliſh made for the eſtabliſhment of democracy. As thoſe who had a ſhare in the direction of public affairs were void of all virtue, as their ambition was inflamed by the ſucceſs of the moſt daring of their members *, as the ſpirit of a faction was ſuppreſſed only by that of a ſucceeding faction, the government was continually changing; the people, amazed at ſo many revolutions, ſought every where for a democracy without being able to find it. At length, after a ſeries of tumultuary motions and violent ſhocks, they were obliged to have recourſe to the very government which they had ſo odiouſly proſcribed.

When Sylla wanted to reſtore Rome to her liberty, this unhappy city was incapable of receiving it. She had only ſome feeble remains of virtue; and, as this was every day diminiſhing, inſtead of being rouſed out of her lethargy by Cæſar, Tiberius, Caius, Claudius, Nero, Domitian, ſhe rivetted every day her chains; the blows ſhe ſtruck were levelled againſt the tyrants, not the tyranny.

The politic Greeks, who lived under a popular government, knew no other ſupport but virtue. The modern inhabitants of that country are entirely taken up with manufactures, commerce, finances, riches, and luxury.

When virtue is baniſhed, ambition invades the hearts of thoſe who are diſpoſed to receive it, and avarice poſſeſſes the whole community. The deſires now change their objects; what they were fond of before becomes indifferent; they were free, while under the reſtraint of laws they will now be free to act againſt law; and, as every citizen is like a ſlave eſcaped from his maſter's houſe, what was a maxim of

* Cromwell.

equity they call *rigour*; what was a rule of action they call *conſtraint*; and to precaution they give 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 the public treaſure is become the patrimony of private perſons. The members of the commonwealth riot on the public ſpoils, and its ſtrength is only the power of ſome citizens, and the licentiouſneſs of the whole community.

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

How was it poſſible for Carthage to maintain her

* Plutarch in Pericles. Plato in Critia.

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

‡ She had then twenty thouſand citizens. See Demoſthenes in Ariſtog.

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

ground? When Hannibal, upon being made prætor, endeavoured to hinder the magiſtrates from plundering the republic, did they not complain of him to the Romans? Wretches, who wanted to be citizens without a city, and to 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 againſt them *. From the efforts made by this defenceleſs city, when reduced to deſpair, one may judge of what ſhe was capable in her full ſtrength, and aſſiſted by virtue.

CHAP. IV.

Of the principle of Ariſtocracy.

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

The people, who in reſpect to the nobility are the ſame as the ſubjects with regard to the monarchy, 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? Thoſe who are to execute the laws againſt their compeers will immediately perceive they are acting againſt themſelves. Virtue is therefore neceſſary in this body by the very nature of the conſtitution.

An ariſtocratical government has within itſelf a certain ſtrength which a democracy has not. The nobles form a body, who by their prerogative, and through particular intereſt, reſtrain the people; it is ſufficient here that there are laws in being to ſee them executed.

But, however eaſy it is for the body of the nobles to reſtrain the people within bounds, in the ſame degree is it difficult to reſtrain themſelves †. Such is

* This war laſted three years.

† Public crimes may be puniſhed, becauſe it is a common

the nature of this conſtitution, that it ſeems to ſubject the very ſame perſons to the power of the laws, and to exempt them.

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

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

CHAP. V.

That virtue is not the principle of monarchical government.

IN monarchies, policy makes people do great things with as little virtue as ſhe can. Thus in the fineſt machines, art has contrived as few movements, ſprings and wheels, as poſſible.

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 which to us are known only by ſtory.

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

Though all crimes be in their own nature public, yet there is a diſtinction between crimes that are really public, and thoſe that are private, which are ſo call-

concern; but private crimes will go unpuniſhed, becauſe it is a common intereſt not to puniſh them.

ed, becauſe they are more injurious to individuals than to the whole ſociety.

Now, in republics, private crimes are more public; that is, they atttack 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 take this amiſs; my obſervations are founded on the unanimous teſtimony of hiſtorians. I am not ignorant that virtuous princes are no ſuch very rare ſight; but I venture to affirm, that in a monarchy it is extremely difficult for the people to be virtuous *.

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

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

But if there ſhould chance to be ſome unlucky honeſt man † among the people, Cardinal Richlieu in

* I ſpeak here of political virtue, which is a moral virtue as it is directed to the public good; very little of private moral virtue; and not at all of that virtue which relates to revealed truths. This will appear better, Book v. Chap. 2.

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

his Political Teſtament ‡ ſeems to hint that a prince ſhould take care not to employ him *. So true it is that virtue is not the ſpring of this government!

CHAP. VI.

In what manner virtue is ſupplied in a monarchical government.

BUT it is high time for me to have done with this ſubject, leſt I ſhould be ſuſpected of writing a ſatire againſt monarchical government. Far be it from me; if monarchy wants one ſpring, it is provided with another. Honour, that is, the prejudice of every perſon and every rank, ſupplieth the place of virtue, and is every where her repreſentative; here it is capable of inſpiring the moſt glorious actions, and, joined with the force of laws, may lead us to the end of government, as well as virtue itſelf.

Hence, in well-regulated monarchies, they are almoſt all good ſubjects, and very few good men; for to be a good man, a good intention is neceſſary †.

CHAP. VII.

Of the principle of a monarchy.

A Monarchical government ſuppoſeth, as we have already obſerved, pre-eminences, and ranks, and likewiſe a noble deſcent. Now, as it is the nature of honour to aſpire to preferments and diſtinguiſhing titles, it is therefore 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

‡ This book was written under the inſpection, and from the memoirs of Cardinal Richlieu, by Meſſ. de Bourſes and de ——, who were ſtrongly his adherents.

* We muſt not, ſays he, employ people of mean extraction; they are too auſtere and difficult.

† See the note, p. 28.

government, and is attended with this advantage, that it is no way dangerous, becauſe it may be continually checked.

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

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

Is it not a very great point to oblige men to perform the moſt difficult actions, ſuch as require a great degree of fortitude and ſpirit, without any other recompenſe than the fame and reputation ariſing from the actions themſelves?

CHAP. VIII.

That honour is not the principle of deſpotic government.

HONOUR is far from being the principle of deſpotic government: men being here all upon a level, no one can prefer himſelf to another; men, being here all ſlaves, can give themſelves no preference at all.

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

How can a deſpotic prince bear with any ſuch thing as honour? Honour glories in contempt of life, and here the prince's whole ſtrength conſiſts in the power of taking it away. How can honour ever endure a

deſpotic prince? It has its fixed rules and conſtant caprices; but a deſpotic prince is directed by no rule, and his own caprices deſtroy all others.

Honour, therefore, a thing unknown in deſpotic governments, where very often they have not ſo much as a fit word to expreſs it*, is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themſelves.

CHAP. IX.

Of the principle of deſpotic government.

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

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

A moderate government may, whenever it pleaſes, and without any danger, relax its ſprings: it ſupports itſelf by its laws and by its own force. But, when a deſpotic prince ceaſes one ſingle moment to lift up his arm, when he cannot inſtantly demoliſh thoſe whom he has entruſted with the firſt poſts and employments †, all is at an end; 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 Signor was not obliged to keep his word or oath, when he limited thereby his authority ‡.

* See Perry, p. 447.
† As it often happens in a military ariſtocracy.
‡ Ricault 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 ſubjects ſhould be ſafe, and the Baſhaw's head always in danger. We cannot mention theſe monſtrous governments without horror. The Sophi of Perſia, dethroned in our days by Mahomet the ſon of Miriveis, ſaw the conſtitution ſubverted before this revolution, becauſe he had been too ſparing of blood ‖.

Hiſtory informs us, that the horrid cruelties of Domitian ſtruck ſuch a terror into the governors, that the people recovered themſelves a little under his reign §. Thus a torrent lays one ſide of a whole country waſte, and on the other leaves fields untouched, where the eye is refreſhed with the ſight of ſome diſtant meadows.

CHAP. X.

Difference of obedience in moderate and deſpotic governments.

IN deſpotic ſtates the nature of the 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, parleys, or remonſtrances; nothing equal or better to propoſe: man is a creature that ſubmits to the abſolute will of a creature like himſelf

In a country like this, they are no more allowed to repreſent their fears in reſpect to a future event, than to excuſe their bad ſucceſs by 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, reſpect for a father, tenderneſs for a wife and

‖ See the hiſtory of this revolution by Father du Cerceau.

§ His was a military government, which is one of the ſpecies of deſpotic governments.

children, the laws of honour, or an ill ſtate of health; the orders are given, and that is ſufficient.

In Perſia, when the king has condemned a perſon, it is no longer lawful to mention his name, or to intercede in his favour. Though he were drunk and beſide himſelf, yet the decree muſt be executed*; otherwiſe he would contradict himſelf, and the law admits of no contradiction. This has been the way of thinking in this country in all ages; as the order which Ahaſuerus gave to exterminate the Jews could not be revoked, they contrived to allow them the liberty of defending themſelves.

There is one thing, however, that may be oppoſed to the prince's will †, namely, religion. They will abandon a parent, nay, they may kill him, 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 prince as well as the ſubject. But, with reſpect to the law of nature, it is otherwiſe; the prince is no longer ſuppoſed to be a man.

In monarchical and moderate ſtates, the power is limited by its very ſpring; I mean, by honour, which like a monarch reigns over prince and people. They will not here alledge to their prince the laws of religion; a courtier would think this would render him ridiculous. But the laws of honour will be alledged on all occaſions. Hence ariſe the reſtrictions neceſſary to obedience; honour is naturally ſubject to whims, by which the ſubject's obedience will be always directed.

Though the manner of obeying be different in theſe two kinds of government, yet 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 has the aſſiſtance of inſtruction, and his miniſters have a far greater capacity, and are far better verſed in affairs than the miniſters of a deſpotic government.

* See Sir John Chardin. † Ibid.

CHAP. XI.

Reflections on the foregoing.

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

BOOK IV.

That the Laws of Education ought to be relative to the Principles of Government.

CHAP. I.

Of the laws of education.

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

If the people in general have a principle, their conſtituent parts, that is, the ſeveral families, will have one alſo. The laws of education will be therefore different in each ſpecies of government; in monarchies they will have honour for their object; in republics, virtue; in deſpotic governments, fear.

C H A P II

Of education in monarchies.

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

Here it is that we conſtantly ſee and hear three things; " that we ſhould have a certain nobleneſs in " our virtues, a kind of frankneſs in our morals, and " a particular politeneſs in our behaviour."

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

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

When honour here meets with any thing noble in our actions, it is either a judge that approves them, or a 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 idea of greatneſs of ſoul or importance of affairs; as for inſtance, in politics, with whoſe fineſſes it is far from being offended.

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

With regard to morals, I have obſerved that the education of monarchies ought to admit of a certain frankneſs and open carriage. Truth therefore in converſation is a neceſſary point. But is it for the ſake of truth? by no means: truth is requiſite only be

cauſe a perſon habituated to veracity, has an air of boldneſs and freedom. In fact, a man of this ſtamp ſeems to lay ſtreſs only on the things themſelves, and not on the manner in which others receive them.

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

In fine, the education of monarchies requires a certain politeneſs of behaviour. Men born for ſociety, are born to pleaſe one another; and a perſon that would break through the rules of decorum, by ſhocking thoſe he converſed with, would ſo far loſe the public eſteem as to become incapable of doing any good.

But politeneſs, generally ſpeaking, does not derive its original from ſo pure a ſource. It riſes from a deſire of diſtinguiſhing ourſelves. It is pride that renders us polite: we feel a pleaſing vanity in being remarked for a behaviour that ſhows in ſome meaſure we are not meanly born, and that we have not been bred up with thoſe who in all ages have been conſidered as the ſcum of the people.

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

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

At court we find a delicacy of taſte in every thing, a delicacy ariſing from the conſtant uſe of the ſuperfluities of an affluent fortune, from the variety, and eſpecially the ſatiety of pleaſures; from the multipli-

city, and even confuſion, of fancies; which, if they are but agreeable, are always well received.

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

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

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

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

Grillon refuſed to aſſaſſinate the Duke of Guiſe, but he offered Henry III. to fight him. After the maſſacre of St Bartholemew, Charles IX. having ſent orders to all the governors in the ſeveral provinces for the Huguenots to be murdered, Viſcount Dorte, who commanded at Bayonne, wrote thus to the king: * "Sire, among the inhabitants of this "town, and your Majeſty's troops, I could only find "honeſt citizens and brave ſoldiers, but not one exe-"cutioner: we jointly therefore beſeech your Majeſty "to command our arms and lives in things that are "practicable." This great and generous ſoul looked upon a baſe action as a thing impoſſible.

There is nothing that honour more ſtrongly recommends to the nobility, than to ſerve their prince in a military capacity. In fact, this is their favourite profeſſion, becauſe its dangers, its ſucceſs, and even its misfortunes, are the road to grandeur. And yet this

* See D'Aubigne's hiſtory.

very law of its own making, honour chuſes to explain; and if it happens to be affronted, requires or permits us to retire.

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

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

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

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

CHAP. III.

Of education in a deſpotic government.

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

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

In deſpotic ſtates each houſe is a ſeparate government. As education therefore conſiſts chiefly in ſocial converſe, it muſt be here very much limited: all it does is to ſtrike the heart with fear, and to imprint in the underſtanding a very ſimple notion of a few principles of religion. Learning here proves dange-

rous, emulation fatal; and as to virtue, Ariſtotle cannot think there is any one virtue belonging to ſlaves *; if ſo, education in deſpotic countries is confined within a very narrow compaſs.

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

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

CHAP. IV.

Difference between the effects of ancient and modern education.

MOST of the ancients lived under governments that had virtue for their principle; and when this was in full vigour, they performed things unbeheld in our times, and ſuch as are capable of aſtoniſhing our little ſouls.

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

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

* Polit. lib. 1.

CHAP. V.

Of education in a republican government.

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

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

This love is peculiarly proper to democracies. In theſe alone the government is entruſted to private citizens. Now, government is like every thing elſe; to preſerve it we muſt love it.

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

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

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

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

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

CHAP. VI.

Of ſome inſtitutions among the Greeks.

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

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

By theſe laws Crete and Laconia were governed. Sparta was the laſt that fell a prey to the Macedonians, and Crete to the Romans †. The Samnites had

* Philopœmon obliged the Lacedæmonians to change their manner of educating their children, being convinced that if he did not take this meaſure, they would always have a great ſoul and a noble heart. *Plutarch, Life of Philopœmon.* See Livy. book 38.

† She defended her laws and liberty for the ſpace of three

the ſame inſtitutions, which furniſhed thoſe very Romans with the ſubject of four-and-twenty triumphs *.

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

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

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

An exquiſite ſenſibility to whatever ſhe diſtinguiſhes by the name of honour, her zeal for a religion which much more humbles thoſe who hear than thoſe that preach it, have ſet her upon vaſt undertakings, which ſhe has accompliſhed with ſucceſs. She has drawn wild people from their woods, ſecured them a maintainance, and clothed their nakedneſs: and had ſhe only by this means improved the induſtry of mankind, it would have been ſufficient to eternize her fame.

* Florus, lib 1. † *In fece Romuli.* Cicero

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

years. See the 98th, 99th, and 100th book of Livy, in Florus's epitome. She made a braver reſiſtance than the greateſt kings.

Thoſe who ſhall attempt hereafter to introduce ſuch inſtitutions as theſe, muſt eſtabliſh the community of goods, as preſcribed in Plato's republic; that high reſpect he required for the gods; that ſeparation from ſtrangers for the preſervation of people's morals; and an extenſive commerce carried on by the community, and not by private citizens; they muſt give our arts without our luxury, and our wants without our deſires.

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

"The Epidamnians *, perceiving their morals de-
"praved by converſing with barbarians, choſe a ma-
"giſtrate for making all contracts and ſales in the
"name and behalf of the city." Commerce then does not corrupt the conſtitution, and the conſtitution does not deprive the ſociety of the advantages of commerce.

CHAP. VII.

In what caſe theſe ſingular inſtitutions may be of ſervice.

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

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

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

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 extend or ſupport our power, we muſt be poſſeſſed of the means to which, by the unanimous conſent of mankind, this power is annexed.

CHAP. VIII.

Explication of a paradox of the ancients, in reſpect to manners.

THAT judicious writer Polybius informs us, that muſic was neceſſary to ſoften the manners of the Arcadians, who lived in a cold gloomy country; that the inhabitants of Cynete, who ſlighted muſic, were the cruelleſt of all the Greeks, and that no other town was ſo immerſed in luxury and debauch. Plato is not afraid to affirm, that there is no poſſibility of making a change in muſic, without changing likewiſe the frame of government. Ariſtotle, who ſeems to have wrote his politics only in order to contradict Plato, agrees with him notwithſtanding, in regard to the power and influence of muſic over the manners of the people. This was alſo the opinion of Theophraſtus, of Plutarch *, and of all the ancients; an opinion grounded on mature reflection; being one of the principles of their politics †. Thus it was they en-

* Life of Pelopidas.

† Plato, in his fourth book of laws, ſays, that the præfectures of muſic and gymnaſtic exerciſes are the moſt important

acted laws, and thus they required that cities ſhould be governed.

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

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

In fine, every kind of low commerce * was infamous among the Greeks; as it obliged a citizen to ſerve and wait on a ſlave, on a lodger, on a ſtranger. This was a notion that claſhed with the ſpirit of Greek liberty: hence Plato † in his laws orders a citizen to employments in the city; and, in his Republic, book 3. "Damon will tell you, (ſays he) what ſounds are capable of "inſpiring a meanneſs of ſoul, inſolence and the contrary "virtues."

* Book 5. of Memorable Sayings.

† Polit book 3 chap. 4.

‡ Diophantes, ſays Ariſtotle, Polit. chap. 7. made a law formerly at Athens, that artiſans ſhould be ſlaves to the republic.

|| Plato likewiſe and Ariſtotle require ſlaves to till the land. *Laws, book 5. Polit book 7 c 10.* It is true that agriculture was not every where exerciſed by ſlaves; on the contrary, Ariſtotle obſerves, the beſt republics were thoſe in which the citizens themſelves tilled the land: but this was brought about by the corruption of the ancient governments, which were become democratical; for in earlier times the cities of Greece were ſubject to an ariſtocratic government.

* Cauponatio. † Book 2.

be punished, if he attempted to concern himself with trade.

Thus in Greek republics the magistrates were extremely embarrassed. They would not have the citizens apply themselves to trade, to agriculture, or to the arts; and yet they would not have them idle *. They found therefore employment for them in gymnastic and military exercises; and none else were allowed by their institution †. Hence the Greeks must be considered as a society of wrestlers and boxers. Now, these exercises having a natural tendency to render people hardy and fierce, there was a necessity for tempering them with others that might soften their manners ‡. For this purpose, music, which influences the mind by means of the corporeal organs, was extremely proper. It is a kind of a medium between the bodily exercises that render men fierce and hardy, and speculative sciences that render them unsociable and sour. It cannot be said that music inspired virtue, for this would be inconceivable: but it prevented the effects of a savage institution, and enabled the soul to have such a share in the education, as it could never have had without the assistance of harmony.

Let us suppose among ourselves a society of men so passionately fond of hunting, as to make it their sole employment; these people would doubtless contract thereby a kind of rusticity and fierceness. But if they happened to receive a taste for music, we should quickly perceive a sensible difference in their customs and manners. In short, the exercises used by the Greeks excited only one kind of passions, *viz.* fierceness, anger and cruelty. But music excites them all; and is able to inspire the soul with a sense of pity, lenity, tenderness and love. Our moral writers, who

* Aristot. Polit lib. 10.

† *Ars corporum exercendorum gymnastica, variis certaminibus terendorum pædotribica.* Arist Polit. lib. 8. c 3.

‡ Aristotle observes, that the children of the Lacedæmonians, who began these exercises at a very tender age, contracted from thence too great a ferocity and rudeness of behaviour.

declaim ſo vehemently againſt the ſtage, ſufficiently demonſtrate the power of muſic over the ſoul.

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

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

BOOK V.

That the Laws given by the Legiſlator ought to be relative to the Principle of Government.

CHAP. I.

Idea of this book.

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

Our deſign is to examine this relation in each go-

* Life of Pelopidas.

vernment, beginning with the republican ſtate, whoſe principle is virtue.

CHAP. II.

What is meant by virtue in a political ſtate.

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

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

CHAP. III.

What is meant by a love of the republic in a democracy.

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

A love of the democracy is likewiſe that of fruga-

lity. As every individual ought to have here the ſame happineſs and the ſame advantages, they ought conſequently to taſte the ſame pleaſures, and to 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, 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 ought all 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 ariſe here 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 wealth to the attention requiſite for procuring neceſſaries to our family, and ſuperfluities to our country. Riches give a power which a citizen cannot uſe for himſelf, for then he would be no longer equal. They likewiſe procure pleaſures which he ought not to enjoy, becauſe theſe would alſo ſubvert the equality.

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

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

CHAP. IV.

In what manner the love of equality and frugality is inſpired.

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

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

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

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

CHAP. V.

In what manner the laws eſtabliſh equality in a Democracy.

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

mand, and the rich obliged to consent to a remedy of this nature.

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

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

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

The law which prohibited peoples having two inheritances ‡ was extremely well adapted to a democracy. It derived its origin from the equal distribution of lands and portions made to each citizen. The law would not permit a single man to possess more than a single portion.

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

At Athens there was a law, whose spirit, in my opinion, has not been hitherto rightly understood. It was lawful to marry a sister only by the father's

* Plutarch, Life of Solon. † Ibid.

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

|| Republic, book 8.

ſide, but it was not permitted to marry a ſiſter by the ſame mother *. This cuſtom originally aroſe in republics, whoſe ſpirit it was, not to let two portions of land, and conſequently two inheritances, devolve on the ſame perſon. A man that married his ſiſter only by his father's ſide, could inherit but one eſtate, namely, that of his father; but by marrying his ſiſter by the ſame venter, it might happen that his ſiſter's father, having no male iſſue, might leave her his eſtate, and conſequently the brother that married her might be poſſeſſed of two.

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

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

Excellent was that law, which, in order to maintain this diviſion of lands in a democracy, ordained, that a father who had ſeveral children, ſhould pitch

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

† "De ſpecialibus legibus quæ pertinent ad precepta decalogi."

‡ Lib 10.

‖ "Athenis dimidium licet, Alexandriæ totum." *Seneca de tranq. Animi.*

upon one of them to inherit his portion *, and give the others to be adopted by thoſe that had no children, to the end that the number of citizens might always be kept upon an equality with that of the diviſions.

Phaleas of Chalcedon † contrived a very extraordinary method of rendering all fortunes equal, in a republic where there was the greateſt inequality. This was, that the rich ſhould give fortunes with their daughters to the poor, but ſhould receive none themſelves; and that the poor ſhould receive money for their daughters, inſtead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It lays the citizens under ſuch hard and odious conditions, as would make them deteſt the very equality which they deſigned to eſtabliſh. It is proper ſometimes that the laws ſhould not ſeem to tend ſo directly to the end they propoſe.

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

All inequality in a democracy ought to be derived from the nature of the democracy, and even from the

* Plato has a law of this kind, lib. 3. leg.

† Ariſt. Polit. lib. 2. cap. 27.

‡ Solon made four claſſes; the firſt, of thoſe who had an income of five hundred minas, either in corn or liquid fruits; the ſecond, of thoſe who had three hundred, and were able to keep a horſe; the third, of thoſe who had only two hundred; the fourth, of all thoſe who lived by their manual labour. *Plut. Life of Solon.*

principle of equality. For example, it may be apprehended, that people who are obliged to live by their labour, would be too much impoverished by a public office, or neglect the duties attending it; that artisans would grow insolent; and that too great a number of freed-men would overpower the ancient citizens. In this case the equality of the citizens * in a democracy may be suppressed, whenever it will conduce to the utility of the state. But then it is only an apparent equality they remove: for a man ruined by a public office, would be in a worse condition than the rest of his fellow-citizens; and this same man being obliged to neglect his duty, would reduce the other citizens to a worse condition than himself, and so on.

CHAP. VI.

In what manner the laws ought to maintain frugality in a Democracy.

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

As the equality of fortune supports frugality, frugality supports the equality of fortunes. These things, though in themselves different, are of such a nature as to be unable to subsist separately; each is the cause and the effect; if one withdraws itself from a democracy, it is surely followed by the other.

It is true, that when a democracy is founded on commerce, private people may acquire vast riches without a corruption of morals. This is because the

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

† They insisted upon a larger division of the conquered lands. *Plutarch's moral works. Lives of the ancient kings and commanders.*

ſpirit of commerce is naturally attended with that of frugality, œconomy, moderation, labour, prudence, tranquillity, order, and rule. As long as this ſpirit ſubſiſts, the riches it produces have no bad effects. The miſchief is, when exceſſive wealth deſtroys this ſpirit of commerce; then it is that the inconveniencies of inequality begin to be felt.

In order to ſupport the ſpirit of commerce, it ſhould be carried on by the principal citizens; this ſpirit alone ought to prevail without being croſſed by another; all the laws ſhould encourage it; and theſe very laws, by dividing the eſtates of individuals in proportion to the increaſe of commerce, ſhould ſet every poor citizen ſo far at his eaſe as to be able to work like the reſt, and every rich citizen in ſuch a mediocrity as to be obliged to labour either to preſerve or to acquire his wealth.

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

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

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

CHAP. VII.

Other methods of favouring the principle of Democracy.

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

If a fixed body be eſtabliſhed to ſerve as a rule and pattern of manners, a ſenate, to which age, virtue, gravity, and public ſervices gain admittance; the ſenators, by being expoſed to public view like the ſtatues of the gods, muſt naturally inſpire ſentiments that will transfuſe themſelves into the boſom of every family.

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

The preſervation of the ancient cuſtoms is a very conſiderable point in reſpect to manners. Since a corrupt people ſeldom perform any memorable actions, ſeldom eſtabliſh ſocieties, build cities, or enact laws; on the contrary, ſince moſt inſtitutions are derived from people of ſimple or ſevere morals; to recall men to the ancient maxims is generally recalling them to virtue.

Beſides, if there happens to be any revolution, by which the ſtate has aſſumed a new form, this ſeldom can be effected without infinite pains and labour, and hardly ever with idleneſs and a depravation of manners. Even thoſe who have been the inſtruments of the revolution, are deſirous it ſhould be reliſhed, which is difficult to compaſs without good laws. Therefore ancient inſtitutions are generally reformations, and

modern ones abuſes. In the courſe of a long adminiſtration, the deſcent to vice is inſenſible; but there is no re-aſcending to virtue without making the moſt generous efforts.

It has been queſtioned, whether the members of the ſenate we are here ſpeaking of ought to be for life, or choſen only for a time. Doubtleſs they ought to be for life, as was the cuſtom at Rome *, at Sparta †, and even at Athens. For we muſt not confound what was called the Senate at Athens, which was a body that changed every three months, with the Areopagus, whoſe members, as perpetual models, were eſtabliſhed for life.

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

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

At Athens, beſides the Areopagus, there were guardians of the people's morals, and guardians of the laws ‡. At Sparta all the old men were cenſors. At Rome the cenſorſhip was committed to two particular magiſtrates. As the ſenate watched over the people, the cenſors were to have an eye over the people and the ſenate. Their office was to reform the corruptions of the republic, to ſtigmatize indolence, to cenſure irregularities, and to correct faults; and as for

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

† Lycurgus, ſays Xenophon *de repub. Laced.* ordained that the ſenators ſhould be taken from amongſt the old men, to the end that they ſhould not be neglected in the decline of life. Thus, by making them judges of the courage of young people, he rendered the old age of the former more honourable than the ſtrength and vigour of the latter.

‡ Even the Areopagus itſelf was ſubject to their cenſure.

notorious crimes, theſe were left to the puniſhment of the laws.

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

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

Nothing gives a greater force to the laws than a perfect ſubordination between the citizens and the magiſtrate. "The great difference which Lycurgus "eſtabliſhed between Sparta and the other cities," ſays Xenophon †, "conſiſts chiefly in the obedience "the citizens ſhow to the laws; they run, when the "magiſtrate calls them. But at Athens, a rich man "would be highly diſpleaſed to be thought depen-"dent on the magiſtrate."

Paternal authority is likewiſe of great uſe towards the preſervation of morals. We have already obſerved, that in a republic there is not ſo coercive a force as in other governments. The laws muſt therefore endeavour to ſupply this deficiency 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.

† Republic of the Lacedæmonians.

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

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 childrens fortune during life, as was the cuſtom at Rome. But this is not agreeable to the ſpirit of monarchy.

CHAP. VIII.

In what manner the laws ought to be relative to the principle of government in an Ariſtocracy.

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

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

As the pomp and ſplendour, with which kings are ſurrounded, form a part of their power, ſo modeſty and ſimplicity of manners conſtitute the ſtrength of an ariſtocratic nobility *. When they effect 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

* 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 in Terra Firma, with reſpect to precedency in a church, by declaring that out of Venice a noble Venetian had no pre-eminence over any other citizen.

principle of monarchy, which would be the caſe, were the nobles to be inveſted with perſonal and particular privileges diſtinct from thoſe of their body; privileges ought to be for the ſenate, and ſimple reſpect for the ſenators.

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

The firſt inequality is chiefly when the privileges of the nobility are honourable only as they are ignominious to the people. Such was the law at Rome by which the patricians were forbidden to marry † plebeians; a law that had no other effect than to render the patricians on the one ſide more haughty, and on the other more odious *.

This inequality occurs likewiſe when the condition of the citizens differs with regard to taxes, which may happen four different ways; when the nobles aſſume the privilege of paying none; when they commit frauds to exempt themſelves ‡; when they ingroſs the taxes to themſelves, 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 inconveniencies. The magiſtrates never received any emoluments from their office. The chief men of the republic were taxed like the reſt, nay

† It was inſerted by the decemvirs in the two laſt tables. See Dionyſ. Halicar. lib. 10.

* It is eaſy to ſee the advantages the tribunes drew from thence in their ſpeeches.

‡ As in ſome ariſtocracies in Italy; nothing is more prejudical to the government.

heavier, and ſometimes the taxes fell upon them alone. In fine, far from ſharing among themſelves the revenues of the ſtate, all they could draw from the public treaſure, and all the wealth that fortune flung in their way, they beſtowed freely on the people, that they might not envy them their honours ‖.

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

If the revenues of the ſtate are not diſtributed among the people, they muſt be convinced at leaſt of their being well adminiſtered: To feaſt their eyes with 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 riches of the people.

It is a very eſſential point in an ariſtocracy, that the nobles themſelves ſhould not levy the taxes. The firſt order of the ſtate in Rome never concerned themſelves with it; the levying of taxes was committed to the ſecond, and even this in proceſs of time was attended with great inconveniencies. In an ariſtocracy of this kind, where the nobles levied the taxes, the private people would be all at the diſcretion of thoſe who were 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 eſtates at their pleaſure.

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 tha

‖ See in Strabo, lib. 14. in what manner the Rhodians behaved in this reſpect.

ſome governments, without having ever received any remarkable ſhock, have dwindled away to ſuch a degree, as not only their neighbours, but even their own ſubjects have been ſurpriſed at it,

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

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

The laws ought to employ the moſt effectual means for making the nobles do juſtice to the people. If they have not eſtabliſhed a tribune, they ought to ſupply the place of 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 pride of domineering. 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 that are ſubject to no formalities. This ſort of government ſtands in need of the ſtrongeſt ſprings: Thus a mouth of ſtone † is open to every informer at Venice, a mouth to which one would be apt to give the appellation of that of tyranny.

Theſe tyrannical magiſtrates in an ariſtocracy bear ſome analogy to the cenſorſhip of democracies, which of its own nature is equally independent. In fact, the cenſors ought to be ſubject to no enquiry in relation to their own conduct during their office; they ſhould meet with a thorough confidence, and never be diſcouraged. In this reſpect the practice of the Romans deſerved

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

† The informers throw their ſcrowls into it.

admiration; magiſtrates of all denominations were accountable for their adminiſtration ‡, except the cenſors §.

There are two very pernicious things in an ariſtocracy, either exceſs of poverty, or exceſs 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 ſenſible regulations ſhould be made, but no confiſcations, no Agrarian laws, no expunging of debts; theſe are things that are productive of infinite miſchief.

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

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

After the laws have made families equal, the next thing they have to do 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 becomes thoſe of families. Arbiters may terminate or even prevent the riſe of diſputes.

In fine, the laws muſt not favour the diſtinctions raiſed by vanity among families, under pretence that they are more noble or ancient: pretences of this na-

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

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

* It is ſo practiſed at Venice. Amelot de la Houſſaye, p. 30. and 31.

† The main deſign of ſome ariſtocracies ſeems to be leſs the ſupport of the ſtate than of what they call their nobility.

ture ought to be ranked among the weakneſſes of private perſons.

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

CHAP. IX.

In what manner the laws are relative to their principle in monarchies.

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

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

They ſhould render the nobility hereditary, not as a boundary between the power of the prince and the weakneſs of the people, but as the bond and conjunction of both.

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

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

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

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

Subſtitutions are a reſtraint to commerce; the power of redemption produces an infinite number of proceſſes; every eſtate in land that is ſold throughout the kingdom is in ſome meaſure without an owner for

the ſpace of a year. Privileges annexed to fiefs give a power that is very burthenſome to thoſe governments which tolerate them. Theſe are the particular inconveniences of nobility; inconveniences however that vaniſh when compared with the general utility which reſults from it: but, when theſe privileges are communicated to the people, every principle of government is broke through to no manner of purpoſe.

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

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

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

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

CHAP. X.

Of the expedition peculiar to the executive power in monarchies.

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

Cardinal Richlieu † adviſes monarchs to permit no

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

† Teſtam. Polit.

ſocieties or communities that raiſe difficulties upon every thing. If this man's heart had not been bewitched with the love of deſpotic power, ſtill theſe arbitrary notions would have filled his head.

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

What would have become of the fineſt monarchy in the world, if the magiſtrates, by their delays, by their complaints, by their prayers, had not ſtopped the rapidity even of their princes virtues, when theſe monarchs, conſulting only the generous impulſe of great minds, wanted to give a boundleſs reward to ſervices performed with unbounded courage and fidelity?

CHAP. XI.

Of the excellence of a monarchical government.

MONARCHY has a great advantage over a deſpotic government. As it naturally requires there ſhould be ſeveral orders belonging to the conſtitution under the prince, the ſtate is more fixed, the conſtitution more ſteady, and the perſon of him that governs more ſecure.

Cicero * is of opinion, that the eſtabliſhing of the tribunes was the preſervation of the republic. "In "fact, (ſays he) the violence of a headleſs people "is more terrible: A chief or head is ſenſible that "the affair depends upon himſelf, and therefore he "thinks; but the people in their impetuoſity are ig"norant of the danger into which they hurry them"ſelves." This reflection may be applied to a deſpotic government, which is a people without tribunes,

† "Barbaris cunctatio ſervilis, ſtatim exequi regium videtur." Tacit. Annal. lib 5.

* Lib. 3. De leg.

and to a monarchy, where people have ſome ſort of tribunes.

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

In theſe circumſtances men of prudence and authority interfere; moderate meaſures are firſt propoſed, then complied with, and things at length are redreſſed; the laws reſume their vigour, and command ſubmiſſion.

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

The writers of the hiſtory of the civil wars of ſome countries, even they who fomented them, ſufficiently demonſtrate how little reaſon princes have to ſuſpect the authority with which they inveſt particular bodies of men for their ſervice, ſince even in their very going aſtray, they ſighed only after the laws and their duty, and reſtrained, more than they were capable of inflaming, the impetuoſity of the revolted †.

Cardinal Richlieu, reflecting perhaps that he had too much reduced the ſtates of the kingdom, has recourſe to the virtues of the prince and of his miniſters for the ſupport ‡ of the government: but he requires ſo many things, that indeed there is none but an an-

* See the firſt note of Book ii. Chap. 4.
† Memoirs of Cardinal de Retz, and other hiſtories.
‡ Teſtam. Polit.

gel capable of ſuch attention, of ſuch reſolution and knowledge; and ſcarce can we flatter ourſelves ever to ſee ſuch a prince and miniſters, no not while monarchy ſubſiſts.

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

CHAP. XII.

The ſame ſubject continued.

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

It is in monarchies we ſee the ſubjects around the prince, receiving the influence of his beams; there it is that each perſon, filling as it were a larger ſpace, is capable of exerciſing thoſe virtues which adorn the ſoul, not with independence, but with grandeur.

CHAP. XIII.

An idea of deſpotic power.

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

* Edifying letters, 11. coll. p. 315.

CHAP. XIV.

In what manner the Laws are relative to the principles of deſpotic government.

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

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

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

A prince of this ſtamp, unaccuſtomed to reſiſtance in his palace, is enraged to ſee his will oppoſed by armed force; hence he is generally governed by wrath or vengeance.

Beſides, he can have no notion of true glory. War therefore is carried on under ſuch a government in its full natural fury, and a leſs extent is given to the law of nations than in other ſtates.

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

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

If the prince is a priſoner, he is ſuppoſed to be

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

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

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

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

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

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

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

* Continuation of Puffendorff's introduction to the hiſtory of Europe, in the article of Sweden, chap. 10

† According to Sir J. Chardin there is no council of ſtate in Perſia.

Obſerve how induſtriouſly the Ruſſian government endeavours to temper its arbitrary power, which is more burdenſome to it than to the people themſelves. They have broke their great bodies of troops, mitigated criminal puniſhments, erected tribunals, entered into a knowledge of the laws, and inſtructed the people. But there are particular cauſes, that will probably oblige them to return to the very miſery which they now endeavour to avoid.

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

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

Of all deſpotic governments, there is none that labours more under its own weight, than that wherein the prince declares himſelf proprietor of all the lands, and heir to all his ſubjects. Hence the neglect of agriculture ariſes; and, if the prince intermeddles likewiſe in trade, all manner of induſtry is ruined.

Under this ſort of government nothing is repaired or improved†. Houſes are built only for the neceſſity of habitation; there is no ſuch thing as digging of ditches, or planting of trees; every thing is drawn from, but nothing reſtored to the earth; the land lyes untilled, and the whole country becomes a deſert.

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

† See Ricault's State of the Ottoman empire, p 196.

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

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

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

As every prince of the royal family is held equally capable of being choſen, hence it follows, that the prince who aſcends the throne ſtrangles immediately his brothers, as in Turkey, or puts out their eyes, as

* See the treatiſe concerning the inheritances of the Turks. Ancient and modern Sparta. See alſo Ricault on the Ottoman empire.

† Collection of voyages that contributed to the eſtabliſhment of the eaſt-india company, tome i. The law of Pegu is leſs cruel; if there happens to be children, the king ſucceeds only to two thirds. Ibid. tome iii. p. 1.

in Perſia, or bereaves them of their underſtanding, as in the Mogul's country, or if theſe precautions are not uſed, as in Morocco, the vacancy of the throne is always attended with a horrid civil war.

By the conſtitutions of Ruſſia * the Czar may chuſe whom he has a-mind for his ſucceſſor, whether of his own or a ſtrange family. Such a ſettlement produces a thouſand revolutions, and renders the throne as tottering as the ſucceſſion is arbitrary.

The right of ſucceſſion being one of thoſe things which are of moſt importance to the people to know, the beſt is that which moſt ſenſibly ſtrikes them, ſuch as a certain order of birth. A ſettlement of this kind puts a ſtop to intrigues, and ſtifles ambition; the mind of a weak prince is no longer inſlaved, nor is he made to ſpeak his will as he is juſt expiring.

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

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

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

The princes of deſpotic governments have always perverted the uſe of marriage. They generally take a great many wives, eſpecially in that part of the

* See the different Conſtitutions, eſpecially that of 1722.

world where abſolute power is in ſome meaſure naturalized, namely, Aſia. Hence they come to have ſuch a multitude of children, that they can hardly have any great affection for them, nor the children for one another.

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

After what has been ſaid, one would imagine that human nature ſhould perpetually riſe in oppoſition to a deſpotic government. But, notwithſtanding the love of liberty ſo natural to mankind, notwithſtanding their innate deteſtation of force and violence, moſt nations are ſubject to this very government. This is eaſily accounted for. In order to form a moderate government, it is neceſſary to combine the ſeveral powers, to regulate, temper, and ſet them in motion, to give as it were ballaſt to one, in order to enable it to reſiſt another. This is a maſterpiece of legiſlation, rarely produced by hazard, and ſeldom attained by prudence. On the contrary, a deſpotic government offers itſelf as it were at firſt ſight: it is uniform throughout; and, as paſſions only are requiſite to eſtabliſh it, this is what every capacity may reach.

* See Juſtin.

CHAP. XV.

The ſame ſubject continued.

IN warm climates, where deſpotic power generally prevails, there is an earlier ſenſibility, as well as an earlier extinction of the paſſions *; the underſtanding is ſooner ripened; they are in leſs danger of ſquandering away their fortunes; there is leſs facility in diſtinguiſhing themſelves in the world; leſs communication between young people, who are confined at home; they marry much earlier, and conſequently they may be ſooner of age than in our European climates. In Turkey they are of age at fifteen †.

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

The ceſſion of goods is naturally admitted in moderate governments ‡, but eſpecially in republics, becauſe of the greater confidence which ariſes from the probity of the citizens, and becauſe of the lenity and moderation that a form of government, which every one ſeems to have framed for himſelf, ought to inſpire.

Had the legiſlators of the Roman republic eſtabliſhed the ceſſion of goods ‖, they never would have been expoſed to ſo many ſeditions and civil diſcords, nor would they have experienced the danger of the evils, or the inconveniency of the remedies.

Poverty and the precarioufneſs of property in a deſpotic ſtate render uſury natural, each perſon raiſing the value of his money in proportion to the danger

* See the book of Laws as relative to the nature of the climate.

† Languilletiere, ancient and modern Sparta, p. 463.

‡ The ſame may be ſaid of compoſitions in regard to fair bankrupts.

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

he ſees in lending it. Miſery therefore pours in from all parts into thoſe unhappy countries: they are bereft of every thing, even of the reſource of borrowing.

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

A government cannot be unjuſt without having hands to exerciſe its injuſtice. Now, it is impoſſible but theſe hands will be graſping for themſelves. The embezzling of the public money is therefore natural in deſpotic ſtates.

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

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

There is no Roman law † againſt confiſcations except in the caſe of high treaſon of the moſt heinous nature. It would be a prudent thing to follow the ſpirit of this law, and to limit confiſcations to particular crimes. In countries where a local cuſtom has rendered real eſtates alienable, Bodin very juſtly ob-

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

† "Authentica bona damnatorum." *Code, de bon. damn.*

ſerves, that confiſcations ſhould extend only to ſuch as are purchaſed or acquired *.

CHAP. XVI.

Of the communication of Power.

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

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

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

This is incompatible with a deſpotic government: For, if thoſe who are not actually employed were nevertheleſs inveſted with privileges and titles, the conſequence muſt be, that there would be a kind of men in the ſtate, who might be ſaid to be great of themſelves, a thing directly oppoſite to the nature of this government.

Were the governor of a town independent of the baſhaw, expedients would be daily neceſſary to make

* Book v. chap. 3.

† " Ut eſſe Phœbi dulcius lumen ſolet
" Jamjam cadentis."———

them agree, which is highly abſurd in a deſpotic ſtate, beſides, if a particular governor might refuſe to obey: how could the other anſwer for his province with his head?

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

Moreover, as the law is only the prince's will, and as the prince can only will what he knows, it follows that there are an infinite number of people who muſt will for him, and as he wills.

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

CHAP. XVII.

Of Preſents.

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

But thus it muſt ever be in a government where no man is a citizen; in a government where they have all a notion that a ſuperior is under no obligation to an inferior; in a government where men imagine themſelves bound by no other tie than the chaſtiſements inflicted by one part over another; in a govern-

* Collection of voyages that contributed to the eſtabliſhment of the Eaſt-India Company, tome i. p. 80.

ment, in fine, where there is very little to do, and where the people have ſeldom an occaſion of preſenting themſelves before the great, of offering their petitions, and much leſs their complaints.

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

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

A very bad law that was among the Romans †, which gave the magiſtrates leave to accept of ſmall preſents ‡, provided they did not exceed 100 crowns the whole year. They who receive nothing expect nothing; they who receive a little ſoon deſire a little more, till at length their deſires ſwell to an exorbitant height. Beſides, it is much eaſier to convict a man who knows himſelf obliged to accept of no preſent at all, and yet will accept of ſomething, than a perſon who takes more when he ought to take leſs, and who always finds pretexts, excuſes and plauſible reaſons in juſtification of his conduct.

CHAP. XVIII.

Of rewards conferred by the ſovereign.

IN deſpotic governments, where, as we have already obſerved, the principal motive of action is the hope of the conveniencies of life, the prince who confers rewards has nothing to beſtow but money. In monarchies, where honour alone predominates, the

* Book xii. of laws. † Leg. § 5. ad leg. Jul. repet.
‡ Munuſcula.

prince's rewards would consist only of marks of distinction, if the distinctions established by honour were not attended with luxury, which necessarily brings on its wants; the prince therefore is obliged to confer such honour as leads to wealth. But in a republic where virtue reigns, a motive self-sufficient, and which excludes all others, the recompenses of the state consist only of public attestations of this virtue.

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

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

CHAP. XIX.

New consequences of the principles of the three governments.

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

Quest. 1. It is a question, Whether the law ought to oblige a subject to accept of a public employment? My opinion is, that they ought in a republic, but not in a monarchical government. In the former, public employments are attestations of virtue, depositums with which a citizen is intrusted by his country, for whom alone he ought to live, act, and think; consequently he cannot refuse them *. In the latter, pu-

* Plato, in his Republic, book 8. ranks the refusals among

blic offices are teſtimonies of honour; now ſuch is the capricioufneſs of honour, that it chuſes to accept of none of theſe teſtimonies, but when and in what manner it pleaſes.

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

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

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

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

the marks of the corruption of a republic. In his Laws, book 6. he orders them to be puniſhed by a fine; at Venice they are puniſhed with baniſhment.

† Victor Amadeus.

‡ Some centurions having appealed to the people for the employments which they had before enjoyed, "It is juſt, my "comrades," ſaid a centurion, "that you ſhould look upon "every poſt as honourable, in which you have an opportunity "of defending the republic." *Livy, lib.* 42.

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

In monarchies, they whoſe condition engages them in the profeſſion of arms, have nothing but glory, or at leaſt honour or fortune, in view. To men therefore like theſe, the prince ſhould never give any civil employments; on the contrary, they ought to be checked by the civil magiſtrate, that the ſame perſons may not have at the ſame time the confidence of the people, and the power to abuſe it *.

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

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

Procopius, therefore, the competitor of Valens the emperor, was ignorant of this principle, when conferring the proconſular ‡ dignity upon Hormiſdas, a

* "Ne imperium ad optimos nobilium transferretur, ſena- "tum militia vetuit Gallienus, etiam adire exercitum." *Aurelius Victor de viris illuſtribus.*

|| Auguſtus deprived the ſenators, proconſuls, and governors of the privilege of wearing arms. *Dion. lib.* 33.

† Conſtantine. See Zozimus, lib. 2.

‡ Ammianus Marcellinus, lib. 26. "More veterum et bella "recturo."

prince of the blood-royal of Perſia, he reſtored to this magiſtracy the military command of which it had been formerly poſſeſſed; unleſs indeed he had very particular reaſons for ſo doing. A perſon that aſpires to the ſovereignty, concerns himſelf leſs about what is ſerviceable to the ſtate, than about what is likely to promote his own intereſt.

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

But in monarchies this venality is not at all improper, by reaſon it is an inducement to undertake that as a family-employment, which would never be undertaken through a motive of virtue; it fixes likewiſe every one to his duty, and renders the ſeveral orders of the kingdom more permanent. Suidas ‖ very juſtly obſerves, that Anaſtaſius had changed the empire into a kind of ariſtocracy, by ſelling all public employments.

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

‖ Fragments taken from the embaſſies of Conſt. Torphyrogenitus.

§ Repub. lib. 8.

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

Queſt. 5. The fifth queſtion is, In what kind of government cenſors are neceſſary? My anſwer is, they are neceſſary in a republic, where the principle of government is virtue. We muſt not imagine that criminal actions only are deſtructive of virtue; it is deſtroyed alſo by careleſſneſs, by faults, by a certain coolneſs in the love of our country, by dangerous examples, by ſeeds of corruption, by whatever does not openly violate but elude the laws, by what does not ſubvert but weaken them; all this ought to fall under the enquiry and correction of the cenſors.

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

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

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

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

BOOK VI.

Consequences of the Principles of different Governments with respect to the simplicity of Civil and Criminal Laws, the Form of Judgements, and the inflicting of Punishments.

CHAP. I.

Of the simplicity of civil laws in different governments.

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

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

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

The difference of rank, birth, and condition, established in monarchial governments, is frequently attended with distinctions in the nature of property; and the laws relative to the constitution of this government, may augment the number of these distinctions. Hence, among us, goods are divided into real estates, purchases, dowries, paraphernalia, paternal and maternal estates; moveables of different kinds; estates held in fee simple, or in tail; acquired by de-

ſcent or conveyance; allodial, or held by ſoccage; ground-rents, or annuities. Each ſort of goods is ſubject to particular rules, which muſt be complied with in the diſpoſal of them. Theſe things muſt needs diminiſh the ſimplicity of the laws.

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

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

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

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

One of the privileges leaſt burthenſome to ſociety,

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

Far different is the case of people under despotic governments. In those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the prince, it follows, that there are scarce any civil laws concerning the property of lands. From the right the sovereign has to succeed to estates, it follows likewise that there are none relating to inheritances. The monopolies established by the prince for himself in some countries, render all sorts of commercial laws quite useless. The marriages which they usually contract with the slaves, are the cause that there are scarce any civil laws relating to dowries, or to the particular advantage of married women. From the prodigious multitude of slaves, it follows likewise that there are very few who have any such thing as a will of their own, and of course are answerable for their conduct before a judge. Most moral actions that are only in consequence of a father's, a husband's, or a master's will, are regulated by them, and not by the magistrates.

I forgot to observe, that as what we call honour is a thing hardly known in those countries, the several points relating to this honour, which are of such importance with us, are with them quite out of the question.

Despotic power is of itself sufficient; round it there is an absolute vacuum. Hence it is, that when travellers favour us with the description of countries where arbitrary sway prevails, they seldom make mention of civil laws *.

* In Mazulipatan it could never be found out that there was such a thing as written laws. See the Collection of Voyages that contributed to the establishment of the East-India Company, tome IV. part i. page 391. The Indians are regulated in their judgments by certain customs. The Vedan and such like books do not contain civil laws, but religious precepts. See Edifying Letters, 14 collect.

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

CHAP. II.

Of the ſimplicity of criminal laws in different governments.

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

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

In Turkey, where little regard is ſhown to the honour, lives or eſtates of the ſubject, all cauſes are one way or other quickly decided. The method of determining them is a matter of indifference, provided they be determined. The baſhaw, after a ſpeedy hearing, orders which party he pleaſes to be baſtinadoed, and then ſends them about their buſineſs.

Here it would be dangerous to have the paſſion of litigiouſneſs; this ſuppoſes a violent deſire of obtaining juſtice, a ſtrong averſion, a hurry of mind, and an obſtinacy in purſuing revenge. All this ſhould be avoided in a government where fear ought to be the only prevailing ſentiment, and in which the leaſt

popular disturbances are frequently attended with sudden and unforeseen revolutions. Here every man ought to know that the magistrate must not hear his name mentioned, and that his security depends entirely on his being reduced to a kind of annihilation.

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

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

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

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

CHAP. III.

In what governments and in what cases the judges ought to determine according to the express letter of the law.

THE nearer a government approaches to a republic, the more the manner of judging becomes settled and fixed; wherefore it was a fault in the republic of Sparta, for the Ephori to pass such arbi-

* Cæsar, Cromwell, and many others.

trary judgments, without having any laws to direct them. The firſt conſuls at Rome pronounced ſentence in the ſame manner as the Ephori; but the inconveniency of this proceeding was ſoon felt, and they were obliged to have recourſe to expreſs and fixed laws.

In deſpotic governments there are no laws; the judge himſelf is his own rule. There are laws in monarchies; and where theſe are explicit, the judge conforms to them; where they are otherwiſe, he endeavours to follow their ſpirit. In republics, the very nature of the conſtitution requires the judges to keep to the letter of the law. Here there is no citizen againſt whom a law can be interpreted, in caſes where either his honour, property, or life is concerned.

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

CHAP. IV.

Of the manner of forming judgments.

HENCE ariſe the different manners of forming judgments. In monarchies the judges take the method of arbiters; they deliberate together, they communicate their thourghts, in order to come to an agreement, they moderate their opinion to render it conformable to that of others; and the ſentiments of the feweſt muſt yield to thoſe of two thirds of the whole number. But this is not agreeable to the nature of a republic. At Rome, and in the cities of Greece, the judges never entered into a conſultation; each gave his opinion one of theſe three ways, "I ab-

"solve. I condemn. It does not appear clear to me *." This was because the people judged, or were supposed to judge. But the people are far from being civilians; all those modifications of arbitration are above their reach; they must have only one object and one single fact set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgment.

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

Hence it followed, that the Roman judges granted only the simple demand, without making any addition, deduction or limitation. But the prætors devised other forms for actions, which were called "ex "bona fide," where the method of pronouncing sentence was left more to the disposition of the judge. This was more agreeable to the spirit of monarchy. Hence it is a saying among the French lawyers, "That in France all † actions are *ex bona fide*."

CHAP. V.

In what governments the sovereign may be judge.

MACHIAVEL ‖ attributes the loss of the liberty of Florence, to the people's not judging in a body in cases of high treason against themselves, as

* Non liquet.

† "Quas actiones ne populus prout vellet institueret, certas "solemnesque esse voluerunt." *Lib.* 2. § 6. *Digest. de orig. jur.*

‡ In France a person, though sued for more than he owes, loses notwithstanding his costs, if he has not offered to pay as much as he owes.

‖ Discourse on the first decade of Livy, book 1. chap. 7.

was cuſtomary at Rome. For this purpoſe they had eight judges: "But the few," ſays Machiavel, "are "corrupted by a few." I ſhould willingly adopt the maxim of this great man: But as in thoſe caſes the political intereſt prevails in ſome meaſure over the civil, (for it is always an inconveniency that the people ſhould be judge in their own cauſe), in order to remedy this evil, the laws muſt provide as much as poſſible for the ſecurity of individuals.

With this view the Roman legiſlators did two things; they gave the perſons accuſed permiſſion to baniſh themſelves * before ſentence was pronounced †; and they ordained that the goods of thoſe who were condemned ſhould be ſacred, to prevent their being confiſcated to the people. We ſhall ſee in the 11th book the other limitations that were ſet to the power the people had of judging.

Solon knew how to prevent the abuſe which the people might make of their power in criminal judgments. He ordained that the court of Areopagus ſhould re-examine the affair; that if they believed the party accuſed was unjuſtly acquitted ‡, they ſhould accuſe him again before the people; that if they believed him unjuſtly condemned ‖, they ſhould put a ſtop to the execution, and make them rejudge the proceeding. An admirable law, that ſubjected the people to the cenſure of the magiſtracy which they moſt revered, and even to their own!

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

In deſpotic governments the prince himſelf may be judge. But in monarchies this cannot be; the con-

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

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

‡ Demoſthenes pro corona, p. 494. edit. Francof an. 1604.

‖ See Philoſtratus's lives of the Sophiſts, book 1. Life of Æſchines.

ſtitution by ſuch means would be ſubverted, and the dependent intermediate powers annihilated; all ſet forms of judgment would ceaſe; fear would take poſſeſſion of the people's minds, and paleneſs ſpread itſelf over every countenance: the more confidence, honour, affection and ſecurity is in the ſubject, the more widely extended is the power of the monarch.

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

In this government, the prince has frequently the benefit of confiſcations; ſo that here again, by being judge himſelf of crimes, he would be both judge and party.

Further, by this means he would deprive himſelf of the moſt glorious attribute of ſovereignty, namely, that of granting pardon *; for it would be quite ridiculous in him to make and unmake his deciſions: Surely he would not chuſe to contradict himſelf. Beſides, this would be confounding all ideas; it would be impoſſible to tell whether a man was acquitted or pardoned.

Lewis XIII. being deſirous to ſit as judge at the trial of the Duke de la Valette †, aſſembled in his cabinet ſome members of the parliament, together with ſome counſellors of ſtate, to conſult about it: Upon their being compelled by the king to give their opinion or judgment concerning the decree for his arreſt, the Preſident de Believre ſaid, "That he ſaw in this "affair a very ſtrange thing, a prince paſſing ſen- "tence upon one of his ſubjects; that kings had re- "ſerved to themſelves the power of pardoning, and "left that of condemning to their officers; that his "Majeſty wanted to ſee before him at the bar, a per-

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

† See the relation of the trial of the Duke de Valette. It is printed in the Memoirs of Monteſor, tome 2. p. 62.

" ſon, who by his deciſion was to be hurried away in " an hour's time into the other world! That this is " what a prince's countenance, from whence favours " flow, ſhould never bear; that his preſence alone re- " moved eccleſiaſtic cenſures; and that ſubjects ought " not to go away diſſatisfied from their prince." When ſentence was paſſed, the ſame preſident ſaid, " This is an unprecedented judgment, to ſee, con- " trary to the example of paſt ages, a king of France " in the quality of a judge, condemning a gentleman " to death *."

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

" Claudius," ſays Tacitus †, " having appropriated " to himſelf the judgment of law-ſuits, and the func- " tions of magiſtrates, gave occaſion to all manner of " rapine." But Nero, upon his coming to the empire after Claudius, endeavoured to conciliate the minds of the people, by declaring, " That he would " take care not to be judge himſelf in private cauſes, " that the parties might not be expoſed within the " walls of a palace to the iniquitous power of a few " freedmen ‡."

" Under the reign of Arcadius," ſays Zozimus ‖, " a ſwarm of calumniators ſpread themſelves all " round, and infected the court. Upon a perſon's " deceaſe, it was immediately ſuppoſed he had no " children §; and, in conſequence of this, his pro- " perty was given away by a reſcript. For, as the " prince was ſurpriſingly ſtupid, and the empreſs ex- " ceſſively enterpriſing, ſhe was a ſlave to the inſa- " tiable avarice of her domeſtics and confidents; in-

* It was afterwards revoked. See the ſame relation.

† Annal. lib. 11. ‡ Ibid. lib. 13 ‖ Hiſt. lib. 5.

§ The ſame diſorder happened under Theodoſius the younger.

" ſomuch that to an honeſt man nothing could be " more deſireable than death."

" Formerly," ſays Procopius *, " there uſed to be " very few people at court; but in Juſtinian's reign, " as the judges had no longer the liberty of admini- " ſtering juſtice, their tribunals were deſerted, while " the prince's palace reſounded with the clamours of " the ſeveral litigating parties." Every body knows what a proſtitution there was, at that court, of public judgments, and even of the very laws themſelves.

The laws are the eye of the prince; by them he ſees what he could not otherwiſe diſcern. Should he attempt the function of a judge, he would not then labour for himſelf, but for impoſtors that want to deceive him.

CHAP. VI.

That in monarchies the miniſters ought not to be judges.

IT is likewiſe a very great inconveniency in monarchies for the miniſters of the prince to be judges. We have ſtill inſtances of ſtates where there are a great number of judges to determine fiſcal controverſies, and where the miniſters notwithſtanding (a thing almoſt incredible!) want to determine them. Many are the reflections that here ariſe; but this ſingle one will ſuffice for my purpoſe.

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

* Secret hiſtory.

CHAP. VII

Of a ſingle magiſtrate.

A Magiſtracy of this kind cannot take place but in a deſpotic government. We have an inſtance in the Roman hiſtory, how far a ſingle magiſtrate may abuſe his power. Might it not be very well expected, that Appius on his tribunal ſhould contemn the laws, after having violated the very law of his own * enacting? Livy has given us the iniquitous diſtinction of the decemvir. He had ſuborned a man to reclaim Virginia in his preſence as his ſlave: Virginia's relations inſiſted, that, by virtue of his own law, ſhe ſhould be conſigned to them till the definitive judgment was paſſed. Upon which he declared, that his law had been made only in favour of the father; and that, as Virginius was abſent, no application could be made of it to the preſent caſe †.

CHAP. VIII.

Of accuſations in different governments.

IN Rome ‡ it was lawful for one citizen to accuſe another; this was according to the ſpirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and where each citizen is ſuppoſed to hold the whole rights of his country in his hands. Under the emperors the republican maxims were ſtill purſued; and inſtantly a pernicious ſet of men ſtarted up, a whole ſwarm of informers. Whoſoever had numerous vices and abilities, a mean ſoul, and an ambitious ſpirit, buſied himſelf in the ſearch of ſome criminal whoſe condemnation might

* See the 2d law, § 24. ff. de orig. jur.

† "Quod pater puellæ abeſſet, locum injuriæ eſſe ratus." *Livius, dec. 1. lib. 3.*

‡ And in a great many other cities.

be agreeable to the prince: this was the road to honour and fortune ‖; but luckily we are ſtrangers to it in our country.

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

By Plato's laws *, thoſe who neglect to inform or aſſiſt the magiſtrates, are liable to be puniſhed. This would not be ſo proper in our days. The public proſecutor watches for the ſafety of the citizens; he proceeds in his office, while they enjoy the ſweets of tranquillity.

CHAP. IX.

Of the ſeverity of puniſhments in different governments.

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

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

In thoſe ſtates a good legiſlator is leſs bent upon puniſhing than preventing crimes; he is more attentive to inſpire good morals, than to inflict puniſhments.

‖ See in Tacitus the reward given to theſe informers.
* Lib. 9.

It is a perpetual remark of the Chineſe authors †, that the more the ſeverity of puniſhments was increaſed in their empire, the nearer they were to a revolution. Becauſe puniſhments were augmented in proportion as the public morals were corrupted.

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

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

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

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

When we read in hiſtory the horrid ſeverity of the ſultans in the adminiſtration of juſtice, we feel a kind of pain upon conſidering the miſeries of human nature.

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

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

CHAP. X.

Of the ancient French laws.

IN the ancient French laws we find the true ſpirit of monarchy. In caſes relating to pecuniary puniſhments the common people are leſs ſeverely punished than the nobility*. But in criminal † caſes it is quite the reverſe; the nobleman loſes his honour and his voice in court, while the peaſant, who has no honour to loſe, undergoes a corporal puniſhment.

CHAP. XI.

That when a people are virtuous, few puniſhments are neceſſary.

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

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

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

† See the council of Peter Defontaines, chap. 13. eſpecially art. 22.

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

‖ "Lex Porcia pro tergo civium lata." It was made in the 454th year of the foundation of Rome.

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

CHAP. XII.

Of the power of puniſhments.

EXPERIENCE ſhows, that in countries remarkable for the lenity of penal laws, the ſpirit of the inhabitants is as much affected by them, as in other countries by ſeverer puniſhments.

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

Deſertion in our days was grown to a very great height; in conſequence of this it was judged proper to puniſh deſerters with death; and yet their number did not diminiſh. The reaſon is very natural; a ſoldier, accuſtomed daily to venture his life, deſpiſes or affects to deſpiſe the danger of loſing it. He is daily habituated to the fear of ſhame; it would have therefore been much better to have continued a puniſhment which branded him with infamy for life: The

* "Nil ultra quam improbe factum adjecit." *Liv.*

punishment was pretended to be increased, while it was really diminished.

Men must not be led by excess of violence; we ought to make a prudent use of the means which nature has given us to conduct them. If we enquire into the cause of all human corruptions, we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments.

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

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

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

It often happens that a legislator, desirous of reforming an evil, thinks of nothing but of this reformation; his eyes are open only to this object, and shut to its inconveniences. When the evil is redressed, there is nothing more seen but the severity of the legislator: yet there still remains an evil in the state that has sprung from this severity; the minds of the people are corrupted, and become habituated to despotic power.

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

* Xenoph. hist. lib. 11.

the people's minds, and given leſſons of cruelty to all Greece.

"The Argives," ſays Plutarch *, "having put fif-
"teen hundred of their citizens to death, the Athe-
"nians ordered ſacrifices of expiation, that it might
"pleaſe the gods to turn the hearts of the Athenians
"from ſo cruel a thought."

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

CHAP. XIII.

Impotency of the Laws of Japan.

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

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

They puniſh with death lies ſpoken before the magiſtrates ‡; a proceeding contrary to natural defence.

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

It is true, that the ſurpriſing character of this obſtinate, capricious, reſolute, whimſical people, who defy all dangers and calamities, ſeems to abſolve their

* Morals of thoſe who are intruſted with the direction of ſtate-affairs.

† See Kempfer.

‡ Collection of voyages that contributed to the eſtabliſhment of the Eaſt India Company, tome iii. p. 428.

legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men who have a natural contempt of death, and who rip open their bellies for the least fancy; are such men, I say, minded or deterred, or rather are they not hardened by the continual sight of punishments?

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

A wise legislator would have endeavoured to reclaim people's minds by a just temperature of punishments and rewards; by maxims of philosophy, morality, and religion, adapted to these characters; by a just application of the rules of honour, and by the enjoyment of a constant happiness and soft tranquillity of life. But these are springs to which despotic power is a stranger; it may abuse itself, and that is all it can do: in Japan it has made its utmost effort, and has surpassed even itself in cruelty.

As the minds of the people by this means grew wild and intractable, they were obliged to have recourse to the most horrid severity. This is the origin, this is the spirit of the laws of Japan. They had more fury however than force. They succeéded in the extirpation of Christianity; but such unaccountable efforts are a proof of their impotence. They wanted to establish a good polity, and they have shown greater marks of their weakness.

We have only to read the relation of the interview between the emperor and the deyro at Meaco*. The number of those who were suffocated or murdered in that city by ruffians is incredible; young maids and

* Collection of voyages that contributed to the establishment of the East India Company, tome v. p. 2.

boys were carried off by force, and found afterwards expoſed in public places at unſeaſonable hours quite naked and ſewed in linen bags, to prevent their knowing which way they had paſſed; robberies were committed in all parts, the bellies of horſes were ripped open to bring their riders to the ground, and coaches were overturned in order to ſtrip the ladies. The Dutch, who were told they could not paſs the night on the ſcaffold without expoſing themſelves to the danger of being aſſaſſinated, came down, &c.

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

CHAP. XIV.

Of the ſpirit of the Roman ſenate.

UNDER the conſulate of Acilius Glabrio and Piſo, the Acilian * law was made to prevent the intriguing for places. Dio ſays ‡, that the ſenate

† Ibid.

* Thoſe that were guilty were condemned in a fine; they could not be admitted into the rank of ſenators, nor nominated to any public office. Dio, Book xxxvi.

‡ Book xxxvi.

engaged the conſuls to propoſe it, by reaſon that C. Cornelius the tribune had reſolved to cauſe moſt ſevere puniſhments to be enacted againſt this crime; to which the people ſeemed greatly inclined. The ſenate rightly judged, that immoderate puniſhments would ſtrike indeed a terror into people's minds, but muſt have alſo this effect, that there would be nobody afterwards to accuſe or condemn; whereas, by propoſing moderate puniſhments, there would be always judges and accuſers.

CHAP. XV.

Of the Roman Laws in reſpect to puniſhments.

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

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

Livy ‡ ſays, in relation to the puniſhment of Metius Suffetius, dictator of Alba, who was condemned by Tullus Hoſtilius to be pulled to pieces by two chariots, that this was the firſt and laſt puniſhment in which the remembrance of humanity ſeemed to have been loſt. He is miſtaken; the law of the twelve tables is full of very cruel puniſhments †.

The deſign of the decemvirs appears moſt conſpicuous in the capital puniſhment pronounced againſt libellers and poets. This is not agreeable to the ge-

‡ Lib. i.

† We find there the puniſhment of fire, and almoſt always capital puniſhments, theft puniſhed with death, &c.

nius of a republic, where the people like to ſee the great men humbled. But perſons that aimed at the ſubverſion of liberty, were afraid of writings that might revive its ſpirit †.

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

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

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

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

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

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

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

* Book i.

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

and to the reſpect with which thoſe dignities were attended.

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

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

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

CHAP. XVI.

Of the juſt proportion betwixt puniſhments and crimes.

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

* See the third law, § "legis ad leg. Cornel. de ſicariis," and a vaſt number of others in the Digeſt and in the Codex.

† Sublimiores. ‡ Medios.

‖ Infimos, leg. 3. § "legis ad leg. Cornel. de ſicariis."

§ Jul. Cap. Maximini duo.

" An impoſtor *, who called himſelf Conſtantine " Ducas, raiſed a great inſurrection at Conſtanti- " nople. He was taken and condemned to be whipt; " but, upon informing againſt ſeveral perſons of di- " ſtinction, he was condemned to be burnt as a ca- " lumniator." It is very extraordinary, that they ſhould thus proportion the puniſhments betwixt the crimes of high treaſon and that of calumny.

This puts me in mind of a ſaying of Charles II. king of Great Britain. He ſaw a man one day ſtanding in the pillory; upon which he aſked what crime the man had committed. He was anſwered, " Pleaſe " your Majeſty, he has wrote a libel againſt your mi- " niſters." " The fool! (ſaid the king), why did he " not write againſt me? they would have done no- " thing to him."

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

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

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

In Ruſſia, where the puniſhment of robbery and

* Hiſt. of Nicephorus, patriarch of Conſtantinople.
† In Nicephorus's hiſtory.
‡ Du Halde, tome i. p. 6.

murder is the ſame, they always murder *. The dead, ſay they, tell no tales.

When there is no difference in the puniſhment, there ſhould be ſome in the expectation of pardon. In England they never murder on the highway, becauſe robbers have ſome hopes of tranſportation, which is never the caſe in reſpect to thoſe that commit murder.

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

CHAP. XVII.

Of the queſtion or torture.

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

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

* Preſent State of Ruſſia, by Perry.

† The Engliſh.

‡ The citizens of Athens could not be put to the rack, (Lyſias, orat. in Agorat.) unleſs it was for high treaſon. The torture was uſed within thirty days after condemnation. (Curius Fortunatus rhetor ſchol. lib. 2.) There was no preparatory torture. In regard to the Romans the 3d and 4th law, ad leg. Julian Majeſt. ſhews that birth, dignity, and the military pro-

So many men of learning and genins have wrote againſt the cuſtom of torturing criminals, that after them I durſt not preſume to meddle with the ſubject. I was going to ſay that it might ſuit deſpotic ſtates, where whatever inſpires fear is the propereſt ſpring of government; I was going to ſay that the ſlaves among the Greeks and Romans-------But I hear the voice of Nature cry out loudly againſt me.

CHAP. XVIII.

Of pecuniary and corporal puniſhments.

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

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

CHAP. XIX.

Of the law of Retaliation.

THE uſe of the law of retaliation † is very frequent in deſpotic countries, where they are fond of ſimple laws. Moderate governments admit of it ſometimes, but with this difference, that the former exerciſion, exempted people from the rack, except in caſes of high treaſon See the prudent reſtrictions of this practice made by the laws of the Viſigoths.

* See Kempfer

† It is eſtabliſhed in the Koran. See the chapter of the Cow.

cise it in full rigour, and among the latter it always receives some kind of limitation.

The law of the twelve tables admitted two; 1*st*, it never condemned to retaliation but when the plaintiff could not be satisfied in any other manner *; 2*dly*, after condemnation they might pay damages and interest †, and then the corporal punishment was changed into a pecuniary one ‡.

CHAP. XX.

Of the punishment of fathers for the crimes of their children.

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

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

CHAP. XXI.

Of the clemency of the prince.

CLEMENCY is the peculiar characteristic of monarchs. In republics, whose principle is virtue, it is not so necessary. In despotic governments, where fear predominates, it is less customary, because the

* "Si membrum rupit, ni cum eo pacit, talio esto." *Aulus Gellius, lib.* xx. *cap.* 1.

† See Kempfer.

‡ See also the law of the Visigoths, book vi. tit. 4. § 3. & 5.

‖ See Garcilasso, history of the civil wars of the Spaniards.

§ Instead of punishing them, says Plato, they ought to have

great men are to be reſtrained by examples of ſeverity. It is more neceſſary in monarchies, where they are governed by honour, which frequently requires what the very law forbids. Diſgrace is here equivalent to chaſtiſement, and even the formalities of juſtice are puniſhments. This is becauſe particular kinds of puniſhment are formed by ſhame, which on every ſide invades the delinquent.

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

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

So many are the advantages which monarchs gain by clemency; ſuch love, ſuch glory attends it, that it is generally a point of happineſs to have an opportunity of exerciſing it, which in theſe parts is ſeldom wanting.

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

But ſome may aſk, when is it proper to puniſh, and when to pardon? This is a point that is eaſier felt than preſcribed. When there is danger in the exerciſe of clemency, the danger is viſible; it is an eaſy matter to diſtinguiſh it from that imbecillity which expoſes princes to contempt, and to the very incapacity of puniſhing.

The Emperor Maurice * made a reſolution never to ſpill the blood of his ſubjects. Anaſtaſius † puniſhed no crimes at all. Iſaac Angelus took an oath that

been commended for not having followed their fathers examples.

Book 9. of laws.

* Evagr. hiſt. † Frag. of Suidas in Conſtant. Porphyrog.

no one should be put to death during his reign. Those Greek Emperors had forgot that it was not for nothing they were intrusted with the sword.

BOOK VII.

Consequences of the different Principles of the three Governments with respect to sumptuary Laws, Luxury, and the Condition of Women.

CHAP. I.

Of Luxury.

LUXURY is always in proportion to the inequality of fortunes. If the riches of a state are equally divided, there will be no luxury; for it is founded merely on the conveniencies acquired by the labour of others.

In order to have this equal distribution of riches, the law ought to give each man only just what is necessary for nature. If they exceed those bounds, some will spend, and others will acquire, and by this means an inequality will be established.

Supposing what is necessary for the support of nature to be equal to a given sum, the luxury of those who have only what is barely necessary will be equal to a cipher; if a person happens to have double that sum, his luxury will be equal to one; he that has double the latter's substance will have a luxury equal to three; if this be still doubled, there will be a luxury equal to seven; so that the property of the subsequent individual being always supposed double to that of the preceding, the luxury will increase double, and an unit be always added in this progression, 0, 1, 3, 7, 15, 31, 63, 127.

In Plato's republic *, luxury might have been exactly calculated. There were four ſorts of cenſuſes, or rates of eſtates. The firſt was exactly the term beyond poverty, the ſecond was double, the third triple, the fourth quadruple to the firſt. In the firſt cenſus, luxury was equal to a cipher; in the ſecond to one, in the third to two, in the fourth to three; and thus it followed in an arithmetical proportion.

Conſidering the luxury of different nations with reſpect to one another, it is in each ſtate in a compound proportion to the inequality of the ſubject's fortunes, and to the inequality of the wealth of the different ſtates. In Poland, for example, there is an extreme inequality of fortunes; but the poverty of the whole hinders them from having ſo much luxury as in a more opulent ſtate.

Luxury is alſo in proportion to the populouſneſs of the towns, and eſpecially of the capital; ſo that it is in a compound proportion to the riches of the ſtate, to the inequality of private fortunes, and to the number of people ſettled in particular places.

In proportion to the populouſneſs of towns, the inhabitants are filled with vain notions, and actuated by an ambition of diſtinguiſhing themſelves by trifles †. If they are ſo very numerous, that moſt of them are ſtrangers to one another, the paſſion of diſtinguiſhing themſelves redoubles, becauſe there are greater hopes of ſucceſs. As luxury inſpires theſe hopes, each man aſſumes the marks of a ſuperior condition. But, by endeavouring thus at diſtinction, every one becomes equal, and diſtinction ceaſes; as all of them are deſirous of reſpect, nobody is taken notice of.

Hence ariſes a general inconveniency. Thoſe who

* The firſt cenſus was the hereditary ſhare in land, and Plato would not allow them to have in other effects above a triple of the hereditary ſhare. See his laws, book 5.

† In a great city, ſays the author of the Fable of the Bees, vol 1. p. 133. they dreſs above their condition, in order to be eſteemed more than what they really are by the multitude. This to a weak perſon is almoſt as great a pleaſure as the accompliſhment of his deſires.

excel in a profession set what value they please upon their labour; this example is followed by people of inferior abilities; and then there is an end of all proportion between our wants and the means of satisfying them. When I am forced to go to law, I must be able to see counsel; when I am sick, I must be able to see a physician.

It is the opinion of several, that the assembling so great a multitude of people in capital cities is an obstruction to commerce, because by this means the inhabitants are no longer within a proper distance from each other. But I cannot think so; for men have more desires, more wants, more fancies, when they live together.

CHAP. II.

Of sumptuary laws in a Democracy.

WE have observed, that in a republic where riches are equally divided, there can be no such thing as luxury; and as this equal distribution constitutes the excellency of a republican government, hence it follows that the less luxury there is in a republic, the more perfect it is. There was none amongst the old Romans, none among the Lacedæmonians; and, in republics where this equality is not quite lost, the spirit of commerce, industry, and virtue, renders every man able and willing to live on his own property, and consequently prevents the growth of luxury.

The laws concerning the new division of lands, insisted upon so eagerly in some republics, were of the most salutary nature. They were dangerous only as they were sudden. By reducing instantaneously the wealth and riches of some, and increasing that of others, they form a revolution in each family, and must produce a general one in the state.

In proportion as luxury gains ground in a republic, the minds of the people are turned towards their particular interest. Those who are allowed only what is necessary have nothing to wish for but their own and

their country's glory. But a ſoul depraved by luxury has many other deſires, and ſoon becomes an enemy to the laws that confine it. The luxury in which the garriſon of Rhegio began to live was the cauſe of their maſſacring the inhabitants.

No ſooner were the Romans corrupted, than their deſires became boundleſs and immenſe. Of this we may judge by the price they ſet on things. A pitcher of Falernian wine * was ſold for a hundred Roman denarii; a barrel of ſalt-meat from the kingdom of Pontus, coſt four hundred; a good cook four talents: and for boys no price was reckoned too great.

When the whole world, impelled by the force of a general corruption, is immerſed in voluptuouſneſs †, what muſt then become of virtue?

CHAP. III.

Of ſumptuary laws in an Ariſtocracy.

THERE is this inconveniency in an ill conſtituted ariſtocracy, that the wealth centers in the nobility, and yet they are not allowed to ſpend; for, as luxury is contrary to the ſpirit of moderation, it muſt be baniſhed thence. This government comprehends therefore only people that are extremely poor and cannot acquire, and people that are vaſtly rich and cannot ſpend.

In Venice the people are compelled by the laws to moderation. They are ſo habituated to parſimony, that none but courteſans can make them part with their money. Such is the method made uſe of for the ſupport of induſtry; the moſt contemptible of women ſpend freely their money without danger, whilſt thoſe who ſupport them conſume their days in the greateſt obſcurity.

Admirable in this reſpect were the inſtitutions of the principal republics of Greece. The rich employed

* Fragment of the 36th book of Diodorus, quoted by Conſt. Porphyrogen. in his extract of virtues and vices.

† "Cum maximus omnium impetus ad luxuriam eſſet." Ibid.

their money in feſtivals, muſical choruſes, chariots, horſe-races, and chargeable offices. Wealth was therefore as burthenſome there as poverty.

CHAP. IV.

Of ſumptuary laws in a monarchy.

TACITUS ſays *, "That the Suiones, a German "nation, have a particular reſpect for riches; for "which reaſon they live under the government of "one perſon." This ſhews that luxury is extremely proper for monarchies, and that under this government there muſt be no ſumptuary laws.

As riches, by the very conſtitution of monarchies, are unequally divided, there is an abſolute neceſſity for luxury. Were the rich not to ſpend their money freely, the poor would ſtarve. It is even neceſſary here, that the expences of the rich ſhould be in proportion to the inequality of fortunes, and that luxury, as we have already obſerved, ſhould increaſe in this proportion. The augmentation of private wealth is owing to its having deprived one part of the citizens of their neceſſary ſupport; this muſt therefore be reſtored to them.

For the preſervation therefore of a monarchical ſtate, luxury ought continually to increaſe and to grow more extenſive, as it riſes from the labourer to the artificers, to the merchants, to the magiſtrates, to the nobility, to the great officers of ſtate, up to the very prince; otherwiſe the nation will be undone.

In the reign of Auguſtus, a propoſal was made in the Roman ſenate, which was compoſed of grave magiſtrates, learned civilians, and of men whoſe heads were filled with the idea of the primitive times, to reform the manners and luxury of women. It is curious to ſee in Dio †, with what art this prince eluded

* De morib. German.
† Dio Caſſius, lib. 54.

the importunate ſolicitations of thoſe ſenators. This was becauſe he was founding a monarchy, and diſſolving a republic.

Under Tiberius the ediles propoſed in the ſenate the re-eſtabliſhment of the ancient ſumptuary laws †. This prince, who did not want ſenſe, oppoſed it: "The ſtate," ſaid he, "could not poſſibly ſubſiſt in "the preſent ſituation of things. How could Rome, "how could the provinces live? We were frugal "while we were inhabitants of a ſingle city; now we "conſume the riches of the univerſe, and employ "both maſters and ſlaves in our ſervice." He plainly ſaw that ſumptuary laws would not ſuit the preſent form of government.

When a propoſal was made under the ſame emperor to the ſenate, to prohibit the governors from carrying their wives with them into the provinces, becauſe of the diſſoluteneſs and irregularities which followed thoſe ladies, the propoſal was rejected. It was ſaid, "that the examples of ancient auſterity had been "changed into a more agreeable method of living ‡." They found there was a neceſſity for different manners.

Luxury is therefore abſolutely neceſſary in monarchies, and neceſſary alſo in deſpotic ſtates. In the former it is the uſe people make of what ſhare of liberty they poſſeſs; in the other, it is the abuſe they make of the advantages of their ſlavery. A ſlave ſingled out by his maſter to tyrannize over the other ſlaves, uncertain of enjoying to-morrow the bleſſings of to-day, has no other felicity than that of glutting the pride, the paſſions, and voluptuouſneſs of the preſent moment.

Hence ariſes a very natural reflection. Republics end with luxury; monarchies with poverty *.

† Tacit. Annal. lib. 3.

‡ "Multa duritici veterum melius et lætius mutata." *Tacit. Ann.* l. 3.

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

CHAP. V.

In what cases ſumptuary laws are uſeful in a monarchy.

WHETHER it was from a republican ſpirit, or from ſome other particular circumſtances, in the middle of the thirteenth century, ſumptuary laws were made in Arragon. James I. ordained, that neither the king, nor any of his ſubjects ſhould have above two ſorts of diſhes at a meal, and that each diſh ſhould be dreſſed only one way, except it were game of their own killing †.

In our days, ſumptuary laws have been alſo enacted in Sweden, but with a view different from thoſe of Arragon.

A government may make ſumptuary laws with a view to abſolute frugality; this is the ſpirit of ſumptuary laws in republics; and the very nature of the thing ſhews that ſuch was the deſign of thoſe of Arragon.

Sumptuary laws may likewiſe be made with a deſign to promote a relative frugality. When a government, perceiving that foreign merchandiſes being at too high a price, will require ſuch an exportation of the home-manufactures, as to deprive them of more advantages by the loſs of the latter, than they can receive from the poſſeſſion of the former, they will forbid their being introduced. And this is the Spirit of the Laws that in our days have been paſſed in Sweden *. Such are the ſumptuary laws proper for monarchies.

In general, the poorer a ſtate is, the more it is ruined by its relative luxury, and conſequently the

† Conſtitution of James I. in the year 1234, art. 9. in Marca Hiſpanica, p. 1429.

* They have prohibited rich wines and other coſtly merchandiſes.

more occaſion it has for relative ſumptuary laws The richer a ſtate is the more it thrives by its relative luxury, for which reaſon it muſt take particular care not to make any relative ſumptuary laws. This we ſhall better explain in the book on commerce †; here we treat only of abſolute luxury.

CHAP. VI.

Of the luxury of China.

SUMPTUARY laws may, in ſome governments, be neceſſary for particular reaſons. The people, by the influence of the clime, may grow ſo numerous, and the means of ſubſiſting may be ſo uncertain, as to render an univerſal application to agriculture extremely neceſſary. As luxury in thoſe countries is dangerous, their ſumptuary laws ſhould be very ſevere. In order therefore to be able to judge whether luxury ought to be encouraged or proſcribed, we ſhould examine firſt what relation there is between the number of people, and the facility they have of procuring ſubſiſtence. In England, the ſoil produces more grain than is neceſſary for the maintainance of thoſe who cultivate the land, and of thoſe who are employed in the woolen manufactures. This country may be therefore allowed to have ſome trifling arts, and conſequently luxury. In France likewiſe there is corn enough for the ſupport of the huſbandman, and of the manufacturer. Beſides, a foreign trade may bring in ſo many neceſſaries in return for toys, that there is no danger to be apprehended from luxury.

On the contrary, in China the women are ſo prolific, and the human ſpecies multiplies ſo faſt, that the lands, though ever ſo much cultivated, are ſcarce ſufficient to ſupport the inhabitants. Here therefore luxury is pernicious, and the ſpirit of induſtry and œconomy is as requiſite, as in any republic *. They

† See book xx. chap 20.

* Luxury has been here always prohibited.

are obliged to purſue the neceſſary arts, and to ſhun thoſe of luxury and pleaſure.

This is the ſpirit of the excellent decrees of the Chineſe Emperors. "Our anceſtors," ſays an Emperor of the family of the Tangs †, "held it as a "maxim, that if there was a man who did not work, "or a woman that was idle, ſomebody muſt ſuffer "cold or hunger in the empire." And on this principle, he ordered an infinite number of monaſteries of bonzes to be deſtroyed.

The third Emperor of the one-and-twentieth dynaſty *, to whom ſome precious ſtones were brought that had been found in a mine, ordered it to be ſhut up, not chuſing to fatigue his people with working for a thing that could neither feed nor clothe them.

"So great is our luxury," ſays Kiaventi ‡, "that "people adorn with embroidery the ſhoes of boys "and girls, whom they are obliged to ſell." Is employing ſo many people in making cloaths for one perſon, the way to prevent a great many from wanting cloaths? There are ten men who eat the fruits of the earth to one employed in agriculture; and is this the means to preſerve numbers from wanting nouriſhment?

CHAP. VII.

Fatal conſequences of luxury in China.

IN the hiſtory of China, we find it has had twenty-two ſucceſſive dynaſties, that is, it has experienced twenty-two general, without mentioning an infinite number of particular revolutions. The three firſt dynaſties laſted a long time, becauſe they were ſagely adminiſtered, and the empire had not ſo great an extent as it afterwards obtained. But we may obſerve

† In an ordinance, quoted by Father du Halde, tome ii. page 497.

* Hiſtory of China, 21ſt dynaſty, in Father du Halde's work, tome 1.

‡ In a diſcourſe cited by Father du Halde, tome ii. page 418.

in general, that all thoſe dynaſties began very well. Virtue, attention, and vigilance, are neceſſary in China; theſe prevailed in the commencement of the dynaſties, and failed in the end. Indeed it was natural, that emperors trained up in military toils, who had compaſſed the dethroning of a family immerſed in pleaſures, ſhould be ſteady to virtue, which they had found ſo advantageous, and afraid of voluptuouſneſs, which they knew had proved ſo fatal to the family dethroned. But after the three or four firſt princes, corruption, luxury, indolence, and pleaſure, poſſeſs their ſucceſſors; they ſhut themſelves up in a palace; their underſtanding is impaired; their life is ſhortened; the family declines; the grandees riſe up; the eunuchs gain credit; none but children are ſet on the throne; the palace is at variance with the empire; a lazy ſet of fellows that dwell there, ruin the induſtrious part of the nation; the Emperor is killed or deſtroyed by an uſurper, who founds a family, the third or fourth ſucceſſor of which goes and ſhuts himſelf up in the very ſame palace.

CHAP. VIII.

Of public continence.

SO many are the imperfections that attend the loſs of virtue in women, and ſo greatly are their minds depraved, when this principal guard is removed, that in a popular ſtate, public incontinency may be conſidered as the laſt of miſeries, and as a certain forerunner of a change in the conſtitution.

Hence it is, that the ſage legiſlators of republican ſtates have always required of women a particular gravity of manners. They have proſcribed not only vice, but the very appearance of it. They have baniſhed even all commerce of gallantry; a commerce that produces idleneſs, that renders the women corrupters, even before they are corrupted; that gives a value to trifles, and debaſes things of importance; a commerce, in fine, that makes people act entirely by

the maxims of ridicule, in which the women are ſo perfectly ſkilled.

CHAP. IX.

Of the condition or ſtate of women in different governments.

IN monarchies, women are ſubject to very little reſtraint; becauſe, as the diſtinction of ranks calls them to court, thither they repair in order to aſſume that ſpirit of liberty, which is the only one there tolerated. The aſpiring courtier avails himſelf of their charms and paſſions, in order to advance his fortune; and as their weakneſs admits not of pride, but of vanity, luxury conſtantly attends them.

In deſpotic governments, women do not introduce, but are themſelves an object of luxury. They muſt be in a ſtate of the moſt rigorous ſervitude. Every one follows the ſpirit of the government, and adopts in his own family the cuſtoms he ſees elſewhere eſtabliſhed. As the laws are very ſevere, and executed on the ſpot, they are afraid leſt the liberty of women ſhould expoſe them to dangers. Their quarrels, indiſcretions, repugnances, jealouſies, piques, and that art, in fine, which little ſouls have of intereſting great ones, would be attended there with fatal conſequences.

Beſides, as princes in thoſe countries make a ſport of human nature, they allow themſelves a multitude of women; and a thouſand conſiderations oblige them to keep them in cloſe confinement.

In republics, women are free by the laws, and conſtrained by manners; luxury is baniſhed from thence, and with it corruption and vice.

In the cities of Greece, where they were not under the reſtraint of a religion which declares that even amongſt men a purity of manners is a part of virtue; where a blind paſſion triumphed with boundleſs inſolence, and love appeared only in a ſhape which we dare not mention, while marriage was conſidered as

nothing more than ſimple friendſhip *; ſuch was the virtue, ſimplicity, and chaſtity of women in thoſe cities, that in this reſpect hardly any people were ever known to have had a better and wiſer polity †.

CHAP. X.

Of the domeſtic tribunal among the Romans.

THE Romans had no particular magiſtrates, like the Greeks, to inſpect the conduct of women. The cenſors had not an eye over them, but as over the reſt of the republic. The inſtitution of the domeſtic tribunal ‡ ſupplied the magiſtracy eſtabliſhed among the Greeks ‖.

The huſband ſummoned the wife's relations, and tried her in their preſence §. This tribunal preſerved the morals of the republic, and at the ſame time theſe very morals maintained this tribunal. For it decided not only in reſpect to the violation of the laws, but alſo of morals; now, in order to judge of the violation of morals, morals are requiſite.

* In reſpect to true love, ſays Plutarch, the women have nothing to ſay to it; in his treatiſe of Love, page 600. He ſpoke in the ſtile of his time. See Xenophon in the dialogue entitled, *Hiero*.

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

‡ Romulus inſtituted this tribunal, as appears from Dionyſius Halicarnaſſ. book ii page 59.

‖ See in Livy, book 39. the uſe that was made of this tribunal, at the time of the conſpiracy of the Bachanalians. They gave the name of conſpiracy againſt the republic, to aſſemblies in which the morals of women and young people were debauched.

§ It appears from Dionyſ. Halicarn. lib. 2. that by the inſtitution of Romulus, in ordinary caſes the huſband ſhould ſit as ſole judge in preſence of the wife's relations, but that in grievous crimes he ſhould determine in conjunction with five of them. Hence Ulpian. tit. 6. ſec. 9, 12, and 13, diſtinguiſhes in reſpect to the different judgments of manners, between thoſe which he calls important, and thoſe which are leſs ſo, *graviores*, *leviores*.

The penalties inflicted by this tribunal ought to have been, and actually were, arbitrary; for all that relates to manners, and to the rules of modesty, can hardly be comprised under a code of laws. It is easy, indeed, to regulate by laws what we owe to others; but it is very difficult to comprise all we owe to ourselves.

The domestic tribunal inspected the general conduct of women: but there was one crime which, beside the animadversion of this tribunal, was likewise subject to a public accusation. This was adultery; whether that in a republic so great a violation of morals interested the government; or whether the wife's immorality might render the husband's suspected; or whether, in fine, they were afraid lest even honest people might chuse that this crime should rather be concealed than punished.

CHAP. XI.

In what manner the institutions changed at Rome, together with the government.

AS morals were supposed by the domestic tribunal, they were also supposed by the public accusation; and hence it is that these two things fell together with the public morals, and ended with the republic *.

The establishing of perpetual questions, that is, the division of jurisdiction among the prætors, and the custom gradually introduced of the prætors judging all affairs themselves †, weakened the use of the domestic tribunal. This appears by the surprise of historians, who look upon the decisions which Tiberius caused to be given by this tribunal, as singular facts, and as a renewal of the ancient course of pleading.

* "Judicio de moribus (quod antea quidem in antiquis legibus positum erat, non autem frequentabatur) penitus abolito." *Leg.* 11. *Cod. de repud.*

† Judicia extraordinaria.

The eſtabliſhment of monarchy, and the change of manners, put likewiſe an end to public accuſations. It might be apprehended that a diſhoneſt man, affronted at the contempt ſhewn him by a woman, vexed at her refuſals, and irritated even by her virtues, ſhould form a deſign to deſtroy her. The Julian law ordained, that a woman ſhould not be accuſed of adultery till after her huſband had been charged with favouring her irregularities; which limited greatly, and annihilated, as it were, this ſort of accuſation *.

Sixtus Quintus ſeemed to have been deſirous of reviving the public accuſation †. But there needs very little reflection to ſee, that this law would be more improper in ſuch a monarchy as his, than in any other.

CHAP. XII.

Of the guardianſhip of women among the Romans.

THE Roman laws ſubjected women to a perpetual guardianſhip, except they were under cover and the authority of a huſband ‡. This guardianſhip was given to the neareſt of the male relations; and by a vulgar expreſſion ‖ it appears they were very much confined. This was proper for a republic, but not at all neceſſary in a monarchy §.

That the women among the ancient Germans were likewiſe under a perpetual tutelage, appears from the different codes of the laws of the Barbarians *. This

* It was entirely aboliſhed by Conſtantine: "It is a ſhame," ſaid he, "that ſettled marriages ſhould be diſturbed by the "preſumption of ſtrangers."

† Sixtus Quintus ordained, that if a huſband did not come and make his complaints to him of his wife's infidelity, he ſhould be put to death. See Leti.

‡ Niſi conveniſſent in manum viri.

‖ Ne ſis mihi patruus oro.

§ The Papian law ordained under Auguſtus, that women who had bore three children ſhould be exempt from this tutelage.

* This tutelage was by the Germans called *Mundeburdium*.

cuſtom was communicated to the monarchies founded by thoſe people; but was not of long duration.

CHAP. XIII.

Of the puniſhments decreed by the emperors againſt the incontinency of women.

THE Julian law ordained a puniſhment againſt adultery. But ſo far was this law, any more than thoſe afterwards made on the ſame account, from being a mark of purity of morals, that on the contrary they were a proof of their depravation.

The whole political ſyſtem, in reſpect to women, received a change in the monarchical ſtate. The queſtion was, no longer to oblige them to a purity of morals, but to puniſh their crimes. That new laws were made to puniſh their crimes, was owing to their leaving thoſe tranſgreſſions unpuniſhed, which were not of ſo criminal a nature.

The frightful diſſolution of manners obliged indeed the emperors to enact laws in order to put ſome ſtop to lewdneſs; but it was not their intention to eſtabliſh a general reformation. Of this the poſitive facts related by hiſtorians are a much ſtronger proof than all thoſe laws can be of the contrary. We may ſee in Dio the conduct of Auguſtus on this occaſion, and in what manner he eluded both in his prætor's and in his cenſor's office, the repeated inſtances that were made him for that purpoſe *.

We find indeed in hiſtorians very rigid ſentences, paſſed in the reign of Auguſtus and Tiberius, againſt

* Upon their bringing before him a young man who had married a woman with whom he had before carried on an illicit commerce, he heſitated a long while, not daring to approve nor to puniſh theſe things. At length recollecting himſelf, "Sedi-"tions," ſays he, "have been the cauſe of very great evils, "let us forget them;" *Dio*, book 54. The ſenate having deſired him to give them ſome regulations in reſpect to womens morals, he evaded their petition, by telling them that they ſhould chaſtiſe their wives in the ſame manner as he did his; upon which they deſired him to tell how he behaved to his wife. (I think a very indiſcreet queſtion.)

the lewdneſs of ſome Roman ladies: But by ſhewing us the ſpirit of theſe reigns, they at the ſame time ſhew us the ſpirit of thoſe deciſions.

The principal deſign of Auguſtus and Tiberius was to puniſh the diſſoluteneſs of their relations. It was not their immorality they puniſhed, but a particular crime of impiety or high treaſon * of their own invention, which ſerved to promote a reſpect for majeſty, and anſwered their private revenge.

The penalty of the Julian law was ſmall †. The emperors inſiſted, that in paſſing ſentence the judges ſhould increaſe the penalty of the law. This was the ſubject of the invectives of hiſtorians. They did not examine whether the women were deſerving of puniſhment, but whether they had violated the law, in order to puniſh them.

One of the moſt tyrannical proceedings of Tiberius ‡, was the abuſe he made of the ancient laws. When he wanted to extend the puniſhment of a Roman lady, beyond that inflicted by the Julian law, he revived the domeſtic tribunal ‖.

Theſe regulations, in reſpect to women, concerned only ſenatorian families, but not the common people. Pretences were wanted to accuſe the great, which were conſtantly furniſhed by the diſſolute behaviour of the ladies.

In fine, what I have above obſerved, namely, that purity of morals is not the principle of monarchy, was never better verified than under thoſe firſt emperors;

* "Culpam inter viros et feminas vulgatam gravi nomine "læſarum religionum appellando, clementium majorum ſuaſque "ipſe leges egrediebatur." *Tacit. annal.* lib. iii.

† This law is given in the Digeſt; but without mentioning the penalty. It is ſuppoſed it was only *relegatio*, becauſe that of inceſt was only *deportatio*. *Leg. Si quis vid. tam, ff. de quæſt.*

‡ "Proprium id Tiberio fuit, ſcelera nuper reperta priſcis "verbis obtegere." *Tacit.*

‖ "Adulterii graviorem pœnam deprecatus, ut exemplo ma-"jorum propinquis ſuis ultra ducenteſimum lapidem removere-"tur, ſuaſit. Adultero Manlio Italia atque Africa interdictum "eſt." *Tacit. annal. lib.* ii.

and whoever doubts of it, need only read Tacitus, Suetonius, Juvenal, or Martial.

CHAP. XIV.

Sumptuary laws among the Romans.

WE have ſpoken of public incontinency, becauſe it always accompanies, always follows, and is followed by luxury. If we leave the motions of the heart at liberty, how ſhall we be able to reſtrain the weakneſſes of the mind?

At Rome, beſides the general inſtitutions, the cenſors prevailed on the magiſtrates to enact ſeveral particular laws to preſerve the frugality of women. This was the deſign of the Fannian, Licinian, and Oppian laws. We may ſee in Livy * the great ferment the ſenate was in, when the women inſiſted upon the revocation of the Oppian law. The abrogation of this law is fixed upon by Valerius Maximus, as the period from whence we may date the luxury of the Romans.

CHAP. XV.

Of dowries and nuptial advantages in different conſtitutions.

DOWRIES ought to be conſiderable in monarchies, in order to enable huſbands to ſupport their rank and the eſtabliſhed luxury. In republics, where luxury ſhould never reign †, they ought to be moderate; but there ſhould hardly be any at all in deſpotic governments, where women are in ſome meaſure ſlaves.

The community of goods introduced by the French

* Decad. iv. lib. iv.

† Marſeilles was the wiſeſt of all the republics in its time; here it was ordained that dowries ſhould not exceed one hundred crowns in money, and five in cloaths, as Strabo obſerves, lib. iv.

laws between man and wife, is extremely well adapted to a monarchical government; becauſe the women are thereby intereſted in domeſtic affairs, and compelled, as it were, to take care of their family. It is leſs ſo in a republic, where women have more virtue. But it would be quite abſurd in deſpotic governments, where the women themſelves generally conſtitute a part of the maſter's property.

As women are in a ſtate that furniſhes ſufficient inducements to marriage, the advantages which the law gives them over their huſband's property, are of no ſervice to ſociety. But in a republic they would be extremely prejudicial, becauſe riches are productive of luxury. In deſpotic governments the profit accruing from marriage ought to be mere ſubſiſtence, and no more.

CHAP. XVI.

An excellent cuſtom of the Samnites.

THE Samnites had a cuſtom, which, in ſo ſmall a republic, and eſpecially in their ſituation, muſt have produced admirable effects. The young people were all convened in one place, and their conduct was examined. He that was declared the beſt of the whole aſſembly, had leave given him to take which girl he pleaſed for his wife; the perſon that had been declared ſecond beſt, choſe after him, and ſo on *. Admirable inſtitution! The only recommendation that young men could have on this occaſion, was owing to virtue, and to the ſervices done their country. He who had the greateſt ſhare of theſe endowments, choſe which girl he liked out of the whole nation. Love, beauty, chaſtity, birth, and even wealth itſelf, were all, in ſome meaſure, the dowry of virtue. A nobler and grander recompenſe, leſs chargeable to a petty

* Fragments of Nicolaus Damaſcenus, taken from Stobœus in the collection of Conſtantine Porphyrogenitus.

ſtate, and more capable of influencing both ſexes, could ſcarce be imagined.

The Samnites were deſcended from the Lacedæmonians: And Plato, whoſe inſtitutes are only an improvement of thoſe of Lycurgus, enacted very near the ſame law †.

CHAP. XVII.

Of female adminiſtration.

IT is contrary to reaſon and nature, that women ſhould reign in families, as was cuſtomary among the Egyptians; but not that they ſhould govern an empire. In the firſt caſe, the ſtate of their natural weakneſs does not permit them to have the pre-eminence; in the ſecond, their very weakneſs generally gives them more lenity and moderation; qualifications fitter for a good adminiſtration than roughneſs and ſeverity.

In the Indies they are very eaſy under a female government; and it is ſettled, that if the male iſſue be not of a mother of the ſame blood, the females born of a mother of the blood-royal muſt ſucceed *. And then they have a certain number of perſons that aſſiſt them to bear the weight of the government. If to this we add the example of England and Ruſſia, we ſhall find that they ſucceed alike both in moderate and deſpotic governments.

† He even permits them to have a more frequent interview with one another, ch. 17.

* Edifying Letters, 14th collection.

BOOK VIII.

Of the corruption of the Principles of the three Governments.

CHAP. I.

General idea of this book.

THE corruption of each government generally begins with that of the principles.

CHAP. II.

Of the corruption of the principle 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 every citizen wants to be upon a level with thoſe he has choſen to command him. Then the people, incapable of bearing the very power they have entruſted, want to do every thing of themſelves, to debate for the ſenate, to execute for the magiſtrate, and to ſtrip the judges of their office.

When this is the caſe, virtue can no longer ſubſiſt in the republic. The people want to exerciſe 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 ſoon for parents; deference to huſbands will be likewiſe thrown off, and ſubmiſſion to maſters. This licentiouſneſs will ſoon taint the mind; and the reſtraint 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 de-

ſcription of a republic in which the people abuſed their equality. Each gueſt gives in his turn the reaſon why he is ſatisfied. "I am content with myſelf," 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 ſum of me; and I "could not decline paying. Since I am grown poor "I have acquired authority; no body 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; I hope to "acquire."

The people fall into this misfortune when thoſe in whom they confide, deſirous of concealing their own corruption, endeavour to corrupt. To prevent them from ſeeing their own ambition, they ſpeak to them only of their grandeur; to conceal their own avarice, they inceſſantly flatter theirs.

The corruption will encreaſe among the corrupters, and likewiſe among thoſe who are already corrupted. The people will diſtribute the public money among themſelves, and having added the adminiſtration of affairs to their indolence, they will be for adding to their poverty 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 give a great deal to the people, without ſqueezing much more out of them: but to compaſs this, the ſtate muſt be ſubverted. The greater the advantages they ſeem to derive from their liberty, the nearer they draw to 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 unſupportable; a ſingle tyrant ſtarts up, and the people loſe all, even the advantages of their corruption.

Democracy hath therefore two exceſſes to avoid, the ſpirit of inequality which leads to ariſtocracy or monarchy; and the ſpirit of extreme equality, which leads to deſpotic power, as the latter is completed by conqueſt.

True it is, that thoſe who corrupted the Greek republics did not become tyrants. This was becauſe they had a greater paſſion for eloquence than for the military art. Beſides, there reigned an implacable hatred in the hearts of the Greeks againſt thoſe who ſubverted a republican government; and for this reaſon anarchy ended in total diſſolution, inſtead of being changed into tyranny.

But Syracuſe, which was ſituated in the midſt of a great number of petty ſtates, whoſe government had been changed from oligarchy to tyranny *; Syracuſe, which had a ſenate † ſcarce ever mentioned in hiſtory, was expoſed to ſuch miſeries as are the conſequences of a more than ordinary corruption. This city, continually in a ſtate of licentiouſneſs ‡ or oppreſſion, equally labouring under liberty and ſervitude, receiving always the one and the other like a tempeſt, and, notwithſtanding its external ſtrength, conſtantly determined to a revolution by the leaſt foreign power: this city, I ſay, had in its boſom an immenſe multitude of people, whoſe fate it was to have always the cruel alternative, of either giving themſelves a tyrant, or of being the tyrant themſelves.

* See Plutarch in the lives of Timoleon and Dio.

† It was that of the ſix hundred, of whom mention is made by Diodorus.

‡ Upon the expulſion of the tyrants, they made citizens of ſtrangers and mercenary troops, which produced civil wars, *Ariſt. Polit. lib.* v. *cap.* 3. The people having been the cauſe of the victory over the Athenians, the republic was changed. *Ibid.* cap 4. The paſſion of two young magiſtrates, one of whom carried off the other's boy, and the other in revenge debauched his wife, produced a change in the form of this republic. *Ibid. lib.* vii. *cap* 4.

CHAP. III.

Of the ſpirit of extreme equality.

AS diſtant as heaven is from earth, ſo is the true ſpirit of equality from that of extreme equality. The former does not conſiſt in managing ſo that every one ſhould command, or that no one ſhould be commanded; but in obeying and commanding our equals. It endeavours not to be without 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 long in this equality. Society makes them loſe it, and they recover it only by means 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 extreme liberty than to ſervitude.

CHAP. IV.

Particular cauſe of the corruption of the people.

GREAT ſucceſs, eſpecially when chiefly owing to the people, ſwells them ſo high with pride, that it is impoſſible to manage them. Jealous of their magiſtrates, they ſoon become jealous likewiſe of the magiſtracy; enemies to thoſe that govern, they ſoon prove enemies alſo to the conſtitution. Thus it was the victory over the Perſians obtained in the Streights of Salamis, that corrupted the republic of Athens *, and thus the defeat of the Athenians ruined the republic of Syracuſe †.

* Ariſtot. Polit. lib. v. cap. 4.
† Ibid.

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

CHAP. V.

Of the corruption of the principle of ariſtocracy.

ARISTOCRACY is corrupted, if the power of the nobles becomes arbitrary; when this is the caſe, there can no longer be any virtue either in the governors, or the governed.

If the reigning families obſerve the laws, it is a monarchy with ſeveral monarchs, and in its own nature one of the moſt excellent: for almoſt all theſe monarchs are tied down by the laws. But when they do not obſerve them, it is a deſpotic ſtate governed by a great many deſpotic princes.

In this laſt 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 and divided bodies in the world.

The extremity of corruption is when the power of the nobles becomes hereditary ‡; for then they can hardly have any moderation. If they are few in number, 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, whoſe head 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 means the ſtate loſes all its ſtrength and activity *.

‡ The ariſtocracy is changed into an oligarchy.

* Venice is one of thoſe republics that has beſt corrected by its laws the inconveniencies of hereditary ariſtocracy.

An ariſtocracy may maintain the full vigour of its conſtitution, if the laws be ſuch as tend to render the nobles more ſenſible of the perils and fatigues, than of the pleaſure of command; and if the government is in ſuch a ſituation as to have ſomething to dread, while ſecurity ſhelters under its protection, and uncertainty threatens from abroad.

As a certain kind of confidence forms the glory and ſtability of monarchies, republics, on the contrary, muſt have ſomething to apprehend †. A fear of the Perſians ſupported the laws of Greece. Carthage and Rome were alarmed, and ſtrengthened by each other. Strange, that the greater ſecurity thoſe ſtates enjoyed, the more, like ſtagnated waters, they were ſubject to corruption!

CHAP. VI.

Of the corruption of the principle of monarchy.

AS democracies are deſtroyed when the people deſpoil the ſenate, the magiſtrates, and judges, of their functions; ſo monarchies are corrupted when the prince inſenſibly deprives ſocieties or cities of their privileges. In the firſt caſe, the multitude uſurp a deſpotic power; in the ſecond, it is uſurped by a ſingle perſon.

"The deſtruction of the dynaſties of Tſin and "Soili, (ſays a Chineſe author,) was owing to this: "The princes, inſtead of confining themſelves, like "their anceſtors, to a general inſpection, the only one "worthy of a ſovereign, wanted to govern every "thing immediately by themſelves *." The Chineſe author gives us here the cauſe of the corruption of almoſt all monarchies.

† Juſtin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no further emulation, they ſpent their revenues in feaſts, "frequentius cænam quam caſtra viſentes." Then it was that the Macedonians emerged out of obſcurity. Lib. vi.

* Compilement of works made under the Mings, related by Father Du Halde.

Monarchy is deſtroyed, when a prince thinks he ſhews a greater exertion of power in changing, than in conforming to the order of things; when he deprives ſome of his ſubjects of their hereditary employments to beſtow them arbitrarily upon others; and when he is fonder of being guided by fancy than judgment.

Monarchy is deſtroyed, when the prince directing every thing to himſelf, calls the ſtate to his capital, the capital to his court, and the court to his own perſon.

Monarchy is deſtroyed, in fine, when the prince miſtakes his authority, his ſituation, and the love of his people; and when he is not fully perſuaded that a monarch ought to think himſelf ſecure, as a deſpotic prince ought to think himſelf in danger.

CHAP. VII.

The ſame ſubject continued.

THE principle of monarchy is corrupted, when the firſt dignities are marks of the firſt ſervitude, when the great men are ſtripped of popular reſpect, and rendered the low tools of arbitrary power.

It is ſtill more corrupted, when honour is ſet up in oppoſition to honours, and when men are capable of being loaded at the very ſame time with infamy * and with dignities.

It is corrupted, when the prince changes his juſtice into ſeverity; when he puts, like the Roman em-

* Under the reign of Tiberius, ſtatues were erected to, and triumphal ornaments conferred on informers; which debaſed theſe honours to ſuch a degree, that thoſe who really merited them diſdained to accept of them. *Fragm.* of Dio, Book lviii. taken from the "Extract of virtues and vices by Conſtantine "Porphyrog." See in Tacitus, in what manner Nero, on the diſcovery and puniſhment of a pretended conſpiracy, beſtowed triumphal ornaments on Petronius Turpilianus, Nerva, and Tigellinus. *Annal*, Book xiv. See likewiſe how the generals refuſed to ſerve, becauſe they contemned the military honours, "pervigatis triumphi inſignibus," *Tacit. Annal.* Book xiii.

perors, a Meduſa's head on his breaſt †; and when he aſſumes that menacing and terrible air which Commodus ordered to be given to his ſtatues ‡.

Again, it is corrupted, when mean and abject ſouls grow vain of the pomp attending their ſervitude; and imagine that the motive which induces them to be entirely devoted to their prince, exempts them from all duty to their country.

But if it be true, (and indeed the experience of all ages have ſhewn it), that in proportion as the power of the monarch becomes boundleſs and immenſe, his ſecurity diminiſhes; is the corrupting this power, and the altering its very nature, a leſs crime than that of high treaſon againſt the prince?

CHAP. VIII.

Danger of the corruption of the principle of monarchical government.

THE danger is not when the ſtate paſſes from one moderate to another moderate government, as from a republic to a monarchy, or from a monarchy to a republic; but when it precipitates from a moderate to a deſpotic government.

Moſt of the European nations are ſtill governed by principles of morality. But if, by 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 baneful 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.

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

‡ Herodian.

CHAP. IX.

How ready the nobility are to defend the throne.

THE Engliſh nobility buried themſelves with Charles I. under the ruins of the throne; and before that time, when Philip II. endeavoured to tempt the French with the allurement of liberty, the crown was conſtantly ſupported by a nobility, who think it an honour to obey a king, but conſider it as the loweſt infamy to ſhare the power with the people.

The houſe of Auſtria has uſed her conſtant endeavours to oppreſs the Hungarian nobility; little thinking how ſerviceable that very nobility would be one day to her. She wanted money from their country, which it had not; but took no notice of the men with which it abounded. When a multitude of princes fell to diſmembering of her dominions, the ſeveral pieces of her monarchy fell motionleſs, as it were, one upon another. No life was then to be ſeen but in that very nobility, who reſenting the injuries done to their ſovereign, and forgetting thoſe done to themſelves, took up arms to avenge her cauſe, and conſidered it as the higheſt glory bravely to die, and to forgive.

CHAP. X.

Of the corruption of the principle of depotic 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 imperfection, when no accidental cauſes impede or corrupt the principles on which it is founded. It maintains itſelf therefore only when circumſtances

drawn from the climate, religion, ſituation, or genius of the people, oblige it to follow ſome order, and to admit of ſome rule. By theſe things, its nature is forced without being changed; its ferocity remains; and it is made tame and tractable only for a time.

CHAP XI.

Natural effects of the integrity and corruption of the principles of government.

WHEN once the principles of government are corrupted, the very beſt laws become bad, and turn againſt the ſtate: But when the principles are ſound, even bad laws have the ſame effect as good; the force of the principle draws every thing to it.

The inhabitants of Crete uſed a very ſingular method to keep the principal magiſtrates dependent on the laws; which was that of inſurrection Part of the citizens roſe up in arms *, put the magiſtrates to flight, and obliged them to return to a private condition. This was ſuppoſed to be done in conſequence of the law. One would have imagined that an inſtitution of this nature, which eſtabliſhed ſedition in order to hinder the abuſe of power, would have ſubverted any republic whatſoever, and yet it did not ſubvert that of Crete. The reaſon follows †.

When the ancients wanted to expreſs a people that had the ſtrongeſt love for their country, they always mentioned the inhabitants of Crete: "Our country, "(ſaid Plato ‖), a name ſo dear to the Cretans." They called it by a name which ſignifies the love of a mother for her children ‡. Now, the love of our country ſets every thing right.

The laws of Poland have likewiſe their inſurrec-

* Ariſtot. Polit. Book ii. chap 10.

† They always united immediately againſt foreign enemies, which was called Synocretiſm. Plut. Mor. p. 88.

‡ Repub. lib ix.

‖ Plutarch's morals, treatiſe, "Whether men advanced in "years ought to meddle with public affairs?"

tion: But the inconveniencies thence arising, plainly shew that the people of Crete alone were capable of employing 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 Lacedæ-"monians and Cretans, (said Plato ‖,) that opened "those celebrated academies which gave them so "eminent a rank in the world. Modesty at first was "alarmed; but it yielded to the public utility." In Plato's time these institutions were admirable §, as they had a relation to a very important object, which was the military art. But when virtue fled from Greece, the military art was destroyed by these insti-tutions; people appeared then on the arena, not for improvement but for debauch.

Plutarch informs us*, that the Romans in his time were of opinion that those games had been the principal cause of the slavery into which the Greeks were fallen. On the contrary, it was the slavery of the Greeks that had corrupted these exercises. In Plutarch's time †, their fighting naked in the parks, and their wrestling, infected the young people with the spirit of cowardice, inclined them to infamous passions, and made them mere dancers. But, in Epaminondas's time, the exercise of wrestling made the Thebans win the famous battle of Leuctra ‡.

There are very few laws which are not good, while

‖ Repub. lib. v.

§ The gymnastic art was divided into two parts, dancing and wrestling. In Crete they had the armed dances of the Curetes; at Sparta they had those of Castor and Pollux; at Athens the armed dances of Pallas, which were extremely proper for those that were not yet of age for military service. Wrestling is the image of war, said Plato, *Of laws*, Book vi. 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.

* Plutarch's Morals, in the treatise, intitled, "Questions "concerning the affairs of the Romans."

† Ibid.

‡ Plutarch's Morals, Table-propositions, Book ii.

the ſtate retains its principles: here I may apply what Epicurus ſays of riches; "it is not the liquor, but "the veſſel that is corrupted."

CHAP. XII.

The ſame ſubject continued.

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

When once a republic is corrupted, there is no poſſibility of remedying any of the riſing evils, but by removing the corruption, and reſtoring its loſt principles; every other correction is either uſeleſs or a new evil. While Rome preſerved its principles entire, the power of judging might without any abuſe be lodged in the hands of the ſenators: But as ſoon as this city was corrupted, let the judicial authority be transferred to whatſoever body, whether to the ſenate, to the knights, to the treaſurers, to two of theſe bodies, to all three together, or to any other, matters ſtill went always wrong. The knights had no more virtue than the ſenate, the treaſurers no more than the knights, and theſe as little as the centurions.

When the people of Rome had obtained the privilege of ſharing the magiſtracy with the patricians, it was natural to think that their flatterers would immediately become arbiters of the government. But no ſuch thing ever happened. It was obſervable, that the very people who had rendered the plebeians capable of public offices, conſtantly fixed their choice upon the patricians. Becauſe they were virtuous, they were magnanimous; and becauſe they were free, they had a contempt of power. But when their morals were corrupted, the more power they were poſ-

ſeſſed of, the leſs prudent was their conduct; till at length, upon becoming their own tyrants and ſlaves, they loſt the ſtrength of liberty, to fall into the weakneſs and impotency of licentiouſneſs.

CHAP. XIII.

The effect of an oath among a virtuous people.

THERE is no nation, ſays Livy*, that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer reſpected.

Such was the influence of an oath among theſe people, that nothing bound them ſtronger to the laws. They often did more for the obſervance of an oath than they would have done for the thirſt of glory, or for the love of their country.

When Quintius Cincinnatus the conſul wanted to raiſe an army in the city againſt the Æqui and the Volſci, the tribunes oppoſed him. "Well (ſaid he), "let all thoſe who have taken an oath to the conſul "of the preceding year, march under my banners ‡." In vain did the tribunes cry out, that this oath was no longer binding; and that, when they made it, Quintius was but a private perſon. The people were more religious than thoſe who pretended to direct them; they would not liſten to the diſtinctions or equivocations of the tribunes.

When the ſame people thought of retiring to the *Sacred Mount*, they felt an inward check from the oath they had taken to the conſuls, that they would follow them into the field †. They entered then into a deſign of killing the conſuls; but dropped it when they were given to underſtand that their oath would ſtill be binding. It is eaſy to judge of the notion they entertained of the violation of an oath, by the crime they intended to commit.

* Book i.

‡ Livy, book iii.

† Ibid. book iii.

After the battle of Cannæ, the people were ſeized with ſuch a panic, that they wanted to retire to Sicily. But Scipio having prevailed upon them to ſwear they would not ſtir from Rome, the fear of violating this oath ſurpaſſed all other apprehenſions. Rome was a ſhip held by two anchors, religion and morality, in the midſt of a furious tempeſt.

CHAP XIV.

How the ſmalleſt change in the conſtitution is attended with the ruin of its principles.

ARISTOTLE mentions the city of Carthage as a well regulated republic. Polybius tells us ‡, that there was this inconveniency at Carthage in the ſecond Punic war, that the ſenate had loſt almoſt all their authority. We are informed by Livy, that when Hannibal returned to Carthage, he found that the magiſtrates and the principal citizens had abuſed their power, and converted the public revenues to their own emolument. The virtue therefore of the magiſtrates, and the authority of the ſenate both fell at the ſame time; and all was owing to the ſame cauſe.

Every one knows the wonderful effects of the cenſorſhip among the Romans. There was a time when it grew burthenſome; but ſtill it was ſupported, becauſe there was more luxury than corruption. Claudius * weakened its authority, and by this means the corruption became greater than the luxury, and the cenſorſhip dwindled away of itſelf †.

‡ About a hundred years after.

* See book xi. chap. 12.

† The tribunes hindered them from making the cenſus, and oppoſed their election. See Cicero to Atticus, book iv. let. 10. and 15.

CHAP. XV.

Sure methods of preſerving the three principles.

I SHALL not be able to make myſelf rightly underſtood, till the reader has peruſed the four following chapters.

CHAP. XVI.

Diſtinctive properties of a republic.

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

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

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

Excepting particular circumſtances *, it is difficult for any other than a republican government to ſubſiſt long in a ſingle town. A prince of ſo petty a ſtate would naturally endeavour to oppreſs his ſubjects, becauſe his power would be great, while the means of enjoying it, or of cauſing it to be reſpected, would be very inconſiderable. The conſequence is, he would trample upon his people. On the other hand, ſuch a prince might be eaſily cruſhed by a foreign, or even by á domeſtic force; the people might every inſtant unite and riſe up againſt him. Now, as ſoon as a prince of a ſingle town is expelled, the quarrel is over; but, if he has many towns, it only begins.

CHAP. XVII.

Diſtinctive properties of a monarchy.

A MONARCHICAL ſtate ought to be of a moderate extent. Were it ſmall, it would form itſelf into a republic: were it very large, the nobility, poſſeſſed of great eſtates, far from the inſpection of the prince, with a private court of their own, and ſecure moreover from ſudden executions by the laws and manners of the country, ſuch a nobility, I ſay, might throw off their allegiance, having nothing to fear from too ſlow and too diſtant a puniſhment.

Thus Charlemagne had ſcarce founded his empire, when he was obliged to divide it; whether the governors of the provinces refuſed to obey, or whether, in order to keep them under more 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 Greeks and Macedonian chiefs, who were each of them free and independent, or commanders at leaſt of the victorious bands

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

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, that, after the enlargement of dominion, opens a new ſcene of miſery?

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

CHAP. XVIII.

Particular caſe of the Spaniſh monarchy.

LET not the example of Spain be produced againſt me; it rather proves what I affirm. To preſerve America, ſhe did what even deſpotic power itſelf does not attempt; ſhe deſtroyed the inhabitants. To preſerve her colony, ſhe was obliged to keep it dependent even for its ſubſiſtence.

In the Netherlands ſhe eſſayed to render herſelf arbitrary; and, as ſoon as ſhe abandoned the attempt, her perplexity increaſed. On the one hand, the Walloons would not be governed by Spaniards, and on the other, the Spaniſh ſoldiers refuſed to ſubmit to Walloon officers *.

In Italy ſhe maintained her ground merely by exhauſting herſelf, and by enriching that country: for thoſe who would have been glad to have got rid of the king of Spain were not in a humour to refuſe his gold.

* See the hiſtory of the United Provinces by Monſ. le Clerc.

CHAP. XIX.

Diſtinctive properties of a deſpotic government.

A LARGE empire ſuppoſes a deſpotic authority in the perſon that 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 careleſſneſs of the remote governor or magiſtrate; that the law ſhould be derived from a ſingle perſon, and ſhould change continually according to the accidents which inceſſantly multiply in a ſtate in proportion to its extent.

CHAP. XX.

Conſequence of the preceding chapters.

IF it be therefore the natural property of ſmall ſtates to be governed as a republic, of middling ones to be ſubject to a monarch, and of large empires to be ſwayed by a deſpotic prince, the conſequence is, that, in order to preſerve the principles of the eſtabliſhed government, the ſtate muſt be ſupported in the extent it has acquired, and that the ſpirit of this ſtate will change in proportion as it contracts or extends its limits.

CHAP. XXI.

Of the empire of China.

BEFORE I finiſh this book, I ſhall anſwer an objection that may be made to what has been here advanced.

Our miſſionaries tell us that the vaſt empire of China has an admirable government, in which there is a proper mixture of fear, honour, and virtue. Conſequently I muſt have given an idle diſtinction, in eſtabliſhing the principles of the three governments.

But I cannot conceive what this honour can be among people that will not do the leaſt thing without blows *.

Again, our mercantile people are far from giving us any idea of that virtue ſo much talked of by the miſſionaries; we need only conſult them in relation to the robberies and extortions of the mandarines †.

Beſides, father Parennin's letters concerning the Emperor's proceedings againſt ſome new converted princes of the blood ‡, who had incurred his diſpleaſure, plainly ſhew us a continued plan of tyranny, and inhuman injuries committed by rule, that is, in cool blood.

We have likewiſe Monſieur de Mairan's and the ſame father Parennin's letters on the government of China. I find therefore, that, after ſome pertinent queſtions and anſwers, the whole wonder vaniſhes.

Might not our miſſionaries have been deceived by an appearance of order? might not they have been ſtruck with that continual exerciſe of a ſingle perſon's will, an exerciſe by which they themſelves are governed, and which they are ſo pleaſed to find in the courts of the Indian princes, becauſe, as they go thither only in order to introduce great changes, it is much eaſier to convince thoſe princes that there are no bounds to their power, than to perſuade the people that there are none to their ſubmiſſion ‖?

In fine, there is frequently ſome kind of truth even in errors themſelves. It may be owing to particular, and perhaps very ſingular circumſtances, that the Chineſe government is not ſo corrupt as one might naturally expect. The climate and ſome other phyſical cauſes may, in that country, have had ſo ſtrong an

* It is the cudgel that governs China, ſays Father du Halde.

† Among others, de Lange's relation.

‡ Of the family of Sourniama, Edifying letters, 8th collection.

‖ See in Father du Halde how the miſſionaries availed themſelves of the authority of Can-hi to ſilence the mandarines, who conſtantly declared that by the laws of the country, no foreign worſhip could be eſtabliſhed in the empire.

influence on the morals, as in ſome meaſure to produce wonders.

The climate of China is ſurpriſingly favourable to the propagation of the human ſpecies. The women are the moſt prolific in the whole world. The moſt barbarous tyranny can put no ſtop to the progreſs of propagation. The prince cannot ſay there like Pharaoh, "Let us deal wiſely with them, leſt they mul-"tiply." He would be rather reduced to Nero's wiſh, that mankind had all but one head. In ſpite of tyranny, China, by the force of its climate, will be always populous, and will triumph over the tyrannical oppreſſor.

China, like all other countries, that live chiefly upon rice †, is ſubject to frequent famines. When the people are ready to ſtarve with hunger, they diſperſe in order to ſeek for nouriſhment, in conſequence of which, ſmall gangs of robbers are formed on all ſides. Moſt of them are extirpated in their very infancy; others increaſe, and are likewiſe ſuppreſſed. And yet, in ſo great a number of ſuch diſtant provinces, ſome gang or other may happen to meet with ſucceſs. In that caſe they maintain their ground, ſtrengthen their party, form themſelves into a military body, march ſtraight up to the capital, and their leader aſcends the throne.

From the very nature of things, a bad adminiſtration is here immediately puniſhed. The want of ſubſiſtence in ſo populous a country produces ſudden diſorders. The reaſon why the redreſs of abuſes is in other countries attended with ſuch difficulty is, becauſe their effects are not immediately felt; the prince is not informed in ſo ſudden and ſenſible a manner as in China.

The emperor of China is not taught like our princes, that, if he governs ill, he will be leſs happy in the other life, leſs potent and leſs rich in this. He knows, that if his government is not good, he will be ſtripped both of empire and life.

† See book xxiii. chap. 14.

As China grows every day more populous, notwithſtanding the expoſing of children, the inhabitants are inceſſantly employed in tilling the land for their ſubſiſtence. This requires a very extraordinary attention in the government. It is their perpetual concern that every body ſhould be able to work without any apprehenſion of being deprived of the fruits of his labour. Conſequently this is not ſo much a civil as a domeſtic government.

Such has been the origin of thoſe regulations which have been ſo greatly extolled. They wanted to make the laws reign in conjunction with deſpotic power; but whatever is joined with the latter loſes all its force. In vain did this arbitrary ſway, labouring under its own misfortunes, deſire to be fettered; it armed itſelf with its chains, and is become ſtill more terrible.

China is therefore a deſpotic ſtate, whoſe principle is fear. Perhaps, in the earlieſt dynaſties, when the empire had not ſo large an extent, the government might have deviated a little from this ſpirit; but the caſe at preſent is otherwiſe.

BOOK IX.

Of Laws in the Relation they bear to a defenſive Force.

CHAP. I.

In what manner republics provide for their ſafety.

IF a republic is ſmall, it is deſtroyed by a foreign force; if it be large, it is ruined by an internal imperfection.

To this twofold inconvenience both democracies and ariſtocracies are equally liable, and that whether

they be good or bad. The evil is in the very thing itſelf; and no form can redreſs it.

It is therefore very probable that mankind would have been at length obliged to live conſtantly under the government of a ſingle perſon, had they not contrived a kind of conſtitution that has all the internal advantages of a republican, together with the external force of a monarchical government: I mean a confederate republic.

This form of government is a convention, by which ſeveral ſmall eſtates agree to become members of a larger one which they intend to form. It is a kind of aſſemblage of ſocieties, that conſtitute a new one, capable of increaſing by means of new aſſociations, till they arrive to ſuch a degree of power, as to be able to provide for the ſecurity of the united body.

It was theſe aſſociations that contributed ſo long to the proſperity of Greece. By theſe the Romans attacked the univerſe, and by theſe alone the univerſe withſtood them; for, when Rome was arrived to her higheſt pitch of grandeur, it was the aſſociations behind the Danube and the Rhine, aſſociations formed by the terror of her arms, that enabled the barbarians to reſiſt her.

From hence it proceeds, that Holland *, Germany, and the Swiſs cantons, are conſidered in Europe as perpetual republics.

The aſſociations of cities were formerly more neceſſary than in our times. A weak defenceleſs town was expoſed to greater dangers. By conqueſt it was deprived not only of the executive and legiſlative power, as at preſent, but moreover of all human property †.

A republic of this kind, able to withſtand an external force, may ſupport itſelf without any internal corruption; the form of this ſociety prevents all manner of inconveniencies.

* It is compoſed of about fifty different republics. State of the United Provinces by M. Janiſon.

† Civil liberty, goods, wives, children, temples, and even burying-places.

If a ſingle member ſhould attempt to uſurp the ſupreme authority, he could not be ſuppoſed to have an equal authority and credit in all the confederate ſtates. Were he to have too great an influence over one, this would alarm the reſt; were he to ſubdue a part, that which would ſtill remain free might oppoſe him with forces independent of thoſe which he had uſurped, and overpower him before he could be ſettled in his uſurpation.

Should a popular inſurrection happen in one of the confederate ſtates, the others are able to quell it. Should abuſes creep into one part, they are reformed by thoſe that remain ſound. The ſtate may be deſtroyed on one ſide, and not on the other: the confederacy may be diſſolved, and the confederates preſerve their ſovereignty.

As this government is compoſed of petty republics, it enjoys the internal happineſs of each; and, with reſpect to its external ſituation, it is poſſeſſed, by means of the aſſociation, of all the advantages of large monarchies.

CHAP. II.

That a confederate government ought to be compoſed of ſtates of the ſame nature, eſpecially of the republican kind.

THE Canaanites were deſtroyed, by reaſon they were petty monarchies that had no union nor confederacy for their common defence; and indeed a confederacy is not agreeable to the nature of petty monarchies.

As the confederate republic of Germany conſiſts of free cities and of petty ſtates ſubject to different princes, experience ſhews us, that it is much more imperfect than that of Holland and Switzerland.

The ſpirit of monarchy is war and enlargement of dominion; peace and moderation is the ſpirit of a republic. Theſe two kinds of government cannot naturally ſubſiſt in a confederate republic.

Thus we obſerve in the Roman hiſtory, that, when the Veientes had choſen a king, they were immediately abandoned by all the other petty republics of Tuſcany. Greece was undone as ſoon as the kings of Macedon obtained a ſeat among the Amphictyons.

The confederate republic of Germany, compoſed of princes and free towns, ſubſiſts by means of a chief, who is in ſome reſpects the magiſtrate of the union, in others the monarch.

CHAP. III.

Other requiſites in a confederate republic.

IN the republic of Holland one province cannot conclude an alliance without the conſent of the others. This law, which is an excellent one, and even neceſſary in a confederate republic, is wanting in the Germanic conſtitution, where it would prevent the misfortunes that may happen to the whole confederacy through the imprudence, ambition, or avarice of a ſingle member. A republic, united by a political confederacy, has given itſelf entirely up, and has nothing more to reſign.

It is difficult for the united ſtates to be all of an equal extent and power. The Lycian * republic was an aſſociation of twenty-three towns; the large ones had three votes in the common council, the middling ones two, and the ſmall towns one. The Dutch republic conſiſts of ſeven provinces, of different extent of territory, which have each one voice.

The cities of Lycia † contributed to the expences of the ſtate, according to the proportion of ſuffrages. The provinces of the United Netherlands cannot follow this proportion; they muſt be directed by that of their power.

In Lycia ‡, the judges and town-magiſtrates were elected by the common council, and according to the proportion already mentioned. In the republic of

* Strabo, lib. 14. † Ibid. lib. 4. ‡ Ibid.

Holland they are not chosen by the common council, but each town names its magistrates.

Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia.

CHAP. IV.

In what manner despotic governments provide for their security.

AS republics provide for their security by uniting, despotic governments do it by separating, and by keeping themselves as it were single. They sacrifice a part of the country, and, by ravaging and desolating the frontiers, they render the heart of the empire inaccessible.

It is a received axiom in geometry, that the greater the extent of bodies, the more their circumference is relatively small. This practice, therefore, of laying the frontiers waste is more tolerable in large than in middling states.

A despotic government does all the mischief to itself that could be done by a cruel enemy, whose progress it could not resist.

It preserves itself likewise by another kind of separation, which is by putting the most distant provinces into the hands of a feudatory prince. The Mogul, the King of Persia, and the Emperors of China, have their feudatories, and the Turks have found their account in putting the Tartars, the Moldavians, the Walachians, and formerly the Transilvanians, between themselves and their enemies.

CHAP. V.

In what manner a monarchical government provides for its ſecurity.

A MONARCHY never deſtroys itſelf like a deſpotic government. But a kingdom of a moderate extent is liable to ſudden invaſions: it muſt therefore have fortified places to defend its frontiers, and troops to garriſon thoſe places. The leaſt ſpot of ground is diſputed with art, with courage and obſtinacy. Deſpotic ſtates make incurſions againſt one another; it is monarchies only that wage war.

Fortreſſes are proper for monarchies; deſpotic governments are afraid of them. They dare not intruſt them to any body; for there is no one that has a love for the prince or his government.

CHAP. VI.

Of the defenſive force of ſtates in general.

TO preſerve a ſtate in its due force, it muſt have ſuch an extent, as to admit of a proportion between the quickneſs with which it may be invaded, and that with which it may render the invaſion abortive. As an invader may inſtantly appear on all ſides, it is requiſite that the ſtate ſhould be able to make on all ſides its defence; conſequently it ſhould be of a moderate extent, proportioned to that degree of celerity with which nature has enabled men to move from one place to another.

France and Spain are exactly of a proper extent. They have ſo eaſy a communication for their forces, as to be able to convey them immediately to what part they have a-mind: the armies unite and paſs with rapidity from one frontier to another, without any apprehenſion of ſuch difficulties as require time to remove.

It is extremely happy for France, that the capital ſtands nearer to the different frontiers in proportion to their weakneſs, and the prince has a better view of each part of his country in proportion as it is more expoſed.

But when a vaſt empire, like Perſia, is attacked, it is ſeveral months before the troops are able to aſſemble, and then they cannot make ſuch forced marches for that length of time, as they can for fifteen days. If the army on the frontiers is beaten, it is certainly diſperſed, becauſe there is no neighbouring place of retreat. The victor, meeting with no reſiſtance, advances with all expedition, ſits down before the capital, and lays ſiege to it, when there is ſcarce time enough to give notice to the governors of the provinces to come to its relief. Thoſe who foreſee an imminent revolution haſten it by their diſobedience; for men, whoſe fidelity is entirely owing to the proximity of puniſhment, are eaſily corrupted as ſoon as it becomes diſtant; their aim is their own private intereſt. The empire is ſubverted, the capital taken, and the conqueror diſputes the ſeveral provinces with the governors.

The real power of a prince does not conſiſt ſo much in the facility he meets with in making conqueſts, as in the difficulty an enemy finds in attacking him, and, if I may ſo ſpeak, in the immutability of his condition. But the encreaſe of territory obliges a government to expoſe new ſides by which it may be attacked.

As monarchs therefore ought to be endued with wiſdom in order to encreaſe, they ought likewiſe to have an equal ſhare of prudence to limit their power. Upon removing the inconveniencies of too ſmall a territory, they ought to have their eye conſtantly on the inconveniences that attend its immoderate enlargement.

CHAP. VII.

A reflection.

THE enemies of a great prince, whoſe reign was protracted to an unuſual length, have very often accuſed him, rather, I believe, from their own fears, than upon any ſolid foundation, of having formed and carried on a project of univerſal monarchy. Had he ſucceeded, nothing would have been more fatal to Europe, to his ancient ſubjects, to himſelf, and to his family. Heaven, that knows our true intereſts, ſerved him more by defeats than it could have done by victories. Inſtead of making him the only ſovereign in Europe, it favoured him more by rendering him the moſt powerful.

The ſubjects of this prince, who in foreign countries are never affected but with what they have forſaken; who, on leaving their own homes, look upon glory as a ſovereign good, and in diſtant countries as an obſtacle to their return; who diſpleaſe you even by their good qualities, becauſe they ſeem to be joined with an air of contempt; who are capable of ſupporting wounds, perils and fatigues, but not the loſs of their pleaſures; who love nothing ſo much as gaiety, and conſole themſelves for the loſs of a battle by ſinging the praiſe of the general; thoſe ſubjects, I ſay, would never have been able to compaſs an enterpriſe, that could not poſſibly be defeated in one country, without miſcarrying in all the others, nor miſcarry for a moment, without miſcarrying for ever.

CHAP. VIII.

A particular caſe, in which the defenſive force of a ſtate is inferior to the offenſive.

IT was a ſaying of the Lord of Coucy to King Charles V. "that the Engliſh are never weaker, 'nor eaſier overcome, than in their own country." The ſame was obſerved of the Romans; the ſame of the Carthaginians; and the ſame will always happen to every power that ſends armies to diſtant countries, in order to reunite, by dint of diſcipline and military power, thoſe who are divided among themſelves by political or civil intereſts. The ſtate finds itſelf weakened by the diſorder that ſtill continues, and more ſo by the remedy.

The Lord of Coucy's maxim is an exception to the general rule, which diſapproves of wars againſt diſtant countries. And this exception confirms likewiſe the rule, becauſe it takes place only in reſpect to thoſe by whom ſuch wars are undertaken.

CHAP. IX.

Of the relative force of ſtates.

ALL grandeur, force and power are relative. Care therefore muſt be taken, that, in endeavouring to encreaſe the real grandeur, the relative be not diminiſhed.

About the middle of the reign of Lewis XIV. France was at its higheſt pitch of relative grandeur. Germany had not yet ſuch great monarchs as it has ſince produced. Italy was in the ſame ſtate. England and Scotland were not yet formed into one united kingdom. Arragon was not joined to Caſtile; the diſtant parts of the Spaniſh monarchy were weakened by it, and weakened it in their turn; and Muſcovy was as little known in Europe as Crim-Tartary.

CHAP. X.

Of the weakneſs of neighbouring ſtates.

WHENSOEVER a ſtate lyes contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the latter's ruin, becauſe this is the happieſt ſituation imaginable, nothing being ſo convenient for one prince as to be near another who receives for him all the rebuffs and inſults of fortune. And it ſeldom happens, that, by ſubduing ſuch a ſtate, the real power of the conqueror is as much encreaſed as the relative is diminiſhed.

BOOK X.

Of Laws in the relation they bear to offenſive Force.

CHAP. I.

Of offenſive force.

OFFENSIVE force is regulated by the law of nations, which is the political law of each country conſidered in its relation to every other.

CHAP. II.

Of war.

THE life of government is like that of man. The latter has a right to kill in caſe of natural de-

fence; the former have a right to wage war for their own preſervation.

In the caſe of natural defence I have a right to kill, becauſe my life is in reſpect to me what the life of my antagoniſt is to him: In the ſame manner a ſtate wages war, becauſe its preſervation is equally juſt with that of any other ſtate.

Among citizens the right of natural defence does not imply a neceſſity of attacking. Inſtead of attacking they need only have recourſe to proper tribunals. They cannot, therefore, exerciſe this right of defence but in ſudden caſes, when immediate death would be the conſequence of waiting for the aſſiſtance of the laws. But, among ſocieties, the right of natural defence carries along with it ſometimes the neceſſity of attacking; as, for inſtance, when one nation ſees that a longer peace will enable another to deſtroy her, and that to attack that nation inſtantly is the only way to prevent her own deſtruction.

From thence it follows, that ſmall ſocieties have oftener a right to declare war than great ones, becauſe they are oftener in the caſe of being afraid of deſtruction.

The right therefore of war is derived from neceſſity and ſtrict juſtice. If thoſe who direct the conſcience or counſels of princes do not hold by this, all is undone: When they proceed on arbitrary principles of glory, conveniency and utility, torrents of blood will overſpread the earth.

But, above all, let them not avail themſelves of any ſuch idle plea as the glory of the prince: his glory is nothing but pride; it is a paſſion, and not a legitimate right.

It is true, the fame of his power might encreaſe the ſtrength of his government; but it might be equally encreaſed by the reputation of his juſtice.

CHAP. III.

Of the right of conqueſt.

FROM the right of war comes that of conqueſt, which is the conſequence of that right, and ought therefore to follow its ſpirit.

The right the conqueror has over a conquered people is directed by four ſorts of laws; the law of nature, which makes every thing tend to the preſervation of the ſpecies; the law of natural reaſon, which teaches us to do to others what we would have done to ourſelves; the law that forms political ſocieties, whoſe duration nature has not limited; and, in fine, the law derived from the nature of the thing itſelf. Conqueſt is an acquiſition; acquiſition carries with it the ſpirit of preſervation and uſe, and not of deſtruction.

A conquered nation is treated by the conqueror one of the four following ways. Either he continues to rule them according to their own laws, and aſſumes to himſelf only the exerciſe of the political and civil government; or he gives them a new political and civil government; or he deſtroys and diſperſes the ſociety; or, in fine, he exterminates the inhabitants.

The firſt way is conformable to the law of nations now followed; the fourth is more agreeable to the law of nations followed by the Romans; in reſpect to which I leave the reader to judge how far we have improved upon the ancients. We muſt here give due praiſe to our modern times, to our preſent reaſon, to our religion, philoſophy and manners.

The authors of our public law, guided by ancient hiſtories, without confining themſelves to caſes of ſtrict neceſſity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by ſuppoſing the conquerors to be inveſted with I know not what right to kill: from thence they have drawn conſequences as terrible as the very principle, and eſtabliſhed maxims which the conquerors themſelves,

when poſſeſſed of the leaſt grain of ſenſe, never preſumed to follow. It is a plain caſe, that, when the conqueſt is completed, the conqueror has no longer a right to kill, becauſe he has no longer the plea of natural defence and ſelf-preſervation.

What has led them into this miſtake is, that they imagined a conqueror had a right to deſtroy the ſociety, from whence they inferred that he had a right to deſtroy the men that compoſe it, a wrong conſequence from a falſe principle; for from the deſtruction of the ſociety it does not at all follow, that the people who compoſe it ought to be alſo deſtroyed. Society is the union of men, and not the men themſelves; the citizen may periſh, and the man remain.

From the right of killing, in caſe of conqueſt, politicians have drawn that of reducing to ſlavery, a conſequence as ill-grounded as the principle.

There is no ſuch thing as a right of reducing people to ſlavery, but when it becomes neceſſary for the preſervation of the conqueſt. Preſervation, but never ſervitude, is the end of conqueſt, though ſervitude may happen ſometimes to be a neceſſary means of preſervation

Even in that caſe, it is contrary to the nature of things, that the ſlavery ſhould be perpetual. The people enſlaved ought to be rendered capable of becoming ſubjects. Slavery in conqueſts is an accidental thing. When, after the expiration of a certain ſpace of time, all the parts of the conquering ſtate are connected with the conquered nation by cuſtoms, marriages, laws, aſſociations, and by a certain conformity of ſpirit, there ought to be an end of the ſlavery; for the rights of the conqueror are founded entirely on the want of thoſe very things, and on the eſtrangement between the two nations, which prevents their confiding in each other.

A conqueror, therefore, who reduces the conquered people to ſlavery, ought always to reſerve to himſelf the means (for means there are without number) of reſtoring them to their liberty.

Theſe are far from being vague and uncertain no-

tions. Thus our anceſtors acted, thoſe anceſtors who conquered the Roman empire. The laws they made in the heat of fire, action, impetuoſity, and the pride of victory, were afterwards ſoftened; thoſe laws were ſevere, but they rendered them impartial. The Burgundians, Goths and Lombards, would always have the Romans continue a conquered people; but the laws of Euric, Gundebald and Rotharis, made the Romans and Barbarians fellow-citizens *.

CHAP. IV.

Some advantages of a conquered people.

INSTEAD of inferring ſuch fatal conſequences from the right of conqueſt, politicians would have done much better to mention the advantages which this very right may ſometimes give to a conquered people; advantages which would be more ſenſibly, more univerſally felt, were our law of nations exactly followed, and eſtabliſhed over all the earth.

Conquered countries are, generally ſpeaking, degenerated from their original inſtitution. Corruption has crept in, the execution of the laws has been neglected, and the government is grown oppreſſive. Who can queſtion but ſuch a ſtate would be a gainer, and derive ſome advantages from the very conqueſt itſelf, if it did not prove deſtructive? When a government is arrived to that degree of corruption, as to be incapable of reforming itſelf, it would not loſe much by being new-moulded. A conqueror that enters triumphant into a country, where the moneyed men have by a thouſand wiles and artifices inſenſibly practiſed innumerable ways of uſurping; where the miſerable people, who grieve to ſee abuſes grow into laws, live under oppreſſion, and think they have no right to complain; a conqueror, I ſay, may make a total change, and then the maſked tyranny will be the firſt thing expoſed to his fury.

* See the code of Barbarian laws, and book 28.

We have ſeen, for inſtance, countries oppreſſed by the farmers of the revenues, and eaſed afterwards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuſes have been often redreſſed without any interpoſition of the conqueror.

Sometimes the frugality of a conquering nation has enabled them to allow the conquered thoſe neceſſaries, of which they have been deprived under a lawful prince.

A conqueſt may deſtroy pernicious prejudices, and place, if I may preſume to make uſe of the expreſſion, the nation under the influence of a better genius.

What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they gave them a mad ſuperſtition. They might have ſet ſlaves at liberty; they made free men ſlaves. They might have undeceived them with regard to the abuſe of human ſacrifices; inſtead of that they deſtroyed them. Never ſhould I have done, were I to recount all the good they did not, and all the miſchief they did.

It is a conqueror's buſineſs to repair a part of the miſchief he has committed. The right, therefore, of conqueſt I define thus: A neceſſary, lawful and unhappy right, which leaves always an immenſe debt to diſcharge, in order to clear the obligations of human nature.

CHAP. V.

Gelon King of Syracuſe.

THE nobleſt treaty of peace ever mentioned in hiſtory is, in my opinion, that which Gelon made with the Carthaginians. He inſiſted upon their aboliſhing the cuſtom of ſacrificing their children *. Glorious indeed! After having defeated 300,000 Carthaginians, he required a condition that was advantage-

* See M. Barbeyrac's Collection, art. 112.

ous only to themſelves, or rather he ſtipulated in favour of human nature.

CHAP. VI.

Of conqueſts made by a republic.

IT is contrary to the nature of things, that, in a confederate government, one ſtate ſhould make any conqueſt over another, as in our days we have ſeen in Swiſſerland *. In mixed confederate republics, where the aſſociation is between ſmall republics and ſmall monarchies, this is not ſo abſurd.

It is alſo contrary to the nature of things, that a democratical republic ſhould conquer towns, which cannot enter into the ſphere of its democracy. It is neceſſary that the conquered people ſhould be capable of enjoying the privileges of ſovereignty, as was ſettled in the very beginning among the Romans. The conqueſt ought to be limited to the number of citizens fixed for the democracy.

If a democratical republic ſubdues a nation in order to govern them as ſubjects, it expoſes its own liberty, becauſe it intruſts too great a power to the officers ſent into the conquered provinces.

How great would have been the danger of the republic of Carthage, had Hannibal made himſelf maſter of Rome? What would not he have done in his own country, had he been victorious, he who cauſed ſo many revolutions after his defeat †?

Hanno could never have diſſuaded the ſenate from ſending ſuccours to Hannibal, had he uſed no other argument than his own jealouſy. The Carthaginian ſenate, whoſe wiſdom is ſo highly extolled by Ariſtotle, (and which has been evidently proved by the proſperity of that republic), could never have been determined by other than ſenſible reaſons. They muſt have been ſtupid not to ſee, that an army, at the di-

* With regard to Tockenburgh.
† He was at the head of a faction.

ſtance of three hundred leagues, would neceſſarily be expoſed to loſſes that ought to be repaired.

Hanno's party inſiſted that Hannibal ſhould be delivered up to the Romans *. They could not at that time be afraid of the Romans; they were therefore afraid of Hannibal.

It was impoſſible, ſome will ſay, for them to imagine that Hannibal had been ſo ſucceſsful. But how was it poſſible for them to doubt of it? Could the Carthaginians, a people ſpread all over the earth, be ignorant of what was tranſacting in Italy? No; they were ſufficiently acquainted with it, and for that reaſon they did not care to ſend ſupplies to Hannibal.

Hanno became more reſolute after the battle of Trebia, after the battle of Thraſimenes, after that of Cannæ; it was not his incredulity that increaſed, but his fear.

CHAP. VII.

The ſame ſubject continued.

THERE is ſtill another inconveniency in conqueſts made by democracies: their government is always odious to the conquered ſtate. It is apparently monarchial; but in reality it is much more oppreſſive than monarchy, as the experience of all ages and countries evinces.

The conquered people are in a melancholy ſituation; they neither enjoy the advantages of a republic, nor thoſe of a monarchy.

What has been here ſaid of a popular ſtate, is applicable to ariſtocracy.

* Hanno wanted to deliver Hannibal up to the Romans, as Cato wanted to deliver up Cæſar to the Gauls.

CHAP. VIII.

The ſame ſubject continued.

WHEN a republic therefore keeps another nation in ſubjection, it ſhould endeavour to repair the inconveniencies ariſing from the nature of its ſituation, by giving it good laws both for the political and civil government of the people.

We have an inſtance of an iſland in the Mediterranean ſubject to an Italian republic, whoſe political and civil laws, in reſpect to the inhabitants of that iſland, were extremely defective. The act of amneſty *, by which it ordained that no one ſhould be condemned to bodily puniſhment in conſequence of the private knowledge of the governor, *ex informata conſcientia*, is ſtill recent in every body's memory. There have been frequent inſtances of the people's petitioning for privileges; here the ſovereign grants only the common right of all nations.

CHAP. IX.

Of conqueſts made by a monarchy.

IF a monarchy can for a long time ſubſiſt before it is weakened by its increaſe, it will become formidable, and its ſtrength will remain entire, while pent up by the neighbouring monarchies.

It ought not therefore to aim at conqueſts beyond the natural limits of its government. As ſoon as it has paſſed theſe limits, it is prudence to ſtop.

* Of the 18th of October. 1738, printed at Genoa by Franchetty. "Vietiamo al noſtro general gouvernatore in detta "iſola, di condannare in avenire ſolamente ex informata conſcientia perſona alcuna nazionale, in pena afflittiva, potra "ben ſi far arreſtare ed incarcerare le perſonne che gli ſarauno "ſoſpette, ſalvo di renderne poi a noi conto ſollecitamente." Art 6. See alſo the Amſterdam Gazette of the 23d of September, 1738.

In this kind of conqueſt things muſt be left as they were found; the ſame courts of judicature, the ſame laws, the ſame cuſtoms, the ſame privileges: there ought to be no other alteration than that of the army, and of the name of the ſovereign.

When a monarchy has extended its limits by the conqueſt of ſome neighbouring provinces, it ſhould treat thoſe provinces with great lenity.

If a monarchy has been a long while endeavouring at conqueſts, the provinces of its ancient demeſne are generally ill uſed. They are obliged to ſubmit both to the new and to the ancient abuſes, and to be depopulated by a vaſt metropolis that ſwallows up the whole. Now, if after having made conqueſts round this demeſne, the conquered people were treated like the ancient ſubjects, the ſtate would be undone; the taxes ſent by the conquered provinces to the capital would never return; the inhabitants of the frontiers would be ruined, and conſequently the frontiers would be weaker; the people would be diſſaffected; and the ſubſiſtence of the armies, deſigned to act and remain there, would become more precarious.

Such is the neceſſary ſtate of a conquering monarchy; a ſhocking luxury in the capital; miſery in the provinces ſomewhat diſtant; and plenty in the moſt remote. It is the ſame with ſuch a monarchy as with our planet; fire at the center, verdure on the ſurface, and between both a dry, cold, and barren land.

CHAP. X.

Of one monarchy that ſubdues another.

SOMETIMES one monarchy ſubdues another. The ſmaller the latter, the better it is checked by fortreſſes; and the larger it is, the better it is preſerved by colonies.

CHAP. XI.

Of the manners of a conquered people.

IT is not ſufficient in thoſe conqueſts to let the conquered nation enjoy their own laws; it is perhaps more neceſſary to leave them alſo their manners, becauſe people generally know, love, and defend their manners better than their laws.

The French have been driven nine times out of Italy, becauſe, as hiſtorians ſay *, of their inſolent familiarities with the fair ſex. It is too much for a nation to be obliged to bear not only with the pride of conquerors, but with their incontinence and indiſcretion; theſe are without doubt moſt grievous and intolerable, as they are the ſource of infinite outrages.

CHAP. XII.

Of a law of Cyrus.

FAR am I from thinking that a good law which Cyrus made, to oblige the Lydians to practiſe none but mean or infamous profeſſions. It is true, he directed his attention to what was of the greateſt importance; he thought of revolts, and not of invaſions; but invaſions will ſoon come; for the Perſians and Lydians unite and corrupt each other. I would therefore much rather ſupport by laws the ſimplicity and rudeneſs of the conquering nation, than the effeminacy of the conquered.

Ariſtodemus tyrant of Cumæ † uſed all his endeavours to baniſh courage, and to enervate the minds of youth. He ordered that boys ſhould let their hair grow in the ſame manner as girls, that they ſhould

* See Puffendorf's Univerſal Hiſtory.
† Dionyſ. Halicar. l. 7.

deck it with flowers, and wear long robes of different colours down to their heels; that when they went to their masters of music and dancing, they should have women with them to carry their umbrellas, perfumes, and fans, and to present them with combs and looking-glasses whenever they bathed. This education lasted till the age of twenty; an education that could be agreeable to none but to a petty tyrant, who exposes his sovereignty to defend his life.

CHAP. XIII.

Alexander.

ALEXANDER made a surprising conquest. Let us see how it was conducted; and since enough has been said by other writers of his valour, let us mention something concerning his prudence.

The measures he took were just. He did not set out till he had compleated the reduction of Greece; he availed himself of this reduction, for no other end than for the execution of his enterprise: and he left nothing by which he could be annoyed behind him. He began his attack against the maritime provinces; he made his land-forces keep close to the sea-coast, that he might not be separated from his fleet; he made an admirable use of discipline against numbers; he never wanted provisions; and if it be true that victory gave him every thing, he, in his turn, did every thing to obtain it.

In this manner he carried on his conquests; let us now see how he preserved them.

He opposed those who would have had him treat the Greeks as masters *, and Persians as slaves. He thought only of uniting the two nations, and of abolishing the distinctions of a conquering and a conquer-

† This was Aristotle's advice. Plutarch's Morals, Of the fortune and virtue of Alexander.

ed people. After he had completed his victories, he relinquished all those prejudices that had helped him to obtain them. He assumed the manners of the Persians, that he might not afflict them too much, by obliging them to conform to those of the Greeks. It was this humanity which made him show so great a respect for the wife and mother of Darius; this that made him so continent; this that caused his death to be so much lamented by the Persians. What a conqueror! he is lamented by all the nations he has subdued! What an usurper! At his death the very family he has cast from the throne is all in tears. These were the most glorious passages in his life, and such as history cannot produce an instance of in any other conqueror.

Nothing consolidates more a conquest than the union formed between the two nations by marriages. Alexander chose his wives from the nation he had subdued; he insisted on his courtiers doing the same; and the rest of the Macedonians followed the example. The Franks and Burgundians permitted those marriages *; the Visigoths forbade them in Spain, and afterwards allowed them †. By the Lombards they were not only allowed but encouraged ‡. When the Romans wanted to weaken Macedonia, they ordained that there should be no intermarriages between the people of different provinces.

Alexander, whose aim was to unite the two nations, thought fit to establish in Persia a great number of Greek colonies. He built therefore a vast multitude of towns; and so strongly were all the parts of this new empire cemented, that after his decease, amidst the trouble and confusion of the most frightful civil wars, when the Greeks had reduced themselves, as it were, to a state of annihilation, not a single province of Persia revolted.

* See the law of the Burgundians, tit. 12. art. 5.

† See the law of the Visigoths, book ii. tit. 1. § 1. which abrogates the ancient law, that had more regard, it says, to the difference of nations, than to that of people's conditions.

‡ See the law of the Lombards, book ii. tit. 7. § 1 and 2.

To prevent Greece and Macedon from being too much exhauſted, he ſent a colony of Jews to Alexandria; the manners of thoſe people ſignified nothing to him, provided he could be ſure of their fidelity.

The kings of Syria, abandoning the plan laid down by the founder of the empire, reſolved to oblige the Jews to conform to the manners of the Greeks; a reſolution that gave the moſt terrible ſhocks to their government.

CHAP. XIV.

Charles XII.

THIS prince, who depended entirely on his own ſtrength, haſtened his ruin, by forming deſigns that could never be executed but by a long war; a thing which his kingdom was unable to ſupport.

It was not a declining ſtate he undertook to ſubvert, but a riſing empire. The Ruſſians made uſe of the war he waged againſt them, as of a military ſchool. Every defeat brought them nearer to victory; and loſing abroad, they learned to defend themſelves at home.

Charles, in the deſerts of Poland, imagined himſelf maſter of the univerſe; here he wandered, and with him in ſome meaſure wandered Sweden; while his capital enemy acquired new ſtrength againſt him, locked him up, made ſettlements along the Baltic, deſtroyed or ſubdued Livonia.

Sweden was like a river, whoſe waters are cut off at the fountain-head, in order to change its courſe.

It was not the affair of Pultowa that ruined Charles. Had he not been deſtroyed at that place, he would in another. The caſualties of fortune are eaſily repaired; but who can be guarded againſt events that inceſſantly ariſe from the nature of things.

But neither nature nor fortune were ever ſo much againſt him as he himſelf.

He was not directed by the actual ſituation of things, but by a kind of model he had formed to himſelf;

and even this he followed very ill. He was not an Alexander; but he would have been Alexander's beſt ſoldier.

Alexander's project ſucceeded, becauſe it was prudently concerted. The bad ſucceſs of the Perſians, in their ſeveral invaſions of Greece, the conqueſts of Ageſilaus, and the retreat of the ten thouſand, had ſhown to demonſtration the ſuperiority of the Greeks in their manner of fighting, and in the arms they made uſe of; and it was well known that the Perſians were too proud to be corrected.

It was no longer poſſible for them to weaken Greece by diviſions: Greece was then united under one head, who could not pitch upon a better method of rendering her inſenſible of her ſervitude, than by flattering her vanity with the deſtruction of her hereditary enemy, and with the hopes of the conqueſt of Aſia.

An empire cultivated by the moſt induſtrious nation in the world, that tilled the lands through a principle of religion; an empire abounding with every conveniency of life, furniſhed the enemy with all neceſſary means of ſubſiſting.

It was eaſy to judge by the pride of thoſe kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by being ſo forward to hazard battles; and that flattery would never permit them to doubt of their grandeur.

The project was not only wiſe, but wiſely executed. Alexander, in the rapidity of his conqueſts, even in the fire of his paſſions, had, if I may preſume to uſe the expreſſion, a flaſh of reaſon by which he was directed, and which thoſe who wanted to make a romance of his hiſtory, and whoſe minds were more debauched than his, could not conceal from poſterity.

CHAP. XV.

New methods of preſerving a conqueſt.

WHEN a monarch has conquered a large country, he may make uſe of an admirable method,

equally proper for moderating deſpotic power, and for preſerving the conqueſt; it is a method practiſed by the conquerors of China.

In order to prevent the conquered nation from falling into deſpair, the conquerors from growing inſolent and proud, the government from becoming military, and to contain the two nations within duty, the Tartar family now on the throne of China has ordained, that every military corps in the provinces ſhould be compoſed half of Chineſe and half of Tartars, to the end that the jealouſy between the two nations may keep them within bounds. The courts of judicature are likewiſe half Chineſe, and half Tartars. This is productive of ſeveral good effects. 1. The two nations keep one another in awe. 2. They both preſerve the civil and military power, and one is not deſtroyed by the other. 3. The conquering nation may ſpread itſelf without being weakened and loſt. It is likewiſe enabled to reſiſt civil and foreign wars. The want of ſo wiſe an inſtitution as this, has been the ruin of almoſt all the conquerors that ever exiſted.

CHAP. XVI.

Of conqueſts made by a deſpotic prince.

WHEN a conqueſt happens to be vaſtly large, it ſuppoſes a deſpotic power; and then the army diſperſed in the provinces is not ſufficient. There ſhould be always a truſty body of troops around the prince, ready to fall inſtantly upon any part of the empire that might chance to waver. This military corps ought to awe the reſt, and to ſtrike terror into thoſe who, through neceſſity, have been intruſted with any authority in the empire. The emperor of China has always a large body of Tartars near his perſon, ready upon all occaſions. In India, in Turkey, in Japan, the prince has always a body-guard, independent of the other regular forces. This particular corps keeps the diſperſed troops in awe.

CHAP. XVII.

The ſame ſubject continued.

WE have obſerved, that the countries ſubdued by a deſpotic monarch ought to be feodary. Hiſtorians exhauſt themſelves in extolling the generoſity of thoſe conquerors who reſtored to the throne the princes they had vanquiſhed. Extremely generous then were the Romans, who made kings in all parts, in order to have inſtruments of ſlavery *. A proceeding of that kind is abſolutely neceſſary. If the conqueror intends to preſerve the conquered country, neither the governors he ſends will be able to contain the ſubjects within duty, nor he himſelf the governors. He will be obliged to ſtrip his ancient patrimony of troops, in order to ſecure the new. All the miſeries of the two nations will be common: the civil war of one will communicate itſelf to the other. On the contrary, if the conqueror reſtores the legitimate prince to the throne, he will have a neceſſary ally, by the junction of whoſe forces his own will be augmented. We have a recent inſtance of what has been here ſaid in Shah Nadir, who conquered the Mogul, ſeized his treaſures, and left him the poſſeſſion of Indoſtan.

* Ut haberent inſtrumenta ſervitutis et reges.

BOOK XI.

Of the Laws that form political Liberty, with regard to the Conſtitution.

CHAP. I.

A general idea.

I MAKE a diſtinction between the laws that form political liberty with regard to the conſtitution, and thoſe by which it is formed in reſpect to the citizen. The former ſhall be the ſubject of this book; the latter I ſhall examine in the next.

CHAP. II.

Different ſignifications given to the word Liberty.

THERE is no word that has admitted of more various ſignifications, and has made more different impreſſions on human minds, than that of *Liberty*. Some have taken it for a facility of depoſing a perſon on whom they had conferred a tyrannical authority; others, for the power of chooſing a perſon whom they are obliged to obey; others, for the right of bearing arms, and of being thereby enabled to uſe violence: others, for the privilege of being governed by a native of their own country, or by their own laws *. A certain nation for a long time thought, that liberty conſiſted in the privilege of wearing a long beard †. Some have annexed this name to one form

* I have copied, ſays Cicero, Scevola's edict, which permits the Greeks to terminate their differences among themſelves according to their own laws: this makes them conſider themſelves as a free people.

† The Ruſſians could not bear that the Czar Peter ſhould oblige them to cut it off.

of government, in exclusion of others: Those who had a republican taste, applied it to this government; those who liked a monarchical state, gave it to monarchies ‡. Thus they all have applied the name of liberty to the government most conformable to their own customs and inclinations: And as in a republic people have not so constant and so present a view of the instruments of the evils they complain of, and likewise as the laws seem there to speak more, and the executors of the laws less, it is generally attributed to republics, and denied to monarchies. In fine, as in democracies the people seem to do very near whatever they please, liberty has been placed in this sort of government, and the power of the people has been confounded with their liberty.

CHAP. III.

In what liberty consists.

IT is true, that in democracies the people seem to do what they please; but political liberty does not consist in an unrestrained freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must have continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit; and if a citizen could do what they forbid, he would no longer be possessed of liberty, because all his fellow-citizens would have the same power.

CHAP. IV.

The same subject continued.

DEMOCRATIC and aristocratic states are not necessarily free. Political liberty is to be met

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

with only in moderate governments: yet even in theſe it is not always met with. It is there only when there is no abuſe of power: but conſtant experience ſhews us, that every man inveſted with power is apt to abuſe it; he puſhes on till he comes to ſomething that limits him. Is it not ſtrange, though true, to ſay, that virtue itſelf has need of limits?

To prevent the abuſe of power, it is neceſſary that by the very diſpoſition of things power ſhould be a check to power. A government may be ſo conſtituted, as no man ſhall be compelléd to do things to which the law does not oblige him, nor forced to abſtain from things which the law permits.

CHAP. V.

Of the end or view of different governments.

THOUGH all governments have the ſame general end, which is that of preſervation, yet each has another particular view. Increaſe of dominion was the view of Rome; war, of Sparta; religion, 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, and from thence reſults the oppreſſion of the whole †.

One nation there is alſo in the world, that has for the direct end of its conſtitution political liberty. We ſhall examine preſently the principles on which this liberty is founded: If they are found, liberty will appear as in a mirror.

To diſcover political liberty in a conſtitution, no

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

† Inconveniency of the *libram zeto*.

great labour is requiſite. If we are capable of ſeeing it where it exiſts, why ſhould we go any further in ſearch of it?

CHAP. VI.

Of the conſtitution of England.

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

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

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

When the legiſlative and executive powers are united in the ſame perſon, or in the ſame body of magiſtrates, there can be no liberty; becauſe apprehenſions may ariſe, leſt the ſame monarch or ſenate ſhould enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the power of judging be not ſeparated from the legiſlative and executive powers. Were it joined with the legiſlative, the life and liberty of the ſubject would be expoſed to arbitrary controul; for the judge would then be the legiſlator. Were it joined to the executive power, the judge might behave with all the violence of an oppreſſor

There would be an end of every thing, were the

ſame man, or the ſame body, whether of the nobles or of the people to exerciſe thoſe three powers, that of enacting laws, that of executing the public reſolutions, and that of judging the crimes or differences of individuals.

Moſt kingdoms of 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 weight of a moſt frightful oppreſſion.

In the republics of Italy, where theſe three powers are united, there is leſs liberty than in our monarchies. Hence their government is obliged to have recourſe to as violent methods for its ſupport, as even that of the Turks; witneſs the ſtate-inquiſitors *, and the lion's mouth into which every informer may at all hours throw his written accuſations.

What a ſituation muſt the poor ſubject be in under thoſe republics! The ſame body of magiſtrates are poſſeſſed, as executors of the laws, of the whole power they have given themſelves in quality of legiſlators. They may plunder the ſtate by their general determinations; and as they have likewiſe the judiciary power in their hands, every private citizen may be ruined by their particular deciſions.

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

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

I allow indeed that the mere hereditary ariſtocracy of the Italian republics, does not anſwer exactly to the deſpotic power of the eaſtern princes. The number of magiſtrates ſometimes ſoftens the power of the ma-

* At Venice.

giſtracy; the whole body of the nobles do not always concur in the ſame deſigns; and different tribunals are erected, that temper each other. Thus at Venice the legiſlative power is in the council, the executive in the pregadi, and the judiciary in the quarantia. But the miſchief is, that theſe different tribunals are compoſed of magiſtrates all belonging to the ſame body; which conſtitutes almoſt one and the ſame power.

The judiciary power ought not to be given to a ſtanding ſenate; it ſhould be exerciſed by perſons taken from the body of the people *, at certain times of the year, and purſuant to a form and manner preſcribed by law, in order to erect a tribunal that ſhould laſt only as long as neceſſity requires.

By this means the power of judging, a power ſo terrible to mankind, not being annexed to any particular ſtate or profeſſion, becomes, as it were, inviſible. People have not then the judges continually preſent to their view; they fear the office, but not the magiſtrate.

In accuſations of a deep or criminal nature, it is proper the perſon accuſed ſhould have the priviledge of chuſing in ſome meaſure his judges, in concurrence with the law; or, at leaſt, he ſhould have a right to except againſt ſo great a number, that the remaining part may be deemed his own choice.

The other two powers may be given rather to magiſtrates or permanent bodies, becauſe they are not exerciſed on any private ſubject; one being no more than the general will of the ſtate, and the other the execution of that general will.

But though the tribunals ought not to be fixed, yet the judgements ought, and to ſuch a degree as to be always conformable to the exact letter of the law. Were they to be the private opinion of the judge, people would then live in ſociety without knowing exactly the obligations it lays them under.

The judges ought likewiſe to be in the ſame ſtation

* As at Athens.

as the accuſed, or, in other words, his peers, to the end that he may not imagine he is fallen into the hands of perſons inclined to treat him with rigour.

If the legiſlature leaves the executive power in poſſeſſion of a right to impriſon thoſe ſubjects who can give ſecurity for their good behaviour, there is an end of liberty; unleſs they are taken up, in order to anſwer without delay to a capital crime; in this 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 authoriſe the executive power, for a ſhort and limited time, to impriſon ſuſpected perſons, who, in that caſe, would loſe their liberty only for a while, to preſerve it for ever.

And this is the only reaſonable method that can be ſubſtituted to the tyrannical magiſtracy of the Ephori, and to the ſtate-inquiſitors of Venice, who are alſo deſpotical.

As in a free ſtate, every man who is ſuppoſed a free agent, ought to be his own governor; ſo 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 inconveniencies; it is fit the people ſhould execute by their repreſentatives, what they cannot execute by themſelves.

The inhabitants of a particular town are much better acquainted with its wants and intereſts, than with thoſe of other places; and are better judges of the capacity of their neighbours, than of that of the reſt of their countrymen. The members therefore of the legiſlature ſhould not be choſen from the general body of the nation; but it is proper, that, in every conſiderable place, a repreſentative ſhould be elected by the inhabitants.

The great advantage of repreſentatives, is their being capable of diſcuſſing affairs. For this the people collectively are extremely unfit, which is one of the greateſt inconveniencies of a democracy.

It is not at all neceſſary that the repreſentatives, who have received a general inſtruction from their electors, ſhould wait to be particularly inſtructed on every 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 throw them into infinite delays, would give each deputy a power of controlling the aſſembly; and, on the moſt urgent and preſſing occaſions, the ſprings of the nation might be ſtopped by a ſingle caprice.

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 hand in the government, but for the chuſing of repreſentatives, which is within their reach. For though few can tell the exact degree of mens capacities, yet there are none but are capable of knowing in general, whether the perſon they chuſe is better qualified than moſt of his neighbours.

Neither ought the repreſentative body to be choſen for active reſolutions, for which it is not ſo fit; but for the enacting of laws, or to ſee whether the laws already enacted be duly executed, a thing they are very capable of, and which none indeed but themſelves can properly perform.

In a ſtate there are always perſons diſtinguiſhed by their birth, riches or honours; but were they to be confounded with the common people, and to have only the weight of a ſingle vote like the reſt, the com-

mon 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 the other advantages they enjoy in the ſtate; which happens only when they form a body that has a right to put a ſtop to the enterpriſes of the people, as the people have a right to put a ſtop to theirs.

The legiſlative power is therefore committed to the body of the nobles, and to the body choſen to repreſent the people, which have each 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 remains therefore only two; and as theſe have need of a regulating power to temper them, the part of the legiſlative body compoſed of the nobility is extremely proper for this very purpoſe.

The body of the nobility ought to be hereditary. In the firſt place, it is ſo in its own nature; and in the next, there muſt be a conſiderable intereſt to preſerve its privileges; privileges that in themſelves are obnoxious to popular envy, and of courſe, in a free ſtate, are always in danger.

But as an hereditary power might be tempted to purſue its own particular intereſts, and forget thoſe of the people; it is proper that where they might reap a ſingular advantage from being corrupted, 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 department of government, which always demands expedition, is better administered by one than by many: whereas, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person.

But if there was no monarch, and the executive power was 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 actually sometimes have, and would moreover be always able to have, a share in both.

Were the legislative body to be a considerable time without meeting, this would likewise put an end to liberty. For one of these two things would naturally follow; either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power, which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and moreover would cut out too much work for the executive power, so as to take off its attention from executing, and oblige it to think only of defending its own prerogatives, and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body was once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next: But were it to be always the same body, the people, upon seeing it once corrupted,

would no longer expect any good from its laws; and of course they would either become desperate, or fall into a state of indolence.

The legislative body should not assemble of itself. For a body is supposed to have no will but when it is assembled; and besides, were it not to assemble unanimously, it would be impossible to determine which was really the legislative body, the part assembled, or the other. And if it had a right to prorogue itself, it might happen never to be prorogued; which would be extremely dangerous, in case it should ever attempt to incroach on the executive power. Besides, there are seasons, some of which are more proper than others for assembling the legislative body: It is fit therefore that the executive power should regulate the time of convening, as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself.

Were the executive power not to have a right of putting a stop to the incroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper, on the other hand, that the legislative power should have a right to stop the executive. For as the execution has its natural limits, it is useless to confine it; besides, the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the execution itself; which was attended with infinite mischiefs.

But if the legislative power in a free government ought to have no right to stop the executive, it has a right, and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Cosini and the Ephori gave no account of their administration.

But whatever may be the issue of that examination,

the legiſlative body ought not to have a power of judging the perſon, nor of courſe the conduct of him who is intruſted with the executive power. His perſon ſhould be ſacred, becauſe as it is neceſſary for the good of the ſtate to prevent the legiſlative body from rendering themſelves arbitrary, the moment he is accuſed or tried, there is an end of liberty.

In this caſe the ſtate would be no longer a monarchy, but a kind of republican, though not a free government. But as the perſon intruſted with the executive power cannot abuſe it without bad counſellors, and ſuch as hate the laws as miniſters, though the laws favour them as ſubjects; theſe men may be examined and puniſhed. An advantage which this government has over that of Gnidus, where the law allowed of no ſuch thing as calling the Amymones * to an account, even after their adminiſtration †; and therefore the people could never obtain any ſatisfaction for the injuries done them.

Though in general the judiciary power ought not to be united with any part of the legiſlative, yet this is liable to three exceptions, founded on the particular intereſt of the party accuſed.

The great are always obnoxious to popular envy; and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meaneſt ſubject is poſſeſſed of in a free ſtate, of being tried by their peers. The nobility for this reaſon ought not to be cited before the ordinary courts of judicature, but before that part of the legiſlature which is compoſed of their own body.

It is poſſible that the law, which is clear-ſighted in one ſenſe, and blind in another, might in ſome caſes be too ſevere. But as we have already obſerved, the

* Theſe were magiſtrates choſen annually by the people. See Stephen of Byzantium.

† It was lawful to accuſe the Roman magiſtrates after the expiration of their ſeveral offices. See in Dionyſ. Halicarn. l. 9. the affair of Genucus the tribune.

the national judges are no more than the mouth that pronounces the words of the law, mere paſſive beings incapable of moderating either its force or rigour. That part therefore of the legiſlative body which we have juſt now obſerved to be a neceſſary tribunal on another occaſion, is alſo a neceſſary tribunal in this; it belongs to its ſupreme authority to moderate the law in favour of the law itſelf, by mitigating the ſentence.

It might alſo happen, that a ſubject intruſted with the adminiſtration of public affairs, might infringe the rights of the people, and be guilty of crimes which the ordinary magiſtrates either could not, or would not puniſh. But in general the legiſlative power cannot judge; and much leſs can it be a judge in this particular caſe, where it repreſents the party concerned, which is the people. It can only therefore impeach. But before what court ſhall it bring its impeachment? Muſt it go and abaſe itſelf before the ordinary tribunals which are its inferiors, and being compoſed moreover of men who are choſen from the people as well as itſelf, will naturally be ſwayed by the authority of ſo powerful an accuſer? No: In order to preſerve the dignity of the people, and the ſecurity of the ſubject, the legiſlative part, which repreſents the people, muſt bring in its charge before the legiſlative part which repreſents the nobility, who have neither the ſame intereſts nor the ſame paſſions.

Here is an advantage which this government has over moſt of the ancient republics, where there was this abuſe, that the people were at the ſame time both judge and accuſer.

The executive power, purſuant to what has been already ſaid, ought to have a ſhare in the legiſlature by the power of rejecting, otherwiſe it would ſoon be ſtripped of its prerogative. But ſhould the legiſlative power uſurp a ſhare of the executive, the latter would be equally undone.

If the prince were to have a ſhare in the legiſlature

by the power of refolving, liberty would be loft. But as it is neceffary he ſhould have a ſhare in the legiſlature for the ſupport of his own prerogative, this ſhare muſt conſiſt in the power of rejecting.

The change of government at Rome was owing to this, that neither the ſenate, who had one part of the executive power, nor the magiſtrates, who were 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, one checks the other, by the mutual privilege of rejecting. They are both checked 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 to move 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 with the people, otherwiſe their reſolutions muſt have been attended with a ſtrange confuſion.

Were the executive power to ordain the levying 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 for ever, it would run the riſk of loſing its liberty, becauſe the executive power would no longer be 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 fix, not from year to year, but for ever, the ſea and land forces with which it is to intruſt 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 inliſted 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.

From a manner of thinking that prevails amongſt mankind, they ſet a higher value upon courage than timorouſneſs, 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 army depends on the legiſlative body, the government becomes a military one; 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 their 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.

Whoever ſhall read the admirable treatiſe of Tacitus on the manners of the Germans *, will find that it is from them the Engliſh have borrowed the idea of their political government. This beautiful ſyſtem was invented firſt in the woods.

As all human things have an end, the ſtate we are ſpeaking of will loſe its liberty, it will periſh. Have not Rome, Sparta, and Carthage periſhed? It will periſh when the legiſlative power ſhall be more corrupted than the executive.

It is not my buſineſs to examine whether the Engliſh actually enjoy this liberty or not. It is ſufficient for my purpoſe to obſerve, that it is eſtabliſhed by their laws; and I enquire 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 ſuch a deſign, I who think that even the exceſs 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 higheſt point 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.

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

CHAP. VII.

Of the monarchies we are acquainted with.

THE monarchies we are acquainted with have not, like that we have been ſpeaking of, liberty for their direct view: their only aim is the ſubject's, the ſtate's, and the prince's glory. But from this glory there reſults a ſpirit of liberty, which in thoſe ſtates may perform as great things, and may contribute 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 upon political liberty; and if they did not border upon it, monarchy would degenerate into deſpotic government.

CHAP. VIII.

Why the ancients had not a clear idea of monarchy.

THE ancients had no notion of a government founded on a body of nobles, and much leſs on a legiſlative body compoſed of the repreſentatives of the people. The republics of Greece and Italy were cities that had each their own form of government, and convened their ſubjects within their own walls. Before Rome had ſwallowed up all the other republics, there was ſcarce any where a king to be found, no, not in Italy, Gaul, Spain, or Germany; theſe were all petty ſtates, or little republics. Even Africa itſelf was under the dominion of a great republic; and Aſia Minor was occupied by Greek colonies. There was therefore no example of deputies of towns, or aſſemblies of the ſtates; one muſt have gone as far as Perſia to find a country under the government of a ſingle perſon.

I am not ignorant that there were confederate republics, in which ſeveral towns ſent deputies to an

assembly. But I affirm there was no monarchy on the present model.

The first plan therefore of the monarchies we are acquainted with was thus formed. The German nations that conquered the Roman empire, were, as it is known to every one, a free people. Of this we may be convinced, only by reading Tacitus on the manners of the Germans. The conquerors spread themselves all over the country; living mostly in the fields, and in very little towns. When they were in Germany, the whole nation was able to assemble. This they could no longer do, when they were dispersed through the conquered provinces. And yet as it was necessary that the nation should deliberate on public affairs, pursuant to their usual method before the conquest; they had therefore recourse to representatives. Such is the origin of the Gothic government amongst us. At first it was mixed with aristocracy and monarchy; a mixture attended with this inconveniency, that the common people were bond-men. The custom afterwards succeeded of granting letters of infranchisement, and was soon followed by so perfect a harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince's prerogative, that I really think there never was in the world a government so well tempered as that of each part of Europe, so long as it lasted. Surprising, that the corruption of the government of a conquering nation, should have given birth to the best species of constitution that could possibly be imagined by man *!

CHAP. IX.

Aristotle's manner of thinking.

ARISTOTLE is greatly puzzled in treating of monarchy †. He makes five species, and he does

* It was a good government that had in itself a capacity of growing better.

† Polit. Book iii. Chap. 14.

not diſtinguiſh them by the form of conſtitution, but by things merely accidental, as the virtues or vices of the prince, or by things extrinſical, ſuch as the uſurpation of, or ſucceſſion to tyranny.

He ranks among the number of monarchies the Perſian empire, and the kingdom of Sparta. But is it not evident, that the one was a deſpotic ſtate, and the other a republic?

The ancients, who were ſtrangers to the diſtribution of the three powers in the government of a ſingle perſon, could never form a juſt idea of monarchy.

CHAP. X.

What other politicians thought.

TO temper the government of a ſingle perſon, Arybas king * of Epirus found no other remedy than a republic. The Moloſſi, not knowing how to limit the ſame power, made two kings †; by this means the ſtate was weakened more than the prerogative of the prince; they wanted rivals, and they created enemies.

Two kings were tolerable no where but at Sparta; here they did not form, but were only a part of the conſtitution.

CHAP. XI.

Of the kings of the heroic times of Greece.

IN the heroic times of Greece, a kind of monarchy aroſe that was not of long duration ‡. Thoſe who had been inventors of arts, who had fought in their country's cauſe, had eſtabliſhed ſocieties, or diſtributed lands among the people, obtained the regal power, and tranſmitted it to their children. They were kings, prieſts and judges. This is one of the five ſpecies of monarchy mentioned by Ariſtotle ‖; and the only one

* See Juſtin, Book xvii.
† Ariſt. Polit. Book v. Chap. 8.
‡ Ibid. Book iii. Chap 14.
‖ Ibid.

that can give us any idea of the monarchical conſtitution. But the plan of this conſtitution is oppoſite to that of our modern monarchies.

The three powers were there diſtributed in ſuch a manner as the people had the legiſlative §, and the king the executive, together with the power of judging; whereas in modern monarchies, the prince is inveſted with the executive and legiſlative powers, or, at leaſt, with part of the legiſlative, but does not aſſume the power of judging.

In the government of the kings of the heroic times, the three powers were ill diſtributed. Hence thoſe monarchies could not long ſubſiſt; for, as ſoon as the people got the legiſlative power into their hands, they might, as they every where did, upon the very leaſt caprice, ſubvert the regal authority.

Among a free people poſſeſſed of a legiſlative power, a people incloſed within walls, where every thing of an odious nature becomes ſtill more odious, it is the higheſt maſter-piece of legiſlation, to know how to place properly the judiciary power. But it could not be in worſe hands, than in thoſe of the perſon to whom the executive power had been already committed. From that very inſtant, the monarch became terrible. But at the ſame time, as he had no ſhare in the legiſlature, he could make no defence againſt it; thus his power was in one ſenſe too great, in another too little.

They had not as yet diſcovered, that the true function of a prince was to appoint judges, and not to ſit as judge himſelf. The oppoſite policy rendered the government of a ſingle perſon inſupportable. Hence all thoſe kings were baniſhed. The Greeks had no notion of the proper diſtribution of the three powers in the government of one perſon; they could ſee it only in that of many; and this kind of conſtitution they diſtinguiſhed by the name of *polity* *.

§ See what Plutarch ſays in the life of Theſeus. See likewiſe Thucydides, Book i.

* Ariſt. Polit. Book vi. Chap 8.

CHAP. XII.

Of the government of the kings of Rome, and in what manner the three powers were there diſtributed.

THE government of the kings of Rome had ſome relation to that of the kings of the heroic times of Greece. Its ſubverſion, like the latter's, was owing to its general defect, though in itſelf, and in its own particular nature, it was exceeding good.

In order to give an adequate idea of this government, I ſhall diſtinguiſh that of the five firſt kings, that of Servius Tullius, and that of Tarquin.

The crown was elective, and under the five firſt kings the ſenate had the greateſt ſhare in the election.

Upon the king's deceaſe, the ſenate examined whether they ſhould continue the eſtabliſhed form of government. If they thought proper to continue it, they named a magiſtrate † taken from their own body, who choſe a king; the ſenate were to approve of the election, the people to confirm it, and the augurs to declare the approbation of the Gods. If one of theſe three conditions was wanting, they were obliged to proceed to another election.

The conſtitution was a mixture of monarchy, ariſtocracy, and democracy; and ſuch was the harmony of power, that there was no inſtance of jealouſy or diſpute in the firſt reigns. The king commanded the armies, and had the direction of the ſacrifices; he had the power of determining * civil and criminal ‖ cauſes; he called the ſenate together, convened the people; laid ſome affairs before the latter, and regulated the reſt with the ſenate ‡.

The authority of the ſenate was very great. The

† Dion. Halic. Book ii. p. 120. and Book iv. p. 242 & 243.

* See Tanaquil's diſcourſe in Livy, book i. dec. 1. and the regulations of Servius Tullius in Dionyſ. Halicarn. Book iv. p. 229.

‖ See Dionyſ. Halicarn. book ii. p. 118. and book iii. p. 171.

‡ It was by virtue of a *ſenatuſconſultum*, That Tullus Hoſtilius

kings oftentimes pitched upon ſenators with whom they judged in conjunction, and they never laid any affair before the people, till it had been previouſly debated ‖ in the ſenate.

The people had the right of chuſing § magiſtrates, of conſenting to the new laws, and, with the king's permiſſion, of making war and peace; but they had not the power of judging. When Tullus Hoſtilius referred the trial of Horatius to the people, he had his particular reaſons, which may be ſeen in Dionyſius Halicarnaſſus **.

The conſtitution altered under †† Servius Tullius. The ſenate had no ſhare in his election; he cauſed himſelf to be proclaimed by the people; he reſigned the power of judging civil cauſes ‡‡, reſerving none to himſelf but the criminal; he laid all affairs directly before the people; he eaſed them of taxes, and impoſed the whole burthen on the patricians. Hence, in proportion as he weakened the regal together with the ſenatorian power, he augmented that of the people *.

Tarquin would neither be choſen by the ſenate nor by the people; he conſidered Servius Tullius as an uſurper, and took the crown as an hereditary right. He deſtroyed moſt of the ſenators; thoſe who remained he never conſulted, nor did he even ſo much as ſummon them to aſſiſt at his deciſions †. Thus his power increaſed; but the odium of that power received a new addition by uſurping alſo the authority of

ordered Alba to be deſtroyed. *Dionyſ. Halicarn. book.* iii. *p.* 167. & 172.

‖ Ibid. book iv. p. 276.

§ Ibid. book ii. And yet they could not have the nomination of all offices, ſince Valerius Publicola made that famous law by which every citizen was forbid to exerciſe any employment, unleſs he had obtained it by the ſuffrage of the people.

** Book iii. p. 159. †† Dionyſ. Halicarn. book 4.

‡‡ He diveſted himſelf of half the regal power, ſays Dionyſ. Halicarn. book iv. p. 229.

* It was thought, that, if he had not been prevented by Tarquin, he would have eſtabliſhed a popular government. *Dionyſ. Halicarn. book* iv. *p.* 243.

† Dionyſ. Halicarn. book iv.

the people, without whom and even againſt whom he enacted ſeveral laws. The three powers were by this means reunited in his perſon; but the people at a critical minute recollected that they were legiſlators, and there was an end of Tarquin.

CHAP. XIII.

General reflections on the ſtate of Rome after the expulſion of its kings.

IT is impoſſible ever to be tired with ſo agreeable a ſubject as ancient Rome; even at preſent ſtrangers leave the modern palaces of that celebratad capital to go in ſearch of ruins: Thus the eye, after reſting itſelf on the enamelled meadows, is pleaſed with the ſight of rocks and mountains.

The patrician families were at all times poſſeſſed of great privileges. Theſe diſtinctions, which were conſiderable under the kings, became much more important after their expulſion. Hence aroſe the jealouſy of the plebeians, who wanted to reduce them. The conteſt ſtruck at the conſtitution without weakening the government: for it was very indifferent of what family the magiſtrates were, provided the magiſtracy preſerved its authority.

An elective monarchy, like that of Rome, neceſſarily ſuppoſeth a powerful ariſtocratic body to ſupport it, without which it changes immediately into tyranny or into a popular ſtate. But a popular ſtate has no need of this diſtinction of families to maintain itſelf. To this it was owing, that the patricians, who were a neceſſary part of the conſtitution under the regal government, became a ſuperfluous branch under the conſuls: the people could ſuppreſs them without hurting themſelves, and change the conſtitution without corrupting it.

After Servius Tullius had reduced the patricians, it was natural that Rome ſhould fall from the regal hands into thoſe of the people. But the people had

no occaſion to be afraid of relapſing under a regal power by reducing the patricians.

A ſtate may alter two different ways, either by the amendment or by the corruption of the conſtitution. If it has preſerved its principles, and the conſtitution changes, it is owing to its amendment; if, upon changing the conſtitution, its principles are loſt, it is becauſe it has been corrupted.

Rome, after the expulſion of the kings, ſhould naturally have been a democracy. The people had already the legiſlative power in their hands; it was their unanimous conſent that had expelled the kings; and, if they had not continued ſteady in thoſe principles, the Tarquins might eaſily have been reſtored. To pretend that their deſign in expelling them was to render themſelves ſlaves to a few families is quite unreaſonable. The ſituation therefore of things required that Rome ſhould be a democracy, and yet it was not. There was a neceſſity of tempering the power of the principal families, and of giving the laws a bias to democracy.

The proſperity of ſtates is frequently greater in the inſenſible tranſition from one conſtitution to another, than in either of thoſe conſtitutions. Then it is that all the ſprings of government are ſtretched, that every citizen forms pretenſions, that the inhabitants attack or careſs one another, and that there is a noble emulation between thoſe who defend the declining, and thoſe who are ſtrenuous in promoting the new conſtitution.

CHAP. XIV.

In what manner the diſtribution of the three powers began to change after the expulſion of the kings.

THERE were four things that greatly oppreſſed the liberty of Rome. The patricians had ingroſſed to themſelves all ſacred, political, civil, and military employments; an exorbitant power was annexed to the conſulate; the people were often inſulted;

and, in fine, they had ſcarce any influence at all left in the public ſuffrages. Theſe four abuſes were redreſſed by the people.

1. It was regulated that there ſhould be ſome magiſtracies to which the plebeians might aſpire; and by degrees they obtained their being made capable of them all, except that of Interrex.

2. The conſulate was diſſolved into ſeveral other magiſtracies *; prætors were created, on whom the power was conferred of judging private affairs; quæſtors † were nominated for determining criminal cauſes; ædiles were eſtabliſhed for the civil adminiſtration; treaſurers ‡ were made who had the management of the public money; and, in fine, by the creation of cenſors the conſuls were diveſted of that part of the legiſlative power which regulates the morals of the citizens, and the momentary policy of the different bodies of the ſtate. The chief privileges left them were to preſide in the great meetings ‖ of the people, to aſſemble the ſenate, and to command the armies.

3. By the ſacred laws tribunes were eſtabliſhed, who had a power on all occaſions of checking the incroachments of the patricians, and prevented not only particular, but likewiſe general injuries.

In fine, the plebeians increaſed their influence in public deciſions. The people of Rome were divided in three different manners, by centuries, by curiæ, and by tribes; and whenever they gave their votes, they were aſſembled and formed one of thoſe three ways.

In the firſt, the patricians, the leading men, the rich, the ſenate, which was very near the ſame thing, had almoſt the whole authority; in the ſecond they had leſs, and leſs ſtill in the third.

The diviſion into centuries was a diviſion rather of

* Livy, decad. i. book 6.
† Quæſtores parricidii. *Pomponius, leg. 2. ff. de orig. jur.*
‡ Plutarch's life of Publicola.
‖ Comitiis centuriatis.

eſtates and fortunes, than of perſons. The whole people were divided into 193 centuries †, which had each a ſingle vote. The patricians and leading men compoſed the firſt ninety-eight centuries, and the other ninety-five conſiſted of the remainder of the citizens. In this diviſion therefore the patricians were maſters of the ſuffrages.

In the diviſion into curiæ ‡, the patricians had not the ſame advantages; ſome however they had, for it was neceſſary that the augurs ſhould be conſulted, who were under the direction of the patricians; and no propoſal could be made there to the people, unleſs it had been previouſly laid before the ſenate, and approved of by a *ſenatuſconſultum*. But, in the diviſion into tribes, they had nothing to do either with the augurs or with the decrees of the ſenate; and the patricians were excluded.

Now the people endeavoured conſtantly to have thoſe meetings by curias which had been cuſtomary by centuries, and by tribes thoſe they uſed to have before by curias; by which means, the direction of public affairs ſoon devolved from the patricians to the plebeians.

Thus, when the plebeians obtained the power of judging the patricians, a power which commenced in the affair of Coriolanus *, the plebeians inſiſted upon judging them by aſſemblies in tribes ⸸, and not in centuries; and, when the new magiſtracies ‡‡ of tribunes and ædiles were eſtabliſhed in favour of the people, the latter obtained that they ſhould meet by curias in order to nominate them, and, after their power was quite ſettled, they gained ‖ ſo far their point as to aſſemble by tribes to proceed to this nomination.

† See Livy, book i. and Dionyſ. Halicarn. book iv. & vii.

‡ Dionyſ. Halicarn. book ix. p. 598.

* Ibid. book vii.

⸸ Contrary to the ancient cuſtom, as may be ſeen in Dionyſ. Halicarn. book v p. 320.

‡‡ Dionyſ. Halicarn. book vi. p. 410. and 411.

‖ See Dionyſ. Halicarn. book ix. p. 605.

CHAP. XV.

In what manner Rome, while in the flouriſhing ſtate of the republic, ſuddenly loſt its liberty.

IN the heat of the conteſts between the patricians and the plebeians, the latter inſiſted upon having fixed laws, to the end that the public judgments ſhould no longer be the effect of a capricious will, or of an arbitrary power. The ſenate, after a great deal of reſiſtance, acquieſced, and decemvirs were nominated to compoſe thoſe laws. It was thought proper to grant them an extraordinary power, becauſe they were to give laws to parties whoſe views and intereſts it was almoſt impoſſible to unite. The nomination of all magiſtrates was ſuſpended, and they were choſen in the comitia ſole adminiſtrators of the republic. Thus they found themſelves inveſted with the conſular and tribunician power. By one they had the privilege of aſſembling the ſenate; by the other that of aſſembling the people. But they aſſembled neither ſenate nor people. Ten men only in the republic had the whole legiſlative, the whole executive, and thewhole judiciary power. Rome ſaw herſelf enſlaved by as cruel a tyranny as that of Tarquin. When Tarquin exerciſed his oppreſſions, Rome was ſeized with indignation at the power he had uſurped; when the decemvirs exerciſed theirs, ſhe was aſtoniſhed at the power ſhe had given.

But what a ſtrange ſyſtem of tyranny! a tyranny carried on by men who had obtained the political and military power merely becauſe of their knowledge in civil affairs, and who, in the circumſtances of that very time, ſtood in need of the cowardice of the citizens to let themſelves be inſulted at home, and of their courage to protect them abroad.

The ſpectacle of Virginia's death, whom her father immolated to chaſtity and liberty, put an end to the power of the decemvirs. Every man became free, becauſe every man had been injured; each ſhewed him-

ſelf a citizen, becauſe each had the tye of a parent. The ſenate and people reſumed a liberty which had been committed to ridiculous tyrants.

No people were ſo eaſily moved with ſpectacles as the Romans. The bloody body of Lucretia put an end to the regal government. The debtor, who appeared in the public market-place covered with wounds, cauſed an alteration in the form of the republic. The decemvirs owed their expulſion to the ſight of Virginia. To condemn Manlius, it was neceſſary to keep the people from ſeeing the capitol. Cæſar's bloody garment flung Rome again into ſlavery.

CHAP. XVI.

Of the legiſlative powers in the Roman republic.

THERE were no rights to conteſt under the decemvirs; but upon the reſtoration of liberty jealouſies revived, and as long as the patricians had any privileges left, they were ſure to be ſtripped of them by the plebeians.

The miſchief would not have been ſo great, had the plebeians been ſatisfied with depriving the patricians of their prerogatives; but they alſo injured them as citizens. When the people aſſembled by curias or centuries, they were compoſed of ſenators, patricians, and plebeians. In their diſputes the plebeians gained this point*, that they alone, without patricians or ſenate, ſhould enact laws called *plebiſcita*; and the comitia, in which they were made, had the name given them of *comitia* by tribes. Thus there were caſes, in which the patricians † had no ſhare in the legiſlative power, and ‡ in which they were ſubject

* Dionyſ. Halicarn. book xi. p. 725.

† By the ſacred laws the plebians had a power of making the *plebiſcita* by themſelves, without admitting the patricians into their aſſembly. Dionyſ. Halicarn. book vi. p. 410. and book vii. p. 430.

‡ By the law made after the expulſion of the decemvirs, the patricians were made ſubject to the *plebiſcita*, though they had

to the legiſlation of another body of the ſtate. This was the higheſt extravagance of liberty. The people, to eſtabliſh a democracy, acted againſt the very principles of this government. One would have imagined, that ſo exorbitant a power muſt have deſtroyed the authority of the ſenate. But Rome had admirable inſtitutions. Two of theſe were eſpecially remarkable; one by which the legiſlative power of the people was regulated, and the other by which it was limited.

The cenſors, and before them the conſuls *, formed and created, as it were, every five years, the body of the people; they exerciſed the legiſlation on the very body that was poſſeſſed of the legiſlative power. "Tiberius Gracchus," ſays Cicero, "cauſed the "freedmen to be admitted into the tribes of the city, "not by the force of his eloquence, but by a word, "by a geſture; which had he not effected, the re-"public, whoſe drooping head we are at preſent "ſcarce able to uphold, would not even exiſt."

On the other hand, the ſenate had the power of reſcuing, as it were, the republic out of the hands of the people, by creating a dictator, before whom the ſovereign bowed his head, and the moſt popular laws were ſilent †.

CHAP. XVII.

Of the executive power in the ſame republic.

JEALOUS as the people were of their legiſlative power, yet they had no great jealouſy of the executive. This they left almoſt entirely to the ſenate and to the conſuls, reſerving ſcarce any thing more

not a right of voting there. Livy, book iii. and Dionyſ. Halicarn. book xi. p. 725. This law was confirmed by that of Publius Philo, the dictator, in the year of Rome 416. Livy, book viii.

* In the year 312 of Rome, the conſuls performed ſtill the buſineſs of ſurveying the people and their eſtates, as appears by Dionyſ. Halicarn. book xi.

† Such as thoſe, by which it was allowed to appeal from the deciſions of all the magiſtrates to the people.

to themſelves, than the right of chuſing the magiſtrates, and of confirming the acts of the ſenate and of the generals.

Rome, whoſe paſſion was to command, whoſe ambition was to conquer, whoſe commencement and progreſs were one continued uſurpation, had conſtantly affairs of the greateſt weight upon her hands; her enemies were always conſpiring againſt her, or ſhe againſt her enemies.

As ſhe was obliged to behave on the one hand with heroic courage, and on the other with conſummate prudence; the ſituation of things required of courſe, that the management of affairs ſhould be committed to the ſenate. Thus the people diſputed every branch of the legiſlative power with the ſenate, becauſe they were jealous of their liberty; but they had no diſputes about the executive, becauſe they were jealous of their glory.

So great was the ſhare the ſenate took in the executive power, that, as Polybius * informs us, foreign nations imagined that Rome was an ariſtocracy. The ſenate diſpoſed of the public money, and farmed out the revenue; they were arbiters of the affairs of their allies; they determined war or peace, and directed in this reſpect the conſuls; they fixed the number of the Roman and of the allied troops, diſpoſed of the provinces and armies to the conſuls or prætors, and, upon the expiration of the year of command, had the power of appointing ſucceſſors; they decreed triumphs, received and ſent embaſſies; they nominated, rewarded, puniſhed, and were judges of kings; gave them, or declared they had forfeited, the title of allies of the Roman people.

The conſuls levied the troops which they were to carry into the field; they had the command of the forces by ſea and land, diſpoſed of the allies, were inveſted with the whole power of the republic in the provinces, gave peace to the vanquiſhed nations, im-

* Book vi.

poſed conditions on them, or referred them to the ſenate.

In the earlieſt times, when the people had ſome ſhare in the affairs relating to war and peace, they exerciſed rather their legaſlative than their executive power. They ſcarce did any thing elſe but confirm the acts of the kings, and, after their expulſion, of the conſuls or ſenate. So far were they from being the arbiters of war, that we have inſtances of its having been often declared notwithſtanding the oppoſition of their tribunes. But, growing wanton in their proſperity, they increaſed their executive power. Thus they * created the military tribunes, the nomination of whom till then had belonged to the generals; and ſome time before the firſt Punic war they decreed, that themſelves only ſhould have right † of declaring war.

CHAP. XVIII.

Of the judiciary power in the Roman government.

THE judiciary power was given to the people, to the ſenate, to the magiſtrates, and to particular judges. We muſt ſee in what manner it was diſtributed; beginning with their civil affairs.

The conſuls had ‡ the power of judging after the expulſion of the kings, as the prætors were judges after the conſuls. Servius Tullius had diveſted himſelf of the judgment of civil affairs, which was not

* In the year of Rome 444. Livy, decad. i. book ix. As the war againſt Perſeus appeared ſomewhat dangerous, it was ordained by a *ſenatuſconſultum*, that this law ſhould be ſuſpended, and the people agreed to it. Livy, dec. v. book ii.

† They extorted it from the ſenate, ſays Freinſhemius, dec. ii. book vi.

‡ There is no manner of doubt, but the conſuls had the power of judging civil affairs before the creation of the prætors. See Livy, dec. i. book ii. p. 19. Dionyſ. Halicarn. book x. p. 621. and the ſame book, p. 645.

resumed by the consuls, except in ‖ some very rare cases, for that reason called *extraordinary* †. They were satisfied with naming the judges, and with forming the several tribunals. By a discourse of Appius Claudius in Dionysius Halicarnassus ‡ it appears, that, as early as the 259th year of Rome, this was looked upon as an established custom among the Romans, and it is not tracing it very high to refer it to Servius Tullius.

Every year the prætor made a list ‖ of such as he chose to discharge the office of judges during his magistracy. A sufficient number was pitched upon for each cause; a custom very near the same as that which is now practised in England. And what was extremely favourable to liberty §, was the prætor's fixing the judges with the consent of the parties ‡. The great number of exceptions, that can be made now in England, amounts pretty near to this very custom.

The judges decided only the questions * relating to facts; for example, whether a sum of money had been paid or not, whether an act had been committed or not. But as to questions of right ††, as they required some sort of capacity, they were always carried before the tribunal of the centumvirs ‡‡.

‖ The tribunes frequently judged by themselves only, but nothing rendered them more odious. Dionys. Halicarn. book xi. p 709.

† "Judicia extraordinaria." See the Institutes, book iv.

‡ Book vi. p. 360. ‖ Album judicum.

§ "Our ancestors, (says Cicero *pro Cluent.*), would not suf-
" fer any man, whom the parties had not agreed to, to be
" judge of the least pecuniary affair, much less of a citizen's
" reputation."

‡ See in the fragments of the Servilian, Cornelian, and other laws, in what manner these laws appointed judges for the crimes they proposed to punish. They were often by choice, sometimes by lot, or in fine, by lot mixed together with choice.

* Seneca de benefic. lib iii. cap. 7. in fine.

†† See Quintilian, lib. iv. page 54. in folio edition of Paris, 1541.

‡‡ *Leg.* 2. *ff. de orig. jur.* Magistrates who were called decemviri presided in court, the whole under a prætor's direction.

The kings reſerved to themſelves the judgment of criminal affairs, and in this they were ſucceeded by the conſuls. It was in conſequence of this authority that Brutus the conſul put his children and all thoſe who were concerned in the Tarquinian conſpiracy to death. This was an exorbitant power. The conſuls, already inveſted with the military command, extended the exerciſe of it even to civil affairs; and their procedures, being ſtripped of all forms of juſtice, were rather exertions of violence than legal judgements.

This gave riſe to the Valerian law, by which it was made lawful to appeal to the people from every ordinance of the conſuls that endangered the life of a citizen. The conſuls after this had no longer power of pronouncing ſentence in capital caſes againſt a Roman citizen without the conſent of the people ‖.

We ſee in the firſt conſpiracy for the reſtoration of the Tarquins, that the criminals were tried by Brutus the conſul; in the ſecond the ſenate and comitia were aſſembled to try them *.

The laws diſtinguiſhed by the name of *Sacred* allowed the plebeians the privilege of chuſing tribunes; by this means a body was formed, whoſe pretenſions at firſt were immenſe. It is hard to determine which was greater, the inſolence of the plebeians in demanding, or the condeſcenſion of the ſenate in granting. The Valerian law allowed of appeals to the people, that is, to the people compoſed of ſenators, patricians, and plebeians. The plebeians made a law that appeals ſhould be brought before themſelves. A queſtion was ſoon after ſtarted, whether the plebeians had a right to judge a patrician; this was the ſubject of a diſpute, which the affair of Coriolanus gave riſe to, and which ended with that affair. When Coriolanus was accuſed by the tribunes before the people, he inſiſted, contrary to the ſpirit of the Valerian law,

‖ "Quoniàm de capite civis Romani, in juſſu populi Roma-
"ni, non erat permiſſum conſulibus jus dicere." See *Pomponius*, *leg. 2. ff. de orig. jur.*

* Dionyſ. Halicarn. book v. page 322.

that, as he was a patrician, none but the conſuls had a power to judge him; on the other hand, the plebeians alſo, contrary to the ſpirit of that very ſame law, pretended that none but themſelves had a power to judge him, and they judged him accordingly.

This was moderated by the law of the twelve tables, whereby it was ordained that none but the great aſſemblies of the people † ſhould pronounce ſentence againſt a citizen in capital caſes. Hence the body of the plebeians, or, which amounts to the very ſame, the comitia by tribes, had no longer any power of judging crimes, except ſuch as were puniſhed with a pecuniary mulct. To inflict a capital puniſhment a law was requiſite; but, to condemn to a pecuniary fine, there was occaſion only for a *pleбiſcitum*.

This regulation of the law of the twelve tables was very prudent. It produced an admirable reconciliation between the body of the plebeians and the ſenate; for, as the full judiciary power of both depended on the greatneſs of the puniſhment and the nature of the crime, it was neceſſary they ſhould both agree.

The Valerian law aboliſhed all the remains of the Roman government, which were any way relative to that of the kings of the heroic times of Greece. The conſuls were diveſted of the power to puniſh crimes. Though all crimes are public, yet we muſt diſtinguiſh between thoſe which more nearly concern the mutual communication of citizens, and thoſe which more nearly intereſt the ſtate in the relation it has to its ſubjects. The firſt are called *private*, the ſecond *public*. The latter were judged by the people, and, in regard to the former, they named by particular commiſſion a quæſtor for the proſecution of each crime. The perſon choſen by the people was frequently one of the magiſtrates, and ſometimes a private man. He

† The comitia by centuries. Thus Manlius Capitolinus was judged in theſe comitia. *Livy, dec.* I. *book* vi. *page* 00.

was called the *quæſtor of parricide*, and is mentioned in the law of the twelve tables *.

The quæſtor nominated the judge of the queſtion, who drew lots for the judges, and formed the tribunal, under which he preſided †.

Here it is proper to obſerve what ſhare the ſenate had in the nomination of the quæſtor, that we may ſee how far the two powers were balanced in this reſpect. Sometimes the ſenate cauſed a dictator to be choſen in order to exerciſe the office of quæſtor **; ſometimes they ordained that the people ſhould be convened by a tribune, in order to proceed to the nomination of a quæſtor ‡; and in fine, the people ſometimes appointed a magiſtrate to make his report to the ſenate concerning a particular crime, and to deſire them to name a quæſtor, as may be ſeen in the judgment of Lucius Scipio ‡ in Livy ||.

In the year of Rome 604, ſome of thoſe commiſſions were rendered permanent §. All criminal cauſes were gradually divided into different parts, to which they gave the name of *perpetual queſtions*. Different prætors were created, to each of whom ſome of thoſe queſtions were aſſigned. They had a power conferred upon them, for the term of a year, of judging ſuch crimes as were any way relative to thoſe queſtions, and then they were ſent to govern their province.

At Carthage, the ſenate of the hundred was com-

* Pomponius, in the ſecond law. *digeſt. de orig. jur.*

† See a fragment of Ulpian, who gives another of the Cornelian law; it is to be met with in the collection of the Moſaic and Roman laws, *tit.* 1. *de ſicariis et homicidiis.*

** This took place eſpecially in regard to crimes committed in Italy, which were ſubject chiefly to the inſpection of the ſenate. See Livy, dec. i. book 9. concerning the conſpiracies of Capua.

‡ This was the caſe in the proſecution for the murder of Poſthumius, in the year 340 of Rome. See Livy.

‡ This judgment was given in the year of Rome 567.

|| Book 8.

§ Cicero in Bruto.

poſed of judges that enjoyed that dignity for life †. But at Rome, the prætors were annual, and the judges were not even for ſo long a term, but were nominated for each cauſe. We have already ſhewn in the ſixth chapter of this book, how favourable this regulation was to liberty in particular governments.

The judges were choſen from the order of ſenators, till the time of the Gracchi. Tiberius Gracchus cauſed a law to paſs, that they ſhould be taken from the equeſtrian order; a change ſo very conſiderable, that the tribune boaſted of having cut, by one rogation only, the ſinews of the ſenatorial dignity.

It is neceſſary to obſerve, that the three powers may be very well diſtributed in regard to the liberty of the conſtitution, though not ſo well in reſpect to the liberty of the ſubject. At Rome, the people had the greateſt ſhare of the legiſlative, part of the executive, and part of the judiciary power; by which means they had ſo great a weight in the government, as required ſome other power to balance it. The ſenate indeed had part of the executive power, and ſome ſhare of the legiſlative *; but this was not ſufficient to counterbalance the weight of the people. It was neceſſary that they ſhould have a ſhare in the judiciary power; and accordingly they had a ſhare, when the judges were choſen from among the ſenators. But when the Gracchi deprived the ſenators of the power of judging ‡, the ſenate were no longer able to withſtand the people. To favour therefore the liberty of the ſubject, they ſtruck at the liberty of the conſtitution; but the former periſhed with the latter.

Infinite were the miſchiefs that from thence aroſe. The conſtitution was changed at a time when the fire

† This is proved from Livy, book 43. who ſays that Hannibal rendered their magiſtracy annual.

* The *Senatus conſulta* were of force for the ſpace of a year, though not confirmed by the people. *Dionyſ. Halicarn. lib.* ix. *p.* 595. and *lib.* xi. *p.* 735.

‡ In the year 630.

of civil diſcords had ſcarce left any ſuch thing as a conſtitution. The knights were no longer that middle order which united the people to the ſenate; the chain of the conſtitution was broke.

There were even particular reaſons againſt tranſferring the judiciary power to the equeſtrian order. The conſtitution of Rome was founded on this principle, that none ſhould be enliſted as ſoldiers, but ſuch as were men of ſufficient property to anſwer for their conduct to the republic. The knights, as perſons of the greateſt property, formed the cavalry of the legions. But when their dignity increaſed, they refuſed to ſerve any longer in that capacity; and another kind of cavalry was obliged to be raiſed: thus Marius enliſted all ſorts of people into his army, and ſoon after the republic was loſt *.

Beſides, the knights were the farmers of the public revenues; a ſet of rapacious men, who ſowed new miſeries amongſt a miſerable people, and made a ſport of the public calamity. Inſtead of giving to ſuch men as thoſe the power of judging, they ought to have been conſtantly under the eye of the judges. This we muſt ſay in commendation of the ancient French laws; they have ſtipulated with the officers of the revenues with as great a diffidence as would be obſerved between enemies. When the judiciary power at Rome was transferred to the farmers of the revenues, there was then an end of virtue, policy, laws, magiſtracy, and magiſtrates.

Of this we find a very ingenious deſcription in ſome fragments of Diodorus Siculus and Dio. "Mucius "Scævola, (ſays Diodorus †), wanted to revive the "ancient morals, and the laudable cuſtom of ſober "and frugal living: for his predeceſſors having en-"tered into a contract with the farmers of the reve-"nue, who at that time were poſſeſſed of the judici-

* Capitæ cenſos pleroſque. *Salluſt de bello Jug.*

† Fragment of this author, book 36, in the Collection of Conſtantine Porphyrogenitus of virtues and vices.

" ary power at Rome, they had filled the province " with all manner of crimes. But Scævola made an " example of the publicans, and impriſoned thoſe " who had ſent others to priſon."

Dio informs us *, that Publius Rutilius, his Lieutenant, was equally obnoxious to the equeſtrian order, and that upon his return, they accuſed him of having received ſome preſents, and condemned him to a fine, upon which he inſtantly made a ceſſion of his goods. His innocence appeared in this, that he was found to be worth a great deal leſs than what he was charged with having extorted, and that he ſhewed a juſt title to what he poſſeſſed; but he would not live any longer in the ſame city with ſuch profligate wretches.

The Italians †, ſays Diodorus again, bought up whole droves of ſlaves in Sicily to till their lands, and to take care of their cattle, but refuſed them a neceſſary ſubſiſtence. Theſe wretches were then forced to go and rob on the highways, armed with lances and clubs, covered with beaſts ſkins, and followed by large maſtiff-dogs. Thus the whole province was laid waſte, and the inhabitants could not call any thing their own but what was ſecured within the walls of towns. There was neither proconſul nor prætor, that could or would oppoſe this diſorder, or that preſumed to puniſh theſe ſlaves, becauſe they belonged to the knights, who at Rome were poſſeſſed of the judiciary power ‖. And yet this was one of the cauſes of th war of the ſlaves. But I ſhall add only one word more. A profeſſion that neither has, nor can have any other view than lucre; a profeſſion that was always forming freſh demands, without ever granting any; a deaf and inexorable profeſſion, that im-

* Fragment of his hiſtory, taken from the extract of virtues and vices.

† Fragment of the 34th book, in the extract of virtues and vices.

‡ " Penes quos Romæ tum judicia erant, atque ex equeſtri " ordine ſolerent ſortito judices eligi in cauſa prætorum et pro- " conſulum, quibus poſt adminiſtratam provinciam dies dicta " erat."

poverifhed the rich, and encreafed even the mifery of the poor; fuch a profeffion, I fay, fhould never have been intrufted with the judiciary power at Rome.

CHAP. XIX.

Of the government of the Roman provinces.

SUCH was the diftribution of the three powers in Rome. But they were far from being thus diftributed in the provinces: Liberty was at the centre, and tyranny in the extreme parts.

While Rome extended her dominions no farther than Italy, the people were governed as confederates, and the laws of each republic were preferved. But, as foon as fhe enlarged her conqueffs, and the fenate had no longer an immediate infpection over the provinces, nor the magiftrates refiding at Rome were any longer capable of governing the empire, they were obliged to fend prætors and proconfuls. Then it was that the harmony of the three powers was loft. Thofe who were fent on that ereand were intrufted with a power which comprehended that of all the Roman magiftracies, nay even that of the fenate and of the people *. They were defpotic magiftrates, extremely proper for the diftance of the places to which they were fent. They exercifed the three powers, being, if I may prefume to ufe the expreffion, the bafhaws of the republic.

We have elfewhere obferved, that in a commonwealth the fame magiftrate ought to be poffeffed of the executive power, as well civil as military. To this it is owing that a conquering republic can hardly communicate her government, and rule the conquered ftate according to the form of her own conftitution. In fact, as the magiftrate fhe fends to govern is inveffed with the executive power, both civil and military, he muft alfo have the legiflative; for who is it that could make laws without him? He muft like-

* They made their edicts upon coming into the provinces.

wife have the judiciary power; for who could pretend to judge independently of him? It is neceſſary, therefore, that the governor ſhe ſends be inſtructed with the three powers, as was practiſed in the Roman provinces.

It is more eaſy for a monarchy to communicate its government, becauſe the officers it ſends have ſome the civil executive, and others the military executive power, which does not neceſſarily imply a deſpotic authority.

It was a privilege of the utmoſt conſequence to a Roman citizen to have none but the people for his judges. Were it not for this, he would have been ſubject in the provinces to the arbitrary power of a proconſul or of a proprætor. The city never felt the tyranny, which was exerciſed only on conquered nations.

Thus in the Roman world, as at Sparta, thoſe who were free were extremely ſo, while thoſe who were ſlaves laboured under the extremity of ſlavery.

While the citizens paid taxes, they were raiſed with great juſtice and equality. The regulation of Servius Tullius was obſerved, who had diſtributed the people into ſix claſſes according to their difference of property, and fixed the ſeveral ſhares of the public taxes in proportion to that which each perſon had in the government. Hence they bore with the greatneſs of the tax, becauſe of their proportionable greatneſs of credit, and conſoled themſelves for the ſmallneſs of their credit, becauſe of the ſmallneſs of the tax.

There was alſo another thing worthy of admiration, which is, that, as Servius Tullius's diviſion into claſſes was in ſome meaſure the fundamental principle of the conſtitution, it thence followed that an equal levying of the taxes was ſo connected with this fundamental principle, that the one could not be abolished without the other.

But, while the city paid the taxes without trouble, or paid none at all *, the provinces were plundered by

* After the conqueſt of Macedonia the Romans paid no taxes.

the knights, who were the farmers of the public revenues. We have already made mention of their oppreſſive extortions, with which all hiſtory abounds.

"All Aſia, (ſays Mithridates †), expects me as its "deliverer; ſo great is the hatred which the rapa- "ciouſneſs of the proconſuls ‡, the confiſcations made "by the officers of the revenue, and the quirks and "cavils of judicial proceedings ‖, have excited againſt "the Romans."

Hence it was that the ſtrength of the provinces made no addition to, but rather weakened the ſtrength of the republic. Hence it was that the provinces looked upon the loſs of the liberty of Rome as the epocha of their own freedom.

CHAP. XX.

End of this book.

I SHOULD be glad to enquire into the diſtribution of the three powers, in all the moderate governments we are acquainted with, and to calculate thereby the degrees of liberty which each may enjoy. But we muſt not always exhauſt a ſubject ſo far as to leave no work at all for the reader. My buſineſs is not to make people read, but to make them think.

† Speech taken from Trogus Pompeius, and related by Juſtin, book xxxviii.

‡ See the orations againſt Verres.

‖ It is well known what ſort of a tribunal was that of Varus which provoked the Germans to revolt.

BOOK XII.

Of the Laws that form political Liberty as relative to the Subject.

CHAP. I.

Idea of this book.

IT is not ſufficient to have treated of political liberty as relative to the conſtitution; we muſt examine it likewiſe in the relation it bears to the ſubject.

We have obſerved, that in the firſt caſe it is formed by a certain diſtribution of the three powers: but in the ſecond we muſt conſider it under another idea. It conſiſts in ſecurity, or in the opinion people have of their ſecurity.

The conſtitution may happen to be free, and not ſo the ſubject. 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 its relation to the conſtitution. But as it relates to the ſubject; morals, cuſtoms, or received examples, may give riſe to it, and particular civil laws may favour it, as we ſhall preſently ſee in this book.

Farther, as in moſt ſtates, liberty is more checked or depreſſed than their conſtitution demands, it is proper to treat of the particular laws that in each conſtitution are apt to affect or check the principle of liberty which each ſtate is capable of receiving.

CHAP. II.

Of the liberty of the ſubject.

PHILOSOPHICAL liberty conſiſts in the free exerciſe of the will; or, at leaſt, if we muſt ſpeak agreeably to all ſyſtems, in an opinion that we have the free exerciſe of our will. Political liberty conſiſts in ſecurity; or, at leaſt, in the opinion that we enjoy ſecurity.

This ſecurity is never more dangerouſly attacked than in public or private accuſations. It is therefore on the goodneſs of criminal laws that the liberty of the ſubject principally depends.

Criminal laws did not receive their full perfection all at once. Even in places where liberty has been moſt ſought after, it has not been always found. Ariſtotle * informs us, that at Cumæ the parents of the accuſer might be witneſſes. So imperfect was the law under the kings of Rome, that Servius Tullius pronounced ſentence againſt the children of Ancus Marcius, who were charged with having aſſaſſinated the king his father-in-law †. Under the firſt kings of France, Clotarius made a law ‡, that nobody ſhould be condemned without being heard; which ſhews that a contrary cuſtom had prevailed in ſome particular caſe, or among ſome barbarous people. It was Charondas that firſt eſtabliſhed penalties againſt falſe witneſſes ||. When the ſubject has no fence to ſecure his innocence, he has none for his liberty.

The knowledge already acquired in ſome countries, or that may be hereafter attained in others, in regard to the ſureſt rules that can be obſerved in criminal judgments, is more intereſting to mankind than any other thing in the univerſe.

* Politics, book ii.

† Tarquinius Priſcus. See Dionyſ. Halicarn. book iv.

‡ As early as the year 560.

|| Ariſt. Polit. book ii. chap. 12. He gave his laws at Thurium, in the 84th Olympiad.

Liberty can only be founded on the practice of this knowledge: And ſuppoſing a ſtate to have the beſt laws imaginable in this reſpect, a perſon tried under that ſtate, and condemned to be hanged the next day, would have much more liberty, than a baſhaw enjoys in Turkey.

CHAP. III.

The ſame ſubject continued.

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

The Greeks * and Romans † required one voice more to condemn: But our French law inſiſts upon two. The Greeks pretend that their cuſtom was eſtabliſhed by the gods ‡; but this more juſtly may be ſaid of ours.

CHAP. IV.

That liberty is favoured by the nature and proportion of puniſhments.

LIBERTY is in its higheſt perfection, when criminal laws derive each puniſhment from the particular nature of the crime. There are then no arbitrary deciſions; the puniſhment does not flow from the capricioufneſs 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,

* See Ariſtid. orat. in Minervam.

† Dionyſius Halicarnaſſus on the judgment of Coriolanus, book vii.

‡ Minervæ calculus.

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 prejudise 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 *, 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, detestations and conjurations.

In things that prejudise 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 action, there can be no criminal matter; the whole passes betwixt man and God, who knows the measure and time of his vengeance. Now, if magistrates, confounding things, should enquire also into hidden sacrileges, this inquisition would be directed to a kind of action that does not at all require it; the liberty of the subject would be subverted, by arming the zeal of timorous, as well as of presumptuous consciences against him.

The mischief arises from a notion which some people have entertained of revenging the cause of the Deity. But we must honour the Deity, and leave him to avenge his own cause. In effect, 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

* St Lewis made such severe laws against those who swore, that the Pope thought himself obliged to admonish him for it. This prince moderated his zeal, and softened his laws. See his ordinances.

his infinity, and not by the ignorance and caprice of men.

An hiſtorian * of Provence relates a fact, which furniſhes us with an excellent deſcription of the conſequences that may ariſe in weak capacities from this notion of avenging the Deity's cauſe. A Jew was accuſed of having blaſphemed againſt the bleſſed Virgin; and, upon conviction, was condemned to be flayed alive. A ſtrange ſpectacle was then ſeen: Gentlemen maſked, with knives in their hands, aſcended the ſcaffold, and drove away the executioner, in order to be the avengers themſelves of the honour of the bleſſed Virgin. ——I do not here chuſe 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 continency, that is, of the policy directing the manner in which the pleaſure annexed to the union of bodies 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 wickedneſs, than on the forgetting and deſpiſing ourſelves.

We ſpeak here only of crimes that relate merely to morals; for as to thoſe that are alſo prejudicial to the public ſecurity, ſuch as rapes and raviſhments, they belong to the fourth ſpecies.

The crimes of the third claſs are thoſe that diſturb the public tranquillity. The puniſhments ought therefore to be derived from the nature of the thing, and to be relative to this tranquillity; ſuch as impriſonment, exile, corrections, and other like chaſtiſements, proper for reclaiming turbulent ſpirits, and reducing them to the eſtabliſhed order.

* Father Bougerel.

I confine thoſe crimes that injure the public tranquillity to things that imply a ſingle tranſgreſſion againſt the civil adminiſtration: for, as to thoſe which, by diſturbing the public tranquillity, 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 ſo far as to deprive, or to 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 in reſpect to property, there may be ſome reaſons for inflicting a capital puniſhment: But it would be perhaps much better, and more natural, that crimes committed againſt the ſecurity of property ſhould be puniſhed with the loſs of property; and this ought indeed to be the caſe, if mens fortunes were common or equal. But as thoſe who have no property are generally the readieſt to attack the property of others, it has been found neceſſary, inſtead of a pecuniary, to ſubſtitute a corporal puniſhment.

All that I have here advanced is founded in nature, and extremely favourable to the liberty of the ſubject.

CHAP. V.

Of certain accuſations that require particular moderation and prudence.

IT is an important maxim, that we ought to be very circumſpect in the proſecution of magic and hereſy. The accuſation of theſe two crimes may be vaſtly injurious to liberty, and productive of an infinite number of oppreſſions, if the legiſlator knows not

how to ſet bouuds to it. For as it does not aim directly at a perſon's actions, but at his character, it grows dangerons in proportion to the ignorance of the people; and then a man is always in danger, because the moſt unexceptionable conduct, the pureſt morals, and the conſtant practice of every duty in life, are not a ſufficient ſecurity againſt the ſuſpicion of his being guilty of crimes like theſe.

Under Manuel Comnenus, the proteſtator * was accuſed of having conſpired againſt the emperor, and of having employed for that purpoſe ſome ſecrets that render men inviſible. It is mentioned in the life of this emperor †, that Aaron was detected as he was poring over a book of Solomon's, the reading of which was ſufficient to conjure up whole legions of devils. Now, by ſuppoſing a power in magic to arm all hell, people look upon a man whom they call a magician as the fitteſt perſon in the world to trouble and ſubvert ſociety, and of courſe they are diſpoſed to puniſh him with the utmoſt ſeverity.

But their indignation encreaſes when magic is ſuppoſed to have a power of ſubverting religion. The hiſtory of Conſtantinople ‡ informs us, that in conſequence of a revelation made to a biſhop of a miracle's having ceaſed becauſe of the magical practices of a certain perſon, both that perſon and his ſon were put to death. On how many ſurpriſing things did this ſingle crime depend! That revelations ſhould not be uncommon, that the biſhop ſhould be favoured with one, that it was real, that there had been a miracle in the caſe, that this miracle had ceaſed, that there was an art magic, that magic could ſubvert religion, that this particular perſon was a magician, and, in fine, that he had committed that action of magic.

The Emperor Theodorus Laſcaris attributed his illneſs to magic. Thoſe who were accuſed of this

* Nicetas, life of Manuel Commenus, book 4.
† Ibid.
‡ Hiſtory of the Emperor Maurice, by Theophylactus, chap. 11.

crime, had no other reſource left than to handle a hot iron without being hurt. Thus among the Greeks a perſon ought to have been a magician to be able to clear himſelf of the imputation of magic. Such was the exceſs of their ſtupidity, that, to the moſt dubious crime in the world, they joined the moſt uncertain proofs.

Under the reign of Philip the Long, the Jews were expelled from France, being accuſed of having poiſoned the ſprings with their lepers. So abſurd an accuſation ought very well to make us doubt of all thoſe that are founded on public hatred.

I have not here aſſerted that hereſy ought not to be puniſhed; I ſaid only that we ought to be extremely circumſpect in puniſhing it.

CHAP. VI.

Of the crime againſt nature.

GOD forbid that I ſhould have the leaſt inclination to diminiſh the horror people have for 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 nowiſe diminiſh its infamy, being leveiled only againſt the tyranny that may abuſe the very horror we ought to have for the vice.

As the nature of this crime is ſecreſy, there are frequent inſtances of its having been puniſhed by legiſlators upon the depoſition of a child. This was opening a very wide door to calumny. "Juſtinian," ſays Procopius *, "publiſhed a law againſt this crime; "he ordered an enquiry 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

* Secret hiſtory.

« ſingle witneſs, ſometimes of a child, ſometimes of a « ſlave, was ſufficient, eſpecially againſt ſuch as were « rich, and againſt thoſe that were of the green fac- « tion."

It is very odd that theſe three crimes, magic, hereſy, and that againſt nature, of which the firſt might eaſily be proved not to exiſt at all; 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 find themſelves induced to it in other reſpects by ſome particular cuſtom; as among the Greeks, where the young people performed all their exerciſes naked; as amongſt us, where domeſtic education is diſuſed; as among the Aſiatics, where particular perſons have a great number of women whom they deſpiſe, while others can have none at all. Let there be no cuſtoms preparatory to this crime; let it, like every other violation of morals, be ſeverely proſcribed by the civil magiſtrate, and nature will ſoon be ſeen to defend or reſume her rights. Nature, that tender, amiable, and loving parent, has ſtrewed her pleaſures with a bounteous hand, and while ſhe fills us with delights, ſhe prepares us for future ſatisfactions of a more exquiſite kind than thoſe delights themſelves.

CHAP. VII.

Of the crime of high treaſon.

IT is determined by the laws of China, that whoſoever ſhews any diſreſpect to the emperor, is to be puniſhed with death. As they do not mention in what this diſreſpect conſiſts, every thing may furniſh a pretext to take away a man's life, and to exterminate any family whatſoever.

Two perſons of that country, who were employed

to write the court-gazette, having inſerted ſome circumſtances relating to a certain fact, that were not true; it was pretended, that to tell a lie in the court-gazette was a diſreſpect ſhewn to the court, in conſequence of which they were put to death §. A prince of the blood having inadvertently made ſome mark on a memorial ſigned with the red pencil by the emperor, it was determined that he had behaved diſreſpectfully to that prince; which was the cauſe of one of the moſt terrible perſecutions againſt that family that ever was recorded in hiſtory *.

If the crime of high treaſon be indeterminate, this alone is ſufficient to make the government degenerate into arbitrary power. I ſhall deſcant more largely on this ſubject, when I come to treat † of the compoſition of laws.

CHAP. VIII.

Of the bad application of the name of Sacrilege and High treaſon.

IT is likewiſe a ſhocking abuſe to give the appellation of High-treaſon to an action that does not deſerve it. It was decreed by an imperial law ‡, that thoſe who called in queſtion the prince's judgment, or doubted of the merit of ſuch as he nad choſen for a public office, ſhould be proſecuted as guilty of ſacrilege ‖. Surely it was the cabinet-council and the favourites of the court who invented that crime. By another law it was determined, that whoſoever made any attempt againſt the miniſters and officers of the prince ſhould be deemed guilty of high-treaſon; as if

§ Father du Halde, tome i. p 43.

* Father Parennin in the edifying letters. † Book xxix.

‡ Gratian, Valentinian, and Theodoſius. This is the ſecond in the code *de crimine ſacril.*

‖ "Sacrilegii inſtar eſt dubitare, an is dignus ſit quem elegerit imperator." *Ibid.* This law was a model to that of Roger in the conſtitutions of Naples, tit 4.

he had attempted againſt the prince himſelf §. This law is owing to two princes *, celebrated in hiſtory for their weakneſs; princes who were led by their miniſters as flocks by ſhepherds; princes who were ſlaves in the palace, children in the council, ſtrangers to the army; princes, in fine, who preſerved their authority only by giving it away every day. Some of thoſe favourites conſpired againſt their emperors. Nay, they did more, they conſpired againſt the empire; they called in barbarous nations; and when the emperors wanted to ſtop their progreſs, the ſtate was ſo enfeebled, as to be under a neceſſity of infringing their law, and of expoſing itſelf to the crime of high-treaſon in order to puniſh thoſe favourites.

And yet this is the very law which the judge of Monſieur de Cinq-Mars built upon ‖, when endeavouring to prove that the latter was guilty of the crime of high-treaſon, for attempting to remove Cardinal Richlieu from the miniſtry, he ſays, "Crimes that "aim at the perſons of miniſters, are deemed, by the "imperial conſtitutions, of equal conſequence with "thoſe which are levelled againſt the emperor's own "perſon. A miniſter diſcharges his duty to his prince "and to his country; to attempt therefore to remove "him, is endeavouring to deprive the former of one "of his arms †, and the latter of part of its power." If even ſlavery herſelf was to deſcend upon the earth, ſhe could not ſpeak in any other language.

By another law of Valentinian, Theodoſius, and Arcadius ‡, falſe coiners are declared guilty of high-treaſon. But is not this confounding the ideas of things? Is not the very horror of high-treaſon diminiſhed, by giving that name to another crime?

§ The 5th law ad leg Jul. maj. * Arcadius and Honorius.

‖ Memoirs of Monteſor, tome i.

† "Nam ipſi pars corporis noſtri ſunt." The ſame law of the code *ad leg. Jul. maj.*

‡ It is the 9th of the code Theodoſ. *de falſa moneta.*

CHAP. IX.

The ſame ſubject continued.

PAULINUS having wrote to the emperor Alexander, that "he was preparing to proſecute for "high-treaſon, a judge who had decided contrary "to his edict:" the emperor anſwered, "That under "his reign there was no ſuch thing as indirect high-"treaſon *."

Juſtinian wrote to the ſame emperor, that as he had ſworn by the prince's life never to pardon his ſlave, he found himſelf thereby obliged to perpetuate his wrath, leſt he ſhould incur the guilt of high-treaſon. Upon which the emperor made anſwer, "Your fears "are groundleſs †, and you are a ſtranger to my prin-"ciples."

It was determined by a *ſenatuſconſultum* ‡, that whoſoever melted down any of the emperor's ſtatues which ſhould happen to be rejected, ſhould not be deemed guilty of high-treaſon. The emperors Severus and Antoninus wrote to Pontius ‖, that thoſe who ſold unconſecrated ſtatues of the emperor, ſhould not be charged with high treaſon. The ſame princes wrote to Julius Caſſianus, that if any perſon, when ſlinging a ſtone, ſhould by chance ſtrike one of the emperor's ſtatues, he ſhould not be liable to a proſecution of high-treaſon §. The Julian law requires theſe ſorts of limitations; for, in virtue of this law, the crime of high-treaſon was charged not only upon thoſe who melted down the emperor's ſtatues, but likewiſe on thoſe who committed any ſimilar action *, which made it an arbitrary crime. When a number of crimes of high-treaſon had been eſtabliſhed, they

* "Etiam ex aliis cauſis majeſtatis crimina ceſſant meo ſe-"culo." *Leg.* 1. *cod. ad leg. Jul. maj.*

† "Alienam ætatæ meæ ſolicitudinem concepiſti." *Leg.* 2. *Ib.*

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

‖ See the 5th law, ibid. § ibid.

* "Alliudve quid ſimile admiſerint." *Leg.* 6. *Ibid.*

were obliged to diſtinguiſh the ſeveral ſorts. Hence Ulpian the civilian, after ſaying that the accuſation of high-treaſon did not die with the criminal, adds, that this does not relate to † all the treaſonable acts eſtabliſhed by the Julian law, but only to that which implies an attempt againſt the empire, or againſt the emperor's life.

CHAP. X.

The ſame ſubject continued.

THERE was a law paſſed in England under Henry VIII. by which whoſoever predicted the king's death, was declared guilty of high-treaſon. This law was very indeterminate; the terror of deſpotic power is ſo great, that it even turns againſt thoſe who exerciſe it. In this king's laſt illneſs, the phyſicians would not venture to ſay he was in danger; and ſurely they acted very right ‡.

CHAP. XI.

Of thoughts.

MARSYAS dreamed that he had cut Dionyſius's throat ‖. Dionyſius put him to death, pretending that he would never have dreamed of ſuch a thing by night, if he had not thought of it by day. This was a moſt tyrannical action; for though it had been the ſubject of his thoughts, yet he had made no attempt § towards it. The laws do not take upon them to puniſh any other than overt acts.

† In the laſt law in ff. *ad leg. Jul. de adulteriis.*
‡ See Burnet's hiſtory of the Reformation.
‖ Plutarch, life of Dionyſius.
§ The thought muſt be joined with ſome ſort of action.

CHAP. XII.

Of indiſcreet ſpeeches.

NOTHING renders the crime of high-treaſon more arbitrary, than declaring people guilty of it for indiſcreet ſpeeches. Speech is ſo ſubject to interpretation; there is ſo great a difference between indiſcretion and malice, and frequently ſo little is there of the latter in the expreſſions uſed, that the law can hardly ſubject people to a capital puniſhment for words, unleſs it expreſsly declares what words they are which render a man guilty *.

Words do not conſtitute an overt act; they remain only in idea. They generally, when conſidered by themſelves, have no determinate ſignification; for this depends on the tone in which they are uttered. It often happens, that, in repeating the ſame words, they have not the ſame meaning; this meaning depends on their connection with other things; and ſometimes more is expreſſed by ſilence than by any diſcourſe whatſoever. As there can be nothing ſo equivocal and ambiguous as all this, how is it poſſible to convert it into a crime of high-treaſon? Wherever this law is eſtabliſhed, there is an end not only of liberty, but even of its very ſhadow.

In the manifeſto of the late Czarina againſt the family of the Dolgorukys †, one of theſe princes is condemned to death for having uttered ſome indecent words concerning her perſon; another for having maliciouſly interpreted her ſage regulations for the welfare of the empire, and for having offended her ſacred perſon by diſreſpectful words.

Not that I pretend to diminiſh the indignation people ought to have againſt thoſe who preſume to ſtain the glory of their prince; what I mean is, that

* "Si non tale ſit delictum in quod vel ſcriptura legis de-"ſcendit vel ad exemplum legis vindicandum eſt," ſays Modeſtinus in the ſeventh law, *in ff. ad leg. Jul. maj.*

† In 1740.

if despotic princes are willing to moderate their power, a simple correction would be more proper on these occasions, than an accusation of high-treason, a thing always terrible, even to innocence itself ‡.

Overt acts are not things that happen every day; they are liable to the observation of a great many people; and a false charge in respect to facts may be easily detected. Words joined to an action assume the nature of this action. Thus a man who goes into a public market-place to incite the subjects to revolt, incurs the guilt of high-treason, because the words are joined to the action, and partake of its nature. It is not the words that are punished, but an action in which words are employed. They do not become criminal but when they prepare for, accompany, or follow a criminal action: Every thing is confounded if words are construed as a capital crime, instead of considering them only as a mark of a capital crime.

The emperors Theodosius, Arcadius, and Honorius, wrote thus to Rufinus, who was Præfectus Prætorio: "If a man speaks amiss of our person or government, "we do not for all that intend to punish him; if † he "has spoke through levity, we must despise him; if "through folly we must pity him; and if he wrongs "us we must forgive him Wherefore, leaving "things as they are, you must inform us accordingly, "that we may be able to judge of words by persons, "and that we may well consider whether we ought "to punish or overlook them."

CHAP. XIII.

Of writings.

IN writings there is something more permanent than in words; but when they are no way preparative to high-treason, they are not a subject of that crime.

‡ "Nec lubricum linguæ ad pœnam facile trahendum est." Modestin. in the 7th law, *in eff. au leg. Jul. maj.*

† "Si id ex levitate processerit, contemnendum est; si ex in-"sania miseratione dignissimum . si ab injuria, remittendum." *Leg. unica Cod. si quis imperat. maled.*

And yet Auguſtus and Tiberius ſubjected ſatirical writers to the ſame puniſhment as for having violated the law of majeſty; Auguſtus *, becauſe of ſome libels that had been wrote againſt men and women of the firſt quality; Tiberius, becauſe of thoſe which he ſuſpected to have been written againſt himſelf. Nothing was more fatal to Roman liberty. Cremutius Cordus was accuſed for having called Caſſius, in his Annals, the laſt of the Romans †.

Satirical writings are hardly known in deſpotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. In democracies they are not hindered, for the very ſame reaſon which cauſes them to be prohibited under the government of a ſingle perſon; being generally levelled againſt men of power and authority, they flatter the malignity of the people who are the governing party. In monarchies they are forbidden, but rather as a ſubject of civil animadverſion, than as a capital crime. They may amuſe the general malignity, pleaſe the malecontents, diminiſh the envy againſt public employments, give the people patience to ſuffer, and make them laugh at their ſufferings.

But no government is ſo averſe to ſatirical writings as the ariſtocratical. There the magiſtrates are petty ſovereigns, but not great enough to deſpiſe affronts. If in a monarchy a ſatirical ſtroke is deſigned againſt the prince, he is placed in ſuch an eminence that it does not reach him; but an ariſtocratical lord is pierced to the very heart. Hence the decemvirs, who formed an ariſtocracy, puniſhed ſatirical writings with death ‡.

* Tacitus Annals, Book i. This continued under the following reigns. See the firſt law in the Code *De famoſis libellis.*

† Tacit. Annal. Book iv.

‡ The law of the twelve tables.

CHAP XIV.

Breach of modesty in punishing crimes.

THERE are rules of modesty observed by almost every nation in the world; now it would be very absurd to infringe these rules in the punishment of crimes, the principal view of which ought always to be the establishment of order.

Was it the intent of those oriental nations who exposed women to elephants trained up for an abominable kind of punishment; was it, I say, their intent to establish one law by the breach of another?

By the ancient custom of the Romans, it was not permitted to put girls to death, till they were ripe for marriage. Tiberius found out an expedient of having them debauched by the executioner, before they were brought to the place of punishment *. Thus this bloody and subtile tyrant destroyed the morals of the people to preserve their customs.

When the magistrates of Japan caused women to be exposed naked in the market-place, and obliged them to go upon all four like beasts, modesty was shocked †; but when they wanted to compel a mother——when they wanted to force a son—I cannot proceed; even nature herself was struck with horror.

CHAP. XV.

Of the infranchisement of slaves in order to accuse their master.

AUGUSTUS made a law, that the slaves of those who conspired against his person, should be sold to the public, that they might depose against their master ‡. Nothing ought to be neglected that may contribute to the discovery of an heinous crime; it is natural therefore, that in a government where there are

* Suetonius in Tiberio.
† Collection of voyages that contributed to the establishment of the East-India Company, tome v. part 2.
‡ Dio in Xiphilinus.

ſlaves, they ſhould be allowed to inform; but they ought not to be admitted as witneſſes.

Vindex diſcovered the conſpiracy that had been formed in favour of Tarquin; but he was not admitted a witneſs againſt the children of Brutus. It was right to give liberty to a perſon who had rendered ſo great a ſervice to his country; but it was not given him in order to enable him to render this ſervice.

Thus the emperor Tacitus ordained that ſlaves ſhould not be admitted as witneſſes againſt their maſters, even in the caſe of high-treaſon *: A law which was not inſerted in Juſtinian's compilement.

CHAP. XVI.

Of calumny in reſpect to the crime of high-treaſon.

TO do juſtice to the Cæſars, they were not the firſt deviſers of the diſmal laws which they enacted. It was Sylla † that taught them that calumniators ought not be puniſhed; but the thing was ſoon carried ſo far as to reward them ‡.

CHAP. XVII.

Of the revealing of conſpiracies.

" IF thy brother the ſon of thy mother, or thy ſon, " or thy daughter, or the wife of thy boſom, or " thy friend, who is as thine own ſoul, entice thee " ſecretly, ſaying, Let us go and ſerve other gods, " thou ſhalt ſurely kill him, thou ſhalt ſtone him ‖." This law of Deuteronomy cannot be a civil law among moſt of the nations known to us, becauſe it would pave the way for all manner of wickedneſs.

* Flavius Vopiſcus in his life.

† Sylla made a law of majeſty, which is mentioned in Cicero's Orations *pro Cluentio*, art 3 in Piſonem, art 21. 2d againſt Verres, art. 5 Familiar Epiſtles, Book iii. letter 11. Cæſar and Auguſtus inſerted them in the Julian laws: others made additions to them.

‡ " Et quo quis diſtinctior accuſator, eo magis honores aſſe- " quebatur, ac veluti ſacroſanctus erat." *Tacit.*

‖ Deuteron. chap xiii. ver. 6.

No leſs ſevere is the law of ſeveral countries, which commands the ſubjects, on pain of death, to diſcloſe conſpiracies in which they are not even ſo much as concerned. When ſuch a law is eſtabliſhed in a monarchical government, it is very proper it ſhould be under ſome reſtrictions.

It ought not to be applied in its full ſeverity, but to the ſtrongeſt caſes of high-treaſon In thoſe countries it is of the utmoſt importance not to confound the different degrees of this crime. In Japan, where the laws ſubvert every idea of human reaſon, the crime of concealment is applied even to the moſt ordinary caſes.

A certain relation † makes mention of two young ladies, who were ſhut up for life in a box thick ſet with pointed nails, one for having had a love intrigue, and the other for not diſcloſing it.

CHAP. XVIII.

How dangerous it is in republics to be too ſevere in puniſhing the crime of high-treaſon.

AS ſoon as a republic has compaſſed the deſtruction of thoſe who wanted to ſubvert it, there ſhould be an end of examples, puniſhments, and even of rewards.

Great puniſhments, and conſequently great changes, cannot take place, without inveſting ſome citizens with too great a power. It is therefore more adviſable in this caſe to exceed in lenity than in ſeverity; to baniſh but few rather than many; and to leave them their eſtates, rather than to make a great number of confiſcations. Under pretence of avenging the republic's cauſe, the avengers would eſtabliſh tyranny. The buſineſs is not to deſtroy the rebel, but the rebellion. They ought to return as quick as poſſible into the uſual track of government, in which every one is protected by the laws, and no one oppreſſed.

† Collection of voyages that contributed to the eſtabliſhment of the Eaſt India Company, p 423. Book v. Part 2.

We find in Appian *, the edict and formula of the proſcriptions. One would imagine that they had no other aim than the good of the republic, ſo cooly they ſpeak, ſo many advantages they point out, ſo preferable are the means they take to others, ſuch ſecurity they promiſe to the rich, ſuch tranquillity to the poor, ſo afraid they ſeem to be of endangering the lives of the ſubjects, ſo deſirous of appeaſing the ſoldiers: A dreadful example, which ſhews how near ſevere puniſhments border upon tyranny.

The Greeks ſet no bounds to the vengeance they took of tyrants, or of thoſe they ſuſpected of tyranny; they put their children to death †, nay ſometimes five of their neareſt relations ‡; and they proſcribed an infinite number of families. By this means their republics ſuffered the moſt violent ſhocks; exiles or the return of the exiled, were always epochas that indicated a change of the conſtitution.

The Romans had more ſenſe. When Caſſius was put to death for having aimed at tyranny, the queſtion was propoſed, whether his children ſhould undergo the ſame fate? But they were preſerved. "They," ſays Dionyſius Halicarnaſſus ‖, "who wanted to "change this law at the end of the Marſian and civil "wars, and to exclude from public offices the children "of thoſe who had been proſcribed by Sylla, are very "much to blame."

CHAP. XIX.

In what manner the uſe of liberty is ſuſpended in a republic.

IN countries where liberty is moſt eſteemed, there are laws by which a ſingle perſon is deprived of it, in order to preſerve it for the whole community.

* Of the civil wars, book iv.

† Dionyſ. Halicarn. Roman Antiquities, book viii.

‡ "Tyranno occiſo, quinque ejus proximus cognatione magiſtratus necato." *Cic. de invent. lib.* 2.

‖ Book viii. p. 547.

Such are in England what they call "bills of attainder *." These are relative to those Athenian laws by which a private person was condemned †, provided they were made by unanimous suffrage of six thousand citizens. They are relative also to those laws which were made at Rome against private citizens, and were called privileges ‡. These were never passed but in the great meetings of the people. But in what manner soever they are enacted, Cicero is for having them abolished, because the force of law consists in its being made for the whole community ‖. I must own, notwithstanding, that the practice of the freest nation that ever existed, induces me to think that there are cases in which a veil should be drawn for a while over liberty, as it was customary to veil the statues of the gods.

CHAP. XX.

Of laws favourable to the liberty of the subject in a republic

IN popular governments it often happens that accusations are carried on in public, and every man is allowed to accuse whomsoever he pleases. This rendered it necessary to establish proper laws, in order to protect the innocence of the subject. At Athens, if an accuser had not the fifth part of the votes on his side, he was obliged to pay a fine of a thousand drachms. Æschines, who accused Ctesiphon, was

* The author of the continuation of Rapin Thoyras defines a bill of attainder, a sentence which, upon being approved by the two houses, and signed by the king, passes into an act, whereby the party accused is declared guilty of high-treason without any other formality, and without appeal. Tome ii. p. 266.

† "Legem de singulari aliquo ne rogato, nisi sex milibus ita "visum." *Ex Andocide de mysteriis.* This is what they called Ostracism.

‡ "De privis hominibus latæ." *Cicero de leg. lib.* 3.

‖ "Scitum est jussum in omnes." *Cicero, ibid.*

condemned to pay this fine *. At Rome a falſe accuſer was branded with infamy †, by marking the letter K on his forehead. Guards were alſo appointed to watch the accuſer, in order to prevent his corrupting either the judges or the witneſſes ‡.

I have already taken notice of that Athenian and Roman law, by which the party accuſed was allowed to withdraw before judgment was pronounced.

CHAP. XXI.

Of the cruelty of laws in reſpect to debtors in a republic.

GREAT is the ſuperiority which one fellow-ſubject has already over another by lending him money, which the latter borrows in order to ſpend, and of courſe has no longer in his poſſeſſion. What muſt be the conſequence, if the laws of a republic make a farther addition to this ſervitude and ſubjection?

At Athens and Rome ‖, it was at firſt permitted to ſell ſuch debtors as were inſolvent. Solon redreſſed this abuſe at Athens §, by ordaining that no man's body ſhould anſwer for his civil debts. But the decemvirs † did not reform the ſame cuſtom at Rome; and though they had Solon's regulation before their eyes, yet they did not chuſe to follow it. This is not the only paſſage of the law of the twelve tables, in which the decemvirs ſhew their deſign of checking the ſpirit of democracy.

* See Philoſtratus, book i. Lives of the Sophiſts, life of Æſchines. See likewiſe Plutarch and Photius.

† By the Remmian law

‡ Plutarch, in a treatiſe, intitled, How a perſon may reap advantage from his enemies.

‖ A great many ſold their children to pay their debts. *Plutarch, life of Solon.*

§ Plutarch, life of Solon.

† It appears from hiſtory that this cuſtom was eſtabliſhed among the Romans before the law of the twelve tables. *Liv. dec. 1. book ii.*

Often did thoſe cruel laws againſt debtors throw the Roman republic into danger. A man all covered with wounds made his eſcape from his creditor's houſe, and appeared in the forum *. The people were moved with this ſpectacle, and other citizens whom their creditors durſt no longer confine, emerged from their dungeons. They had promiſes made them, which were all broke. The people upon this having withdrawn to the Sacred Mount, obtained, not an abrogation of thoſe laws, but a magiſtrate to defend them. Thus they quitted a ſtate of anarchy, but were ſoon in danger of falling into tyranny. Manlius, to render himſelf popular, was going to ſet thoſe citizens at liberty, who had been reduced to ſlavery by their inhuman creditors †. Manlius's deſigns were prevented, but without remedying the evil. Particular laws facilitated to debtors the means of paying ‡, and in the year of Rome 428 the conſuls propoſed a law ‖, which deprived creditors of the power of confining their debtors in their own houſes §. An uſurer, by name Papirius, attempted to corrupt the chaſtity of a young man named Publius, whom he kept in irons. Sextus's crime gave to Rome its political liberty; that of Papirius gave it alſo the civil.

Such was the fate of this city, that new crimes confirmed the liberty, which thoſe of a more ancient date had procured it. Appius's attempt upon Virginia flung the people again into that horror againſt tyrants with which the misfortune of Lucretia had firſt inſpired them. Thirty-ſeven years after ** the crime of the infamous Papirius, an action of the like criminal nature ††, was the cauſe of the people's re-

* Dionyſ Halicarn. Roman Antiq. book vi.

† Plutarch, life of Furius Camillus.

‡ See what follows in the 24th chapter of the book of laws, as relative to the uſe of money.

‖ One hundred and twenty years after the law of the twelve tables. "Eo anno plebi Romanæ, velut aliud initium libertatis "factum eſt, quod necti deſierant." *Livy, lib.* viii.

§ "Bona debitoris, non corpus obnoxium eſſet." Ibid.

** The year of Rome 465

†† That of Plautius who made an attempt on the body of

tiring to the Janiculum †, and of giving new vigour to the law made for the ſafety of debtors.

After that time creditors were oftener proſecuted by debtors for having violated the laws againſt uſury, than the latter were ſued for refuſing to pay them.

CHAP. XXII.

Of things that ſtrike at liberty in monarchies.

LIBERTY has been often weakened in monarchies by a thing of the leaſt uſe in the world to the prince: This is, the naming of commiſſioners to try a private perſon.

The prince himſelf derives ſo very little advantage from thoſe commiſſioners, that it is not worth while to change for their ſake the common courſe of things. He is morally ſure that he has more of the ſpirit of probity and juſtice than his commiſſioners, who always think themſelves ſufficiently juſtified by his orders, by a dubious intereſt of ſtate, by the choice that has been made of them, and even by their very apprehenſions.

Upon the arraigning of a peer under Henry VIII. it was cuſtomary to try him by a committee of the houſe of lords: by this means he put to death as many peers as he pleaſed.

CHAP. XXIII.

Of ſpies in monarchies.

SHOULD I be aſked whether there is any neceſſity for ſpies in monarchies, my anſwer would be, that the uſual practice of good princes is not to employ

Veturius. Valerius Maximus, book vi. art. 9. Theſe two events ought not to be confounded; they are neither the ſame perſons, nor the ſame times.

† See a fragment of Dionyſ. Halicarn. in the extract of virtues and vices; Livy's epitom, book xi. and Freinſhemius, book xi.

them. When a man obeys the laws, he has discharged his duty to his prince. He ought at least to have his own house for an asylum, and the rest of his conduct should be exempt from enquiry. The spying-trade might perhaps be tolerable, were it practised by honest men; but the necessary infamy of the person is sufficient to make us judge of the infamy of the thing. A prince ought to act towards his subjects with candour, frankness, and confidence. He that has so much disquiet, suspicion, and fear, is an actor embarrassed in playing his part. When he finds that the laws are generally observed and respected, he may judge himself safe. The general behaviour of the public answers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how should they do otherwise than love him? since he is the source of almost all the favours that are shewn; punishments being generally charged to the account of the laws. He never shews himself to his people but with a serene countenance: they have even a share of his glory, and they are protected by his power. A proof of his being beloved is, that his subjects have a confidence in him; what the minister refuses they imagine the prince would have granted: even under public calamities they do not accuse his person; they are apt to complain of his being misinformed, or beset by corrupt men: "did the prince but know," say the people; these words are a kind of invocation, and a proof of the confidence they have in his person.

CHAP. XXIV.

Of anonymous letters.

THE Tartars are obliged to put their names to their arrows, that the arm may be known that shoots them. When Philip of Macedon was wounded at the siege of a certain town, these words were found on the javelin, "After has given this mortal wound to

" Philip *." If they who accuſe a perſon did it merely to ſerve the public, they would not carry their complaint to the prince, who may be eaſily prejudiced, but to the magiſtrates, who have rules that are formidable only to calumniators. But, if they are unwilling to leave the laws open between them and the accuſed, it is a preſumption they have reaſon to be afraid of them; and the leaſt puniſhment they ought to ſuffer is not to be credited. No notice therefore ſhould ever be taken of thoſe letters but in caſes that cannot admit of the delays of the ordinary courſe of juſtice, and where the prince's welfare is concerned. Then it may be imagined that the accuſer has made an effort, which has untied his tongue and made him ſpeak. But in other caſes one ought to ſay with the Emperor Conſtantius, " We cannot ſuſpect a perſon " who has wanted an accuſer, whilſt he did not want " an enemy †."

CHAP. XXV.

Of the manner of governing in monarchies.

THE royal authority is a great ſpring that ought to move eaſily and without noiſe. The Chineſe boaſt of one of their emperors, who governed, they ſay, like Heaven, that is, by his example.

There are ſome caſes in which a ſovereign ought to exert the full extent of his power, and others in which he ought to reduce it within its proper limits. The ſublimity of adminiſtration conſiſts in knowing perfectly the proper degree of power that ſhould be exerted on different occaſions.

The whole felicity of our monarchies conſiſts in the opinion people have of the lenity of the government. A wrong-headed miniſter always wants to remind us of our ſlavery. But, granting even that we are ſlaves,

* Plutarch's morals, compariſon of ſome Roman and Greek hiſtories, tome ii. p. 487.

† Leg. 6. cod. Theod. de famoſ. libellis.

he ought to endeavour to conceal our miſerable condition from us. All he can ſay or write is, that the prince is uneaſy, that he is ſurpriſed, and that he will let things to rights. There is a certain eaſe in commanding; the prince ought only to encourage, and leave the menacing part to the laws *.

CHAP. XXVI.

That in a monarchy the prince ought to be of eaſy acceſs.

THE utility of this maxim will appear better from the inconveniency attending the contrary practice. "Czar Peter I. (ſays the Sieur Perry †), has "publiſhed a new edict, by which he forbids any of "his ſubjects to offer him a petition, till after having "preſented two to his officers. In caſe of refuſal of "juſtice, they may preſent him a third, but upon pain "of death, if they are in the wrong. After this, no "one ever preſumed to offer a petition to the Czar."

CHAP. XXVII.

Of the manners of a monarch.

THE manners of a prince contribute as much as the laws themſelves to liberty; like theſe he may transform men into beaſts, and beaſts into men. If he likes free and noble ſouls, he will have ſubjects; if he likes baſe daſtardly ſpirits, he will have ſlaves. Does he want to know the great art of ruling? let him call honour and virtue around his perſon; let him invite perſonal merit. He may even ſometimes caſt an eye on talents and abilities. Let him not be afraid of thoſe rivals who are called men of merit; he is their equal as ſoon as he loves them. Let him gain the hearts of his people without bringing their ſpirits into ſubjection. Let him render himſelf popular; he ought to

* Nerva, ſays Tacitus, increaſed the caſe of the empire.
† State of Ruſſia, p. 173. Paris edition, 1717.

be pleaſed with the affection of the loweſt of his ſubjects, for they too are men. The common people require ſo very little deference, that it is fit they ſhould be humoured; the infinite diſtance between the ſovereign and them will ſurely prevent them from giving him any uneaſineſs. Let him be exorable to ſupplication, and reſolute againſt demands; let him be ſenſible, in fine, that his people have his refuſals, while his courtiers enjoy his favours.

CHAP. XXVIII.

Of the regard which monarchs owe to their ſubjects.

PRINCES ought to be extremely circumſpect in point of raillery. It pleaſes when moderate, becauſe it opens the way to familiarity; but a biting raillery is leſs excuſable in them than in the meaneſt of their ſubjects, for it is they alone that give a mortal wound.

Much leſs ought they to offer a notorious inſult to any of their ſubjects; kings were inſtituted to pardon, and to puniſh, but never to inſult.

When they inſult their ſubjects, their treatment is more cruel than that of the Turk or the Muſcovite. The inſults of the latter are a humiliation, not a diſgrace; but both muſt follow from the inſults of the former.

Such is the prejudice of the eaſtern nations, that they look upon an affront coming from the prince, as the effect of paternal goodneſs; and ſuch, on the contrary, is our way of thinking, that, to the cruel vexation of being affronted, we join the deſpair of ever being able to wipe off the diſgrace.

Princes ought to be overjoyed to have ſubjects to whom honour is dearer than life, an incitement to fidelity as well as to courage.

They ſhould remember the misfortunes that have happened to princes for inſulting their ſubjects, the revenge of Chærea, of the eunuch Narſes, of Count Julian, and in fine of the Ducheſs of Montpenſier,

who, being enraged against Henry III. for having published some of her private failings, plagued him all his life.

CHAP. XXIX.

Of the civil laws proper for mixing a little liberty in a despotic government.

THOUGH despotic governments are of their own nature every where the same, yet from circumstances, from an opinion of religion, from prejudice, from received examples, from a particular turn of mind, from manners or morals, it is possible they may admit of a considerable difference.

It is useful that some particular notions should be established in those governments. Thus in China the prince is considered as the father of his people, and at the commencement of the empire of the Arabs, the prince was their preacher *.

It is proper there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, the Vedam among the Indians, and the classic books among the Chinese. The religious code supplies the civil one, and directs the arbitrary power.

It is not at all amiss, that in dubious cases the judges should consult the ministers of religion †. Thus in Turkey the Cadis consult the Mollachs. But, if it is a capital crime, it may be proper for the particular judge, if such there be, to take the governor's advice; to the end that the civil and ecclesiastic power may be tempered also by the political authority.

* The Califs.

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

CHAP. XXX.

The same subject continued.

NOTHING but the very excess and fury of despotic power ordained, that the father's disgrace should drag after it that of his wife and children. They are wretched enough already without being criminals: besides, the prince ought to leave suppliants or mediators, between himself and the accused, to assuage his wrath, or to inform his justice.

It is an excellent custom of the Maldivians *, that when a lord is disgraced, he goes every day to pay his court to the king till he is taken again into favour: his presence disarms the prince's wrath.

In some despotic governments † they have a notion, that it is trespassing against the respect due to their prince, to speak to him in favour of a person in disgrace. These princes seem to use all their endeavours to deprive themselves of the virtue of clemency.

Arcadius and Honorius, in a law ‡ which we have already descanted upon ‖, positively declare that they will show no favour to those who shall presume to petition them in behalf of the guilty §. This was a very bad law indeed, since it is bad even under a despotic government.

The custom of Persia, which permits every man that pleases to leave the kingdom, is excellent; and though the contrary practice derives its origin from despotic power, which has always looked upon sub-

* See Francis Pirard.

† As at present in Persia, according to Sir John Chardin. This custom is very ancient. They put Cavades, says Procopius, in the castle of oblivion. There is a law which forbids any one to speak of those who are shut up, or even to mention their name.

‡ The 5th law in the code ad leg. Jul. maj.

‖ In chapter viii. of this book.

§ Frederick copied this law in the constitution of Naples, book i.

jects as ſlaves†, and thoſe who quit the country as fugitives, yet the Perſian practice it uſeful even to a deſpotic government, becauſe the apprehenſion of the flight, or of the withdrawing of debtors, puts a ſtop to, or moderates the oppreſſions of bathaws and exactioners.

BOOK XIII.

Of the relation which the levying of taxes and the greatneſs of the public revenues have to liberty.

CHAP. I.

Of the revenues of the ſtate.

THE revenues of the ſtate are a portion that each ſubject gives of his property, in order to ſecure, or to have the agreeable enjoyment of the remainder.

To fix theſe revenues in a proper manner, regard ſhould be had both to the neceſſities of the ſtate and to thoſe of the ſubject. The real wants of the people ought never to give way to the imaginary wants of the ſtate.

Imaginary wants are thoſe which flow from the paſſions, and from the weakneſs of the governors, from the charms of an extraordinary project, from the diſtempered deſire of vain glory, and from a certain impotency of mind incapable of withſtanding the attacks of fancy. Often has it happened, that miniſters of a reſtleſs diſpoſition have imagined that the wants of the ſtate were thoſe of their own little and ignoble ſouls.

† In monarchies there is generally a law which forbids thoſe who are inveſted with public employments, to go out of the kingdom without the prince's leave. This law ought to be eſtabliſhed alſo in republics. But, in thoſe that have particular inſtitutions, the prohibition ought to be general, in order to prevent the introduction of foreign manners.

There is nothing requires more wiſdom and prudence than the regulation of that portion which is taken from, and of that which is left to the ſubject. The public revenues are not to be meaſured by what the people are able, but by what they ought to give; and, if they are meaſured by what they are able to give, it ought to be at leaſt by what they are able to give conſtantly.

CHAP. II.

That it is bad reaſoning to ſay that the greatneſs of taxes is good in its own nature.

THERE have been inſtances in particular monarchies of ſmall ſtates exempt from taxes, that have been as miſerable as the circumjacent places which groaned under the weight of exactions. The chief reaſon of this is, that the ſmall ſurrounded ſtate can hardly have any ſuch thing as induſtry, arts, or manufactures, becauſe in this reſpect it lyes under a thouſand reſtraints from the great ſtate in which it is incloſed. The great ſtate that ſurrounds it is bleſſed with induſtry, manufactures, and arts, and eſtabliſhes laws by which thoſe ſeveral advantages are procured. The petty ſtate becomes therefore neceſſarily poor; let it pay ever ſo few taxes.

And yet ſome have concluded from the poverty of thoſe petty ſtates, that in order to render the people induſtrious, they ſhould be loaded with taxes. But it would be a much better concluſion to ſay, that they ought to have no taxes at all. None live here but wretches who retire from the neighbouring parts to avoid working; wretches who, diſheartened by pain and toil, make their whole felicity conſiſt in idleneſs.

The effect of wealth in a country is to inſpire every heart with ambition, the effect of poverty is to give birth to deſpair. The former is excited by labour, the latter is ſoothed by indolence.

Nature is juſt to all mankind; ſhe rewards them

for their induſtry, whilſt ſhe renders them induſtrious by annexing rewards in proportion to the greatneſs of their labour. But if an arbitrary power deprives people of the recompenſes of nature, they fall into a diſreliſh of induſtry, and then indolence and inaction ſeem to be their only happineſs.

CHAP. III.

Of taxes in countries where part of the people are villains or bondmen †.

THE ſtate of villainage is ſometimes eſtabliſhed after a conqueſt. In that caſe the bondman, or villain that tills the land, ought to have a kind of partnerſhip with his maſter. Nothing but a communication of loſs or profit can reconcile thoſe who are doomed to labour, with thoſe who are bleſſed with a ſtate of affluence.

CHAP. IV.

Of a republic in the like caſe.

WHEN a republic has reduced a nation to the drudgery of cultivating her lands, ſhe ought never to ſuffer the free ſubject to have a power of increaſing the tribute of the bondman. This was not permitted at Sparta. Thoſe brave people thought the Helotes * would be more induſtrious in cultivating their lands, upon knowing that their ſervitude was not to increaſe; they imagined likewiſe that the maſters would be better citizens when they deſired no more than what they were accuſtomed to enjoy.

† Glebæ aſcriptitios.

* Plutarch.

CHAP. V.

Of a monarchy in the like case.

WHEN the nobles of a monarchial state cause the lands to be cultivated for their own use by a conquered people, they ought never to have a power of increasing the service of tribute †. Besides, it is right the prince should be satisfied with his own demesne and the military service. But if he wants to raise taxes on the bondmen of his nobility, the lords of the several districts ought to be answerable for the tax ‡, and be obliged to pay it for the bondmen, by whom they may be afterwards reimbursed. But if this rule is not followed, the lord and the collectors of the prince's taxes will harrass the poor bondman by turns, till he perishes with misery, or flies into the woods.

CHAP. VI.

Of a despotic government in the like case.

WHAT has been above said is still more indispensably necessary in a despotic government. The lord, who is every moment liable to be stripped of his lands and bondmen, is not so eager to preserve them.

When Peter I. thought proper to follow the custom of Germany, and to demand his taxes in money, he made a very prudent regulation which is still followed in Russia. The gentleman levies the tax on the peasants, and pays it to the Czar. If the number of peasants diminishes, he pays the same; if it in-

† This is what induced Charlemagne to make his excellent institutions upon this head. See the 5th book of the capitularies art. 393.

‡ This is the practice in Germany.

creaſes, he pays no more; ſo that it is his intereſt not to worry or oppreſs his vaſſals.

CHAP. VII.

Of taxes in countries where villainage is not eſtabliſhed.

WHEN the inhabitants of a ſtate are all free ſubjects, and each man enjoys his property with as much right as the prince his ſovereignty, taxes may then be laid either on perſons, on lands, on merchandizes, on two of theſe, or on all three together.

In the taxing of perſons, it would be an unjuſt proportion to conform exactly to that of property. At Athens * the people were divided into four claſſes. Thoſe who drew five hundred meaſures of liquid or dry fruit from their eſtates paid a talent † to the public; thoſe who drew three hundred meaſures paid half a talent; thoſe who had two hundred meaſures paid ten minæ; thoſe of the fourth claſs paid nothing at all. The tax was fair, though it was not proportionable; if it did not follow the proportion of people's property, it followed that of their wants. It was judged that every man had an equal ſhare of what was neceſſary for nature; that whatſoever was neceſſary for nature ought not to be taxed; that to this ſucceeded the uſeful, which ought to be taxed, but leſs than the ſuperfluous; and that the largeneſs of the taxes on what was ſuperfluous prevented ſuperfluity.

In the taxing of lands it is cuſtomary to make liſts or regiſters in which the different claſſes of eſtates are ranged. But it is very difficult to know theſe differences, and ſtill more ſo to find people that are not intereſted in miſtaking them. Here therefore are two ſorts of injuſtice, that of the man, and that of the thing. But if in general the tax be not exorbitant,

* Pollux, book viii. chap. 10. article 130.
† Or ſixty minæ.

and the people continue to have plenty of neceſſaries, theſe particular acts of injuſtice will do no harm. On the contrary, if the people are permitted to enjoy only juſt what is neceſſary for ſubſiſtence, the leaſt diſproportion will be of the greateſt conſequence.

If ſome ſubjects do not pay enough, the miſchief is not ſo great; their convenience and eaſe turn always to the public advantage; if ſome private people pay too much, their ruin redounds to the public detriment. If the government proportions its fortune to that of individuals, the eaſe and conveniency of the latter will ſoon make its fortune riſe. The whole depends upon a critical moment. Shall the ſtate begin with impoveriſhing the ſubjects to enrich itſelf? or had it better wait to be enriched by its wealthy ſubjects? Is it more adviſeable for it to have the firſt or ſecond advantage? Which ſhall it chuſe? to begin, or to end, with being rich?

The duties felt leaſt by the people are thoſe on merchandize, becauſe they are not demanded of them in form. They may be ſo prudently managed, that the people themſelves ſhall hardly know they pay them. For this purpoſe it is of the utmoſt conſequence, that the perſon who ſells the merchandize ſhould pay the duty. He is very ſenſible that he does not pay it for himſelf; and the conſumer who pays it in the main confounds it with the price. Some authors have obſerved, that Nero had aboliſhed the duty of the five and twentieth part ariſing from the ſale of ſlaves *; and yet he had only ordained, that it ſhould be paid by the ſeller inſtead of the purchaſer. This regulation, which left the impoſt entire, ſeemed nevertheleſs to ſuppreſs it.

There are two ſtates in Europe where there are very heavy impoſts upon liquors; in one the brewer alone pays the duty, in the other it is levied indiſcri-

* "Vectigal quintæ et viceſimæ venalium mancipiorum remiſſum ſpecie magis quam vi, quia cum venditor pendere juberetur, in partem pretii emptoribus accreſcebat." *Tacit. Annal. lib.* 13.

minately upon all the conſumers; in the firſt, nobody feels the rigour of the impoſt, in the ſecond it is looked upon as a grievance. In the former the ſubject is ſenſible only of the liberty he has of not paying, in the latter he feels only the neceſſity that compels him to pay.

Farther, the obliging the conſumers to pay, requires a perpetual rummaging and ſearching into their houſes. Now, nothing is more contrary than this to liberty; and thoſe who eſtabliſh theſe ſort of duties have not ſurely been ſo happy in this reſpect, as to hit upon the beſt method of adminiſtration.

CHAP. VIII.

In what manner the illuſion is preſerved.

IN order to make the purchaſer confound the price of the commodity with the impoſt, there muſt be ſome proportion between the impoſt and the value of the commodity; wherefore there ought not to be an exceſſive duty upon merchandizes of little value. There are countries in which the duty exceeds ſeventeen or eighteen times the value of the commodity. In this caſe the prince removes the illuſion; his ſubjects plainly ſee they are dealt with in an unreaſonable manner, which renders them moſt exquiſitely ſenſible of their ſlaviſh ſituation.

Beſides, the prince, to be able to levy a duty ſo diſproportioned to the value of the commodity, muſt be himſelf the vender, and the people muſt not have it in their power to purchaſe it elſewhere; a practice ſubject to a thouſand inconveniencies.

Smuggling being in this caſe extremely lucrative, the natural and moſt reaſonable penalty, namely the confiſcation of the merchandiſe, becomes incapable of putting a ſtop to it, eſpecially as this very merchandize is intrinſically of an inconſiderable value. Recourſe muſt therefore be had to extravagant puniſhments, ſuch as thoſe inflicted for capital crimes.

All proportion then of punishment is at an end. People that cannot really be considered as bad men are punished like villains, which, of all things in the world, is the most contrary to the spirit of a moderate government.

I add, that the more the people are tempted to cheat the farmer of the revenues, the more the latter is enriched, and the former impoverished. To put a stop to smuggling, the publican must be invested with extraordinary means of oppressing, and then the country is ruined.

CHAP. IX.

Of a bad kind of impost.

WE shall here take some cursory notice of an impost laid in particular countries on the different articles of civil contracts. As these are things subject to very nice disquisitions, a vast deal of knowledge is necessary to make any tolerable defence against the farmer of the revenues, who interprets in that case the regulations of the prince, and exercises an arbitrary power over people's fortunes. Experience has demonstrated, that a duty on the paper on which the deeds are drawn would be of far greater service.

CHAP. X.

That the greatness of taxes depends on the nature of the government.

TAXES ought to be very light in despotic governments; otherwise who would be at the trouble of tilling the land? Besides, how is it possible to pay heavy taxes in a government that makes no manner of return to the different contributions of the subject?

The exorbitant power of the prince, and the extreme depression of the people, require that there should not

be even a poſſibility of the leaſt miſtake between them. The taxes ought to be ſo eaſy to collect, and ſo clearly ſettled, as to leave no opportunity to the collectors to encreaſe or diminiſh them. A portion of the fruits of the earth, a capitation, a duty of ſo much *per cent.* on merchandiſes, are the only taxes ſuitable to that government.

Merchants in deſpotic countries ought to have a perſonal ſafeguard, to which all due reſpect ſhould be paid. Without this, they would ſtand no chance in the diſputes that might riſe between them and the prince's officers.

CHAP. XI.

Of fiſcal puniſhments.

WITH reſpect to fiſcal puniſhments, there is one thing very particular, that, contrary to the general cuſtom, they are more ſevere in Europe than in Aſia. In Europe, not only the merchandiſes, but even ſometimes the ſhips and carriages, are confiſcated; which is never practiſed in Aſia. This is becauſe in Europe the merchant has judges, who are able to ſhelter him from oppreſſion: in Aſia the deſpotic judges themſelves would be the greateſt oppreſſors. What remedy could a merchant have againſt a baſhaw, that was determined to confiſcate his merchandizes?

The prince, therefore, reſtrains his own power, finding himſelf under a neceſſity of acting with ſome kind of lenity. In Turkey they raiſe only a ſingle duty for the importation of goods, and afterwards the whole country is open to the merchant. Falſe entries are not attended with confiſcation, or encreaſe of duty. In China *, they never open the baggage of thoſe who are not merchants. Defrauding the cuſtoms in the territory of the Mogul is not puniſhed with confiſcation, but with doubling the duty. The princes of

* Father du Halde, tome ii. page 37.

Tartary †, who reſide in towns, impoſe ſcarce any duty at all on the goods that paſs through their country. In Japan. it is true, the defrauding of the cuſtoms is a capital crime; but this is, becauſe they have particular reaſons for prohibiting all communication with foreigners; hence the fraud ‡ is rather a contravention of the laws made for the ſecurity of the government, than of thoſe of commerce.

CHAP. XII.

Relation between the greatneſs of taxes and liberty.

IT is a general rule, that taxes may be heavier in proportion to the liberty of the ſubject, and that there is a neceſſity for reducing them in proportion to the increaſe of ſlavery. This has always been, and always will be, the caſe. It is a rule derived from nature, that never varies. We find it in all parts, in England, in Holland, and in every ſtate where liberty gradually declines, till we come to Turkey. Switzerland ſeems to be an exception to this rule, becauſe they pay no taxes; but the particular reaſon for that exemption is well known, and even confirms what I have advanced. In thoſe barren mountains proviſions are ſo dear, and the country is ſo populous, that a Swiſs pays four times more to nature, than a Turk does to the Sultan.

A conquering people, ſuch as were formerly the Athenians and the Romans, may rid themſelves of all taxes, as they reign over vanquiſhed nations. Then indeed they do not pay in proportion to their liberty, becauſe in this reſpect they are no longer a people, but a monarch.

† Hiſtory of the Tartars, part iii. page 290.

‡ Being willing to trade with foreigners without having any communication with them, they have pitched upon two nations for that purpoſe, the Dutch for the commerce of Europe, and the Chineſe for that of Aſia; they confine the factors and ſailors in a kind of priſon, and lay ſuch a reſtraint upon them as tires their patience.

But the general rule ſtill holds good. In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In deſpotic countries * there is an equivalent for liberty, which is the lightneſs of the taxes.

In ſome monarchies in Europe, there are † particular provinces, which, from the very nature of their civil government, are in a more flouriſhing condition than the reſt. It is pretended, that theſe provinces are not ſufficiently taxed, becauſe through the goodneſs of their government they are able to be taxed higher. Hence the miniſters ſeem conſtantly to aim at depriving them of this very government, from whence a diffuſive bleſſing is derived; a bleſſing which ſpreads its influence to diſtant parts, and redounds even to the prince's advantage.

CHAP. XIII.

In what governments taxes are capable of increaſe.

TAXES may be encreaſed in moſt republics, becauſe the citizen who thinks he is paying himſelf willingly ſubmits to them, and moreover is generally able to bear their weight through an effect of the nature of the government.

In a monarchy taxes may be encreaſed, becauſe the moderation of the government is capable of procuring riches: it is a recompence, as it were, of the prince for the reſpect he ſhews to the laws. In deſpotic governments they cannot be encreaſed, becauſe there can be no encreaſe of the extremity of ſlavery.

* In Ruſſia the taxes are but ſmall; they have been increaſed ſince the deſpotic power of the prince is exerciſed with more moderation. See the Hiſtory of the Tartars, part ii.

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

CHAP. XIV.

That the nature of the taxes is relative to the government.

A CAPITATION is more natural to ſlavery; a duty on merchandiſes is more natural to liberty, becauſe it has not ſo direct a relation to the perſon.

It is natural, in a deſpotic government, for the prince not to give money to his ſoldiers, or to thoſe belonging to his court, but to diſtribute lands amongſt them, and of courſe that there ſhould be very few taxes. But, if the prince gives money, the moſt natural tax he can raiſe is a capitation, which can never be conſiderable: For, as it is impoſſible to make different claſſes of the contributors, becauſe of the abuſes that might ariſe from thence, conſidering the injuſtice and violence of the government, they are under an abſolute neceſſity of regulating themſelves by the rate of what even the pooreſt and moſt wretched are able to pay.

The natural tax of moderate governments is the duty laid on merchandiſes. As this is really paid by the conſumer, though advanced by the merchant, it is a loan which the merchant has already made to the conſumer. Hence the merchant muſt be conſidered on the one ſide, as the general vender for the ſtate, and on the other, as the creditor of every individual. He advances to the ſtate the duty which the conſumer will ſome time or other refund, and he has paid for the conſumer the duty which he has paid for the merchandiſe. It is therefore obvious, that, in proportion to the moderation of the government, to the prevalence of the ſpirit of liberty, and to the ſecurity of private fortunes, the more a merchant has it in his power to advance money to the ſtate, and to pay conſiderable duties for individuals. In England a merchant lends really to the government fifty or ſixty pounds Sterling for every tun of wine he imports. Where is the merchant that would dare do any ſuch

thing in a country like Turkey? And, were he ſo courageous, how could he do it with a dubious or ſhattered fortune?

CHAP. XV.

Abuſe of liberty.

TO theſe great advantages of liberty it is owing, that liberty itſelf has been abuſed. Becauſe a moderate government has been productive of admirable effects, this moderation has been laid aſide: becauſe great taxes have been raiſed, they wanted to raiſe them to exceſs, and, ungrateful to the hand of liberty of whom they received this preſent, they addreſſed themſelves to ſlavery, who never grants the leaſt favour.

Liberty produces exceſſive taxes; but the effect of exceſſive taxes is to produce ſlavery in their turn, and ſlavery produces a diminution of tribute.

Moſt of the edicts of the Eaſtern monarchies are to exempt every year ſome province of their empire from paying tribute *. The manifeſtations of their will are favours. But in Europe the edicts of princes are diſagreeable even before they are ſeen, becauſe they always make mention of their own wants, but not a word of ours.

From an unpardonable indolence in the miniſters of thoſe countries, owing to the nature of the government, and frequently to the climate, the people derive this advantage, that they are not inceſſantly plagued with new demands. The public expence does not encreaſe, becauſe the miniſters do not form new projects; and, if ſome by chance are formed, they are ſuch as are ſoon executed. The governors of the ſtate do not perpetually torment the people, becauſe they do not perpetually torment themſelves. But it is impoſſible there ſhould be any fixed rule in our finances, becauſe we always know that we ſhall have ſomething or other to do, without ever knowing what it is.

* This is the practice of the emperors of China.

It is no longer cuſtomary with us to give the appellation of a great miniſter to a wiſe diſpenſer of the public revenues, but to a perſon of dexterity and cunning, who is clever at finding out what we call *ways and means*.

CHAP. XVI.

Of the conqueſts of the Mahometans.

IT was this exceſs of taxes † that occaſioned the prodigious facility with which the Mahometans carried on their conqueſts. Inſtead of a continual ſeries of extortions deviſed by the ſubtile avarice of the emperors, the people were ſubjected to a ſimple tribute, which was paid and collected with eaſe. Thus they were far happier in obeying a barbarous nation than a corrupt government, in which they ſuffered every inconveniency of a loſt liberty, with all the horrors of a preſent ſlavery.

CHAP. XVII.

Of the augmentation of troops.

A NEW diſtemper has ſpread itſelf over Europe; it has infected our princes, and induces them to keep up an exorbitant number of troops. It has its redoublings, and of neceſſity becomes contagious: for, as ſoon as one prince augments what he calls his *troops*, the reſt of courſe do the ſame; ſo that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot as if his people were in danger of being exterminated, and they give the name of *peace* * to this general effort of all againſt

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

* All that is wanting for this is, to improve the new invention of the militia eſtabliſhed almoſt over all Europe, and carry it to the ſame exceſs as they do the regular troops.

all. Thus Europe is ruined to that degree, that were private people to be in the ſame ſituation as the three moſt opulent powers of this part of the world, they would not have neceſſary ſubſiſtence. We are poor with the riches and commerce of the whole univerſe; and ſoon, by thus augmenting our troops, we ſhall have nothing but ſoldiers, and be reduced to the very ſame ſituation as the Tartars †.

Great princes, not ſatisfied with hiring or buying troops of petty ſtates, make it their buſineſs on all ſides to pay ſubſidies for alliances, that is, almoſt generally, to throw away their money.

The conſequence of ſuch a ſituation is the perpetual augmentation of taxes; and the miſchief which prevents all future remedy is, that they reckon no more upon their revenues, but go to war with their whole capital. It is no unuſual thing to ſee government mortgage their funds even in time of peace, and to employ what they call extraordinary means to ruin themſelves; means ſo extraordinary indeed, that ſuch are hardly thought on by the moſt extravagant young ſpendthrift.

CHAP. XVIII.

Of an exemption from taxes.

THE maxim of the great eaſtern empires, of exempting ſuch provinces as have very much ſuffered from taxes, ought to be extended to monarchical ſtates. There are ſome indeed where this maxim is eſtabliſhed; yet the country is more oppreſſed than if no ſuch rule took place; becauſe, as the prince levies ſtill neither more nor leſs, the ſtate becomes bound for the whole. In order to eaſe a village that pays badly, they load another that pays better; the former is not relieved, and the latter is ruined. The people grow deſperate between the neceſſity of paying, for fear of

† True it is that this ſtate of effort is the chief ſupport of the balance, becauſe it checks the great powers.

exactions, and the danger of paying, for fear of new charges.

A well regulated government ought to ſet aſide for the firſt article of its expence, a determinate ſum for contingencies. It is with the public as with individuals, who are ruined when they live up exactly to their income.

With regard to an obligation for the whole amongſt the inhabitants of the ſame village, ſome pretend *, that it is but reaſonable, becauſe there is a poſſibility of a fraudulent combination on their ſide: but who ever heard, that upon mere ſuppoſitions we are to eſtabliſh a thing in itſelf unjuſt and ruinous to the ſtate?

CHAP. XIX.

Which is moſt ſuitable to the prince and to the people, the letting out to farm, or the adminiſtration of the revenues?

THE adminiſtration of the revenues is like the conduct of a good father of a family, who collects his own rents himſelf with œconomy and order.

By the adminiſtration of the revenues the prince is at liberty to preſs or to retard the levy of the taxes, according to his own wants, or to thoſe of his people. By this he ſaves to the ſtate the immenſe profits of the farmers, who impoveriſh it a thouſand ways. By this he ſpares the people the mortifying view of ſudden fortunes. By this the money collected paſſes through few hands, and goes directly to the treaſury, and conſequently makes a quicker return to the people. By this the prince avoids an infinite number of bad laws, extorted from him continually by the importunate avarice of the farmers, who pretend to offer a preſent advantage for regulations pernicious to poſterity.

As the moneyed man is always the moſt powerful,

* See a treatiſe on the Roman finances, chap. 2.

the farmer renders himself arbitrary even over the prince himself; he is not the legislator, but he obliges the legislator to give laws.

In republics, the revenues of the state are generally under administration. The contrary practice was a great defect in the Roman government *. In despotic governments, the people are infinitely happier where this administration is established; witness Persia and China †. The unhappiest of all are those where the prince farms out his sea-ports and trading cities. The history of monarchies abounds with mischiefs done by the farmers of the revenues.

Nero, incensed at the oppressive extortions of the publicans, formed a magnanimous, but impossible project, of abolishing all kinds of imposts. He did not think of an administration of the revenues, but made four edicts: that the laws enacted against publicans, which had hitherto been kept secret, should be made public; that they should not pretend to any thing which they had omitted to demand in the term of a year; that there should be a prætor established to judge their pretensions without any formality; and that the merchants should pay no duty for their vessels. These were the bright days of that emperor.

CHAP. XX.

Of the farmers of the revenues.

ALL is lost when the lucrative profession of tax-gatherers becomes likewise, by means of the riches with which it is attended, a post of honour. This may do well enough in despotic states, where their employ-

* Cæsar was obliged to remove the Publicans from the province of Asia, and to establish there another kind of administration, as we learn from Dio; and Tacitus informs us, that Macedonia and Achaia, provinces left by Augustus to the people of Rome, and consequently governed pursuant to the ancient plan, obtained to be of the number of those which the emperor governed by his officers.

† See Sir John Chardin's travels through Persia, tom. vi.

ment is oftentimes a part of the functions of the governors themselves. But it is by no means proper in a republic; since a custom of the like nature destroyed the people of Rome. Nor is it better in monarchies; nothing being more opposite to the spirit of this government. All the other orders of the state are dissatisfied; honour loses its whole value; the flow and natural means of distinction are no longer regarded; and the very principle of the government is subverted.

It is true, indeed, that enormous fortunes were raised in former times; but this was one of the calamities of the fifty years war. These riches were then considered as scandalous; now we admire them.

Every profession has its particular lot. The lot of those who levy the taxes is wealth, and the recompence of wealth, is wealth itself. Glory and honour fall to the share of that nobility, who neither know, see, nor feel any other happiness than honour and glory. Respect and esteem are for those ministers and magistrates, whose whole life is a continued succession of labour, and who watch day and night over the happiness of the empire.

BOOK XIV.

Of Laws as relative to the nature of the Climate.

CHAP. I.

General idea.

If it be true that the character of the mind and the passions of the heart are extremely different in different climates, the laws ought to be relative both to the difference of those passions, and to the difference of those characters.

CHAP. II.

Of the difference of men in different climates.

A COLD air * conſtringes the extremities of the external fibres of the body; this encreaſes their elaſticity, and favours the return of the blood from the extremities to the heart. It contracts † thoſe very fibres; conſequently it encreaſes alſo their force. On the contrary, a warm air relaxes and lengthens the extremes of the fibres; of courſe it diminiſhes their force and elaſticity.

People are therefore more vigorous in cold climates. Here the action of the heart and the re-action of the extremities of the fibres are better performed, the temperature of the humours is greater, and the blood moves freer towards the heart, and reciprocally the heart has more power. This ſuperiority of ſtrength muſt produce a great many effects; for inſtance, a greater ſelf-confidence, that is, more courage; a greater ſenſe of ſuperiority, that is, leſs deſire of revenge; a greater opinion of ſecurity, that is, more frankneſs, leſs ſuſpicion, policy and cunning. In ſhort, this muſt be productive of very different characters. Put a man in a cloſe warm place, and he will, for the reaſons above given, feel a great faintneſs. If under this circumſtance you propoſe a bold enterpriſe to him, I believe you will find him very little diſpoſed towards it: his preſent weakneſs will throw him into a deſpondency of ſoul; he will be afraid of every thing, becauſe he will feel himſelf capable of nothing. The inhabitants of warm countries are, like old men, timorous; the people in cold countries are, like young men, brave. If we reflect on the late ‡ wars, which are more preſent to our memory, and in which we

* This appears even in the countenance: In cold weather people look thinner.

† We know it ſhortens iron.

‡ Thoſe for the ſucceſſion to the Spaniſh monarchy.

can better diſtinguiſh ſome ſlight effects that eſcape us at a great diſtance of time; we ſhall find that the northern people tranſplanted into ſouthern countries †, did not perform ſuch great feats as their countrymen, who fighting in their own climate poſſeſſed their full vigour and courage.

This ſtrength of the fibres in northern nations is the cauſe that the courſeſt juices are extracted from their aliments. From hence two things reſult; One, that the parts of the chyle or lymph are more proper, by reaſon of their large ſurface, to be applied to, and to nouriſh the fibres: The other, that they are leſs proper, becauſe of their coarſeneſs, to give a certain ſubtilty to the nervous juice. Thoſe people have therefore large bodies and little vivacity.

The nerves that terminate from all parts in the cutis, form each a bundle of nerves; generally ſpeaking, the whole nerve is not moved, but a very minute part. In warm climates, where the cutis is relaxed, the ends of the nerves are opened, and expoſed to the ſmalleſt action of the weakeſt objects. In cold countries the cutis is conſtringed, and the papillæ compreſſed; the miliary glands are in ſome meaſure paralytic; and the ſenſation does not reach the brain but when it is very ſtrong, and proceeds from the whole nerve at once. Now, imagination, taſte, ſenſibility and vivacity, depend on an infinite number of ſmall ſenſations.

I have obſerved the outermoſt part of a ſheep's tongue, where to the naked eye it ſeems covered with papillæ. On theſe papillæ, I have diſcerned, through a microſcope, ſmall hairs or a kind of down: Between the papillæ were pyramids, ſhaped towards the ends like pincers. Very likely theſe pyramids are the principal organ of taſte.

I cauſed the half of this tongue to be frozen, and obſerving it with the naked eye, I found the papillæ conſiderably diminiſhed: Even ſome rows of the papillæ were ſunk into their ſheath. I examined the

† For inſtance, to Spain.

outermoſt part with the microſcope, and I perceived no pyramids. In proportion as the froſt went off, their papillæ ſeemed to the naked eye to riſe; and with the microſcope the miliary glands began to appear.

This obſervation confirms what I have been ſaying, that in cold countries the nervous glands are leſs ſpread; they ſink deeper into their ſheaths; or they are ſheltered from the action of external objects. Conſequently they have not ſuch lively ſenſations.

In cold countries they have very little ſenſibility for pleaſure; in temperate countries they have more; in warm countries their ſenſibility is exquiſite. As climates are diſtinguiſhed by degrees of latitude, we might diſtinguiſh them alſo, in ſome meaſure, by degrees of ſenſibility. I have ſeen the operas of England and of Italy; they are the ſame pieces and the ſame performers; and yet the ſame muſic produces ſuch different effects on the two nations, one is ſo cold and indifferent, and the other ſo tranſported, that it ſeems almoſt inconceivable.

It is the ſame with regard to pain; which is excited by the laceration of ſome fibre of the body. The Author of nature has made it an eſtabliſhed rule, that this pain ſhould be more acute in proportion as the laceration is greater; now it is evident, that the large bodies and coarſe fibres of the people of the north are leſs capable of laceration than the delicate fibres of the inhabitants of warm countries; conſequently the ſoul is there leſs ſenſible of pain. You muſt flay a Muſcovite alive to make him feel.

From this delicacy of organs peculiar to warm climates, it follows, that the ſoul is moſt ſenſibly moved by whatever has a relation to the union of the two ſexes: here every thing leads to this object.

In northern climates ſcarce has the animal part of love a power of making itſelf felt. In temperate climates love, attended by a thouſand appendages, renders itſelf agreeable by things that have at firſt the appearance of love, though not the reality. In warmer climates love is liked for its own ſake, it is the only cauſe of happineſs, it is life itſelf.

In ſouthern countries a delicate, weak, but ſenſible machine, reſigns itſelf either to a love which riſes and is inceſſantly laid in a ſeraglio; or to love which leaves women in a greater independence, and is conſequently expoſed to a thouſand inquietudes. In northern climates a ſtrong but heavy machine, finds a pleaſure in whatever is apt to throw the ſpirits into motion, ſuch as hunting, travelling, war and wine. In northern countries we meet with a people who have few vices, many virtues, a great ſhare of frankneſs and ſincerity. If we draw near the ſouth, we fancy ourſelves removed from all morality; the ſtrongeſt paſſions multiply all manner of crimes, every one endeavouring to take what advantage he can over his neighbour, in order to encourage thoſe paſſions. In temperate climates we find the inhabitants inconſtant in their manners, in their very vices, and in their virtues: The climate has not a quality determinate enough to fix them.

The heat of the climate may be ſo exceſſive as to deprive the body of all vigour and ſtrength. Then the faintneſs is communicated to the mind: there is no curioſity, no noble enterpriſe, no generous ſentiment; the inclinations are all paſſive; indolence conſtitutes the utmoſt happineſs; ſcarcely any puniſhment is ſo ſevere as the action of the ſoul, and ſlavery is more ſupportable than the force and vigour of mind neceſſary for human action.

CHAP. III.

Contradiction in the characters of ſome ſouthern nations.

THE Indians * are naturally a cowardly people; even the children † of the Europeans born in the Indies loſe the courage peculiar to their own climate.

* One hundred European ſoldiers, ſays Tavernier, would without any great difficulty beat a thouſand Indian ſoldiers

† Even the Perſians, who ſettle in the Indies, contract in the third generation the indolence and cowardice of the Indians. See Bernier, on the Mogul, tome i. p. 182.

How shall we reconcile this with their cruel actions, with their customs and penances, so full of barbarity? The men voluntarily undergo the greatest hardships; the women burn themselves: Here we find a very odd compound of fortitude and weakness.

Nature having framed those people of a texture so weak as renders them timid, has formed them at the same time of an imagination so lively, that every object makes the strongest impression upon them. That delicacy of organs which renders them apprehensive of death, contributes likewise to make them dread a thousand things more than death; the very same sensibility makes them fly, and dare all dangers.

As a good education is more necessary to children than to those who are arrived to a maturity of understanding, so the inhabitants of those climates have much greater need than our people of a wise legislator. The greater their sensibility, the more it behoves them to receive proper impressions, to imbibe no prejudices, and to let themselves be directed by reason.

At the time of the Romans, the inhabitants of the north of Europe lived without art, education, and almost without laws: and yet, by the help of the good sense annexed to the gross fibres of those climates, they made an admirable stand against the power of the Roman empire, till that memorable period in which they quitted their woods to subvert it.

CHAP. IV.

Cause of the immutability of religion, manners, customs, and laws, in the eastern countries.

IF that delicacy of organs which renders the eastern people so susceptible of every impression, is accompanied likewise with a sort of laziness of mind naturally connected with that of the body, by means of which they grow incapable of any action or effort; it is easy to comprehend, that when once the soul has received an impression, she cannot change it. This

is the reaſon that the laws, manners, and * cuſtoms even thoſe which ſeem quite indifferent, ſuch as their manner of dreſs, are the ſame to this very day, in eaſtern countries, as they were a thouſand years ago.

CHAP. V.

That thoſe are bad legiſlators who favour the vices of the climate, and good legiſlators who oppoſe thoſe vices.

THE Indians believe, that repoſe and non-exiſtence are the foundation of all things, and the end in which they terminate. They conſider therefore the ſtate of entire inaction as the moſt perfect of all ſtates, and the object of their deſires. They give to the Supreme Being † the title of Immoveable. The inhabitants of Siam believe, that their utmoſt ‡ happineſs conſiſts in not being obliged to animate a machine, or to give motion to a body.

In thoſe countries where the exceſs of heat enervates and oppreſſes the body, reſt is ſo delicious, and motion ſo painful, that this ſyſtem of metaphyſics ſeems natural; and Foe ‖, the legiſlator of the Indies, followed what he himſelf felt, when he placed mankind in a ſtate extremely paſſive: but his doctrine ariſing from the lazineſs of the climate, favoured it alſo in its turn; which has been the ſource of an infinite deal of miſchief.

The legiſlators of China had more ſenſe, when con-

* We find by a fragment of Nicholaus Damaſcenus, collected by Conſtantine Porphyrog. that it was an ancient cuſtom in the Eaſt, to ſend to ſtrangle a governor who had given any diſpleaſure; it was in the time of the Medes.

† Panamanad. See Kircher

‡ La Loubere, relation of Siam, p. 446

‖ Foe endeavoured to reduce the heart to a mere vacuum. "We have eyes and ears, but perfection conſiſts in neither ſeeing nor hearing; a mouth, hands, &c. but perfection requires that theſe members ſhould be inactive." This is taken from the dialogue of a Chineſe philoſopher, quoted by Father du Halde, tom. iii.

fidering men not in the peaceful ſtate which they are to enjoy hereafter, but in the ſituation proper for diſcharging the ſeveral duties of life, they made their religion, philoſophy, and laws, all practical. The more the phyſical cauſes incline mankind to inaction, the more the moral cauſes ſhould eſtrange them from it.

CHAP. VI.

Of the cultivation of lands in warm climates.

THE cultivation of lands is the principal labour of man. The more the climate inclines them to ſhun this labour, the more their religion and laws ought to excite them to it. Thus the Indian laws, which give the lands to the prince, and deſtroy the ſpirit of property among the ſubjects, increaſe the bad effects of the climate, that is, their natural lazineſs.

CHAP. VII.

Of Monachiſm.

THE very ſame miſchiefs reſult from monachiſm; it had its riſe in the warm countries of the eaſt, where they are leſs inclined to action than to ſpeculation.

In Aſia the number of derviſes or monks ſeems to increaſe together with the heat of the climate. The Indies, where the heat is exceſſive, are full of them; and the ſame difference is found in Europe.

In order to ſurmount the lazineſs of the climate, the laws ought to endeavour to remove all means of ſubſiſting without labour: but in the ſouthern parts of Europe they act quite the reverſe; to thoſe who want to live in a ſtate of indolence they afford retreats the moſt proper for a ſpeculative life, and endow them with immenſe revenues. Theſe men, who live in the midſt of a plenty they know not how to enjoy, are in the right to give their ſuperfluities away to the com-

mon people. The poor are bereft of property; and these men indemnify them by supporting them in idleness, so as to make them even grow fond of their misery.

CHAP. VIII.

An excellent custom of China.

THE historical relations of China * mention a ceremony † of opening the grounds, which the emperor performs every year. The design of this public and solemn act is to excite ‡ the people to tillage.

Farther, the emperor is informed every year of the husbandman who has distinguished himself most in his profession; and he makes him a Mandarin of the eighth order.

Among the ancient Persians ‖ the kings quitted their grandeur and pomp on the eighth day of the month called *Chorrem-ruz*, to eat with the husbandmen. These institutions were admirably well calculated for the encouragement of agriculture.

CHAP. IX.

Means of encouraging industry.

WE shall show, in the nineteenth book, that lazy nations are generally proud. Now, the effect might well be turned against the cause, and laziness be destroyed by pride. In the south of Europe, where people have such a high notion of the point of honour, it would be right to give prizes to husbandmen who had cultivated best the lands, or to artists who

* Father du Halde's history of China, tome ii. p. 72.

† Several of the kings of India do the same. *Relation of the kingdom of Siam by La Loubere*, p. 69.

‡ Venty, the third emperor of the third dynasty, tilled the lands himself, and made the empress and his wives employ their time in the silk-works in his palace. *History of China.*

‖ Hyde, religion of the Persians.

had made the greateſt improvements in their ſeveral profeſſions. This practice has ſucceeded in our days in Ireland, where it has eſtabliſhed one of the moſt conſiderable linen-manufactures in Europe.

CHAP. X.

Of the laws relative to the ſobriety of the people.

IN warm countries the aqueous part of the blood loſes itſelf greatly by perſpiration *; it muſt therefore be ſupplied by a like liquid. Water is there of admirable uſe; ſtrong liquors would coagulate the globules † of blood that remain after the tranſuding of the aqueous humour.

In cold countries the aqueous part of the blood is very little evacuated by perſpiration. They may therefore make uſe of ſpirituous liquors, without danger of coagulating the blood. They are full of humours; conſequently ſtrong liquors, which give a motion to the blood, are proper for thoſe countries.

The law of Mahomet, which prohibits the drinking of wine, is therefore a law fitted to the climate of Arabia: and indeed, before Mahomet's time, water was the common drink of the Arabs. The ‡ law which forbad the Carthaginians to drink wine, was alſo a law of the climate; in fact, the climate of thoſe two countries is pretty near the ſame.

Such a law would be improper for cold countries, where the climate ſeems to force them to a kind of national drunkenneſs, very different from perſonal intemperance. Drunkenneſs predominates over all

* Monſieur Bernier, travelling from Lahor to Cachemir, wrote thus: "My body is a ſieve; ſcarce have I ſwallowed a "pint of water but I ſee it tranſude like dew out of all my limbs, "even to my fingers ends. I drink ten pints a-day, and it "does me no manner of harm." *Bernier's Travels, Tome* ii. p. 261.

† In the blood there are red globules, fibrous parts, white globules, and water in which the whole ſwims.

‡ Plato, book ii. of laws; Ariſtotle, of the care of domeſtic affairs; Euſebius's evangelical preparation, book xii. chap. 17.

the world, in proportion to the coldneſs and humidity of the climate. Go from the equator to our pole, and you will find drunkenneſs increaſing together with the degree of latitude. Go from the ſame equator to the oppoſite pole, and you will find drunkenneſs travelling ſouth ‡, as on this ſide it travels towards the north.

It is very natural that where wine is contrary to the climate, and conſequently to health, the exceſs of it ſhould be more ſeverely puniſhed than in countries where drunkenneſs produces very few bad effects to the perſon, fewer to the ſociety, and where it does not make people mad, but only ſtupid and heavy. Hence laws * which puniſhed a drunken man both for the fault he committed, and for his drunkenneſs, were applicable only to a perſonal, and not to a national ebriety. A German drinks through cuſtom, and a Spaniard by choice.

In warm countries the relaxing of the fibres produces a great evacuation of the liquids, but the ſolid parts are leſs tranſpired. The fibres which act but weakly, and have very little elaſticity, are not much worn; a ſmall quantity of nutricious juice is ſufficient to repair them: for which reaſon they eat very little.

It is the difference of wants in different climates, that firſt formed a difference in the manner of living, and this difference of living gave riſe to that of laws. Where people are very communicative, there muſt be particular laws; and others among people where there is but little communication.

CHAP. XI.

Of the laws relative to the diſtemper of the climate.

HERODOTUS † informs us that the Jewiſh laws concerning leproſy were borrowed from the practice of the Egyptians. In fact, the ſame diſtem-

‡ This is ſeen in the Hottentots, and the inhabitants of the moſt ſouthern part of Chili.

* As Pittacus did, according to Ariſtotle. polit lib i. c. 3. He lived in a climate where drunkenneſs is not a national vice.

† Book ii.

per required the ſame remedies. The Greeks and the primitive Romans were ſtrangers to theſe laws, as well as to the diſeaſe. The climate of Egypt and Paleſtine rendered them neceſſary; and the facility with which this diſeaſe is ſpread, is ſufficient to make us ſenſible of the wiſdom and ſagacity of thoſe laws.

Even we ourſelves have felt the effects of them. The cruſades had brought the leproſy amongſt us; but the wiſe regulations made at that time hindered it from infecting the maſs of the people.

We find by the law of the † Lombards that this diſeaſe was ſpread in Italy before the cruſades, and merited the attention of the legiſlators. Rotharis ordained that a leper ſhould be expelled from his houſe, and baniſhed to a particular place: that he ſhould be incapable of diſpoſing of his property; becauſe, from the very moment he had been driven from home, he was reckoned dead in the eye of the law. In order to prevent all communication with lepers, they were rendered incapable of civil acts.

I am apt to think that this diſeaſe was brought into Italy by the conqueſts of the Greek emperors, in whoſe armies there might be ſome ſoldiers from Paleſtine or Egypt. Be that as it may, the progreſs of it was ſtopped till the time of the cruſades.

It is related, that Pompey's ſoldiers, returning from Syria, brought a diſtemper home with them not unlike the leproſy. We have no account of any regulation made at that time; but it is highly probable that ſome regulation was made, ſince the diſtemper was ſtopped till the time of the Lombards.

It is now two centuries ſince a diſeaſe unknown to our anceſtors, was firſt tranſplanted from the new world to ours, and came to attack human nature even in the very ſource of life and pleaſure. Moſt of the principal families in the ſouth of Europe were ſeen to periſh by a diſtemper that was grown too common to be ignominious, and was conſidered in no other light than in that of being fatal. It was the thirſt of gold

† Book ii. tit 1. § 3. and tit. 18. § 1.

that propagated this diſeaſe; the Europeans went continually to America, and always brought back a new leaven of it.

As it is the buſineſs of legiſlators to watch over the health of the citizens, it would have been a wiſe part in them to have ſtopped this communication by laws made on the plan of thoſe of Moſes.

The plague is a diſeaſe whoſe infectious progreſs is much more rapid. Egypt is its principal ſeat, from whence it ſpreads over the whole univerſe. Moſt countries in Europe have made exceeding good regulations to prevent this infection, and in our times an admirable method has been contrived to ſtop it; this is by forming a line of troops round the infected country, which cuts off all manner of communication.

The Turks *, who have no regulations in this reſpect, ſee the Chriſtians eſcape this infection in the ſame town, and none but themſelves periſh; they buy the clothes of the infected, wear them, and go on their old way as if nothing had happened. The doctrine of a rigid fate, which directs their whole conduct, renders the magiſtrate a quiet ſpectator; he thinks that God has already done every thing, and that he himſelf has nothing to do.

CHAP. XII.

Of the laws againſt ſuicides.

WE do not find in hiſtory that the Romans ever killed themſelves without a cauſe; but the Engliſh deſtroy themſelves moſt unaccountably; they deſtroy themſelves often in the very boſom of happineſs. This action among the Romans was the effect of education; it was connected with their principles and cuſtoms: among the Engliſh it is the effect of a

* Ricaut on the Ottoman empire, p. 284.

* diſtemper; it is connected with the phyſical ſtate of the machine, and independent of every other cauſe.

In all probability it is a defect of the filtration of the nervous juice; the machine whoſe motive faculties are every moment without action, is weary of itſelf; the ſoul feels no pain, but a certain uneaſineſs in exiſting. Pain is a local thing, which leads us to the deſire of ſeeing an end of it; the burden of life is an evil confined to no particular place, which prompts us to the deſire of ceaſing to live.

It is evident, that the civil laws of ſome countries may have reaſons for branding ſuicide with infamy: but in England it cannot be puniſhed without puniſhing the effects of madneſs.

CHAP. XIII.

Effects ariſing from the climate of England.

IN a nation ſo diſtempered by the climate as to have a diſreliſh of every thing, nay even of life, it is plain that the government moſt ſuitable to the inhabitants, is that in which they cannot lay their uneaſineſs to any ſingle perſon's charge, and in which, being under the direction rather of the laws than of the prince, they cannot change the government without ſubverting the laws themſelves.

And if this nation has likewiſe derived from the climate a certain character of impatience, which renders them incapable of bearing the ſame train of things for any long continuance; it is obvious that the government above mentioned is the fitteſt for them. This character of impatience is not very conſiderable of itſelf; but it may become ſo when joined with courage.

It is quite a different thing from levity, which makes people undertake or drop a project without cauſe; it

* It may be complicated with the ſcurvy, which in ſome countries eſpecially, renders a man whimſical and inſupportable to himſelf. See Pirard's voyages, part ii. chap. 21.

borders more upon obſtinacy, becauſe it proceeds from ſo lively a ſenſe of miſery, that it is not weakened even by the habit of ſuffering.

This character in a free nation is extremely proper for diſconcerting the projects of tyranny *, which is always ſlow and feeble in its commencements, as in the end it is active and lively; which at firſt only ſtretches out a hand to aſſiſt, and exerts afterwards a multitude of arms to oppreſs.

Slavery is ever preceded by ſl ep. But a people who find no reſt in any ſituation, who continually explore every part, and feel nothing but pain, can hardly be lulled to ſleep.

Politics are like a ſmooth file, which cuts ſlowly, and attains its end by a gradual and tedious progreſſion. Now, the people of whom we have been ſpeaking, are incapable of bearing the delays, the details, and the coolneſs of negotiations: in theſe they are more unlikely to ſucceed than any other nation; hence they are apt to loſe by treaties what they obtain by their arms.

CHAP. XIV.

Other effects of the climate.

OUR anceſtors the ancient Germans lived under a climate where the paſſions were extremely calm. Their laws decided only in ſuch caſes where the injury was viſible to the eye, and went no farther. And as they judged of the outrages done to men from the greatneſs of the wounds, they acted with no other delicacy in reſpect to the injuries done to women. The law of † the Germans on this ſubject is very extraordinary. If a perſon uncovers a woman's head, he pays a fine of fifty ſous; if he uncovers her leg up

* Here I take this word for the deſign of ſubverting the eſtabliſhed power, and eſpecially that of democracy. This is the ſignification in which it was underſtood by the Greeks and Romans.

† Chap. lviii. § 1. and 2.

to the knee, he pays the ſame; and double from the knee upwards. One would think that the law meaſured the inſults offered to women as we meaſure a figure in geometry; it did not puniſh the crime of the imagination, but that of the eye. But, upon the migration of a German nation into Spain, the climate ſoon found a neceſſity for different laws. The law of the Viſigoths inhibited the ſurgeons to bleed a free woman, except either her father, mother, brother, ſon, or uncle was preſent. As the imagination of the people grew warm, ſo did that of the legiſlators; the law ſuſpected every thing, when the people grew ſuſpicious.

Theſe laws had therefore a particular regard for the two ſexes. But in their puniſhments they ſeem rather to humour the revengeful temper of private perſons, than to exerciſe public juſtice. Thus in moſt caſes they reduced both the criminals to be ſlaves to the offended relations, or to the injured huſband; a free-born woman * who had yielded to the embraces of a married man, was delivered up to his wife to diſpoſe of her as ſhe pleaſed. They obliged the ſlaves †, if they found their maſter's wife in adultery, to bind her, and carry her to her huſband; they even permitted her children ‡ to be her accuſers, and her ſlaves to be tortured in order to convict her. Thus their laws were far better adapted to refine even to exceſs, a certain point of honour, than to form a good civil adminiſtration. we muſt not therefore be ſurpriſed if Count Julian was of opinion that an affront of that kind ought to be expiated by the ruin of his king and country: We muſt not be ſurpriſed if the Moors, with ſuch a conformity of manners, found it ſo eaſy a matter to ſettle and to maintain themſelves in Spain, and to retard the fall of their empire.

* Law of the Viſigoths, book iii. tit. 4 § 9.
† Ibid. § 6. ‡ Ibid. § 13.

CHAP. XV.

Of the different confidence which the laws have in the people, according to the difference of climates.

THE people of Japan are of ſo ſtubborn and perverſe a temper, that neither their legiſlators nor magiſtrates can put any confidence in them: They ſet nothing before their eyes but judges, menaces, and chaſtiſements; every ſtep they take is ſubject to the inquiſition of the civil magiſtrate. Thoſe laws which out of five heads of families eſtabliſh one as a magiſtrate over the other four; thoſe laws which puniſh a family, or a whole ward, for a ſingle crime; thoſe laws, in fine, which find no one innocent where there may happen to be one guilty; are made with a deſign to implant in all the people a diſtruſt of each other, and to make every one the inſpector, witneſs, and judge of his neighbour's conduct.

On the contrary, the people of India are mild *, tender, and compaſſionate. Hence their legiſlators repoſe a great confidence in them. They have eſtabliſhed † very few puniſhments; theſe are not ſevere, nor are they rigorouſly executed. They have ſubjected nephews to their uncles, and orphans to their guardians, as in other countries they are ſubject to their fathers; they have regulated the ſucceſſion by the acknowledged merit of the ſucceſſor. They ſeem to think that every individual ought to place an entire confidence in the good-nature of his fellow-ſubject.

They infranchiſe their ſlaves without difficulty, they marry them, they treat them as their children ‡. Happy climate, which gives birth to purity of manners, and produces a lenity in the laws!

* See Bernier, tom. ii. p. 140.

† See in the 14th collection of the Edifying Letters, p. 403. the principal laws or cuſtoms of the inhabitants of the peninſula on this ſide the Ganges.

‡ This is perhaps what made Diodorus ſay, that in the Indies there was neither maſter nor ſlave.

BOOK XV.

In what manner the Laws of civil Slavery are relative to the Nature of the Climate.

CHAP. I.

Of civil Slavery.

SLAVERY, properly ſo called, is the eſtabliſhment of a right, which gives to one man ſuch a power over another, as renders him abſolute maſter of his life and fortune. The ſtate of ſlavery is in its own nature bad. It is neither uſeful to the maſter nor to the ſlave; not to the ſlave, becauſe he can do nothing through a motive of virtue; not to the maſter, becauſe, by having an unlimited authority over his ſlaves, he inſenſibly accuſtoms himſelf to the want of all moral virtues, and from thence grows fierce, haſty, ſevere, choleric, voluptuous, and cruel.

In deſpotic countries, where they are already in a ſtate of political ſlavery, civil ſlavery is more tolerable than in other governments. Every one ought to be ſatisfied in thoſe countries with neceſſaries and life. Hence the condition of a ſlave is hardly more burdenſome than that of a ſubject.

But in a monarchical government, where it is of the utmoſt importance that human nature ſhould not be debaſed or diſpirited, there ought to be no ſlavery. In democracies, where they are all upon an equality, and in ariſtocracies, where the laws ought to uſe their utmoſt endeavour to procure as great an equality as the nature of the government will permit, ſlavery is contrary to the ſpirit of the conſtitution; it only contributes to give a power and luxury to the citizens, which they ought not to have.

CHAP. II.

Origin of the right of ſlavery among the Roman Civilians.

ONE would never have imagined that ſlavery ſhould owe its birth to pity, and that this ſhould have been excited three different ways *.

The law of nations, to prevent priſoners from being put to death, has allowed them to be made ſlaves. The civil law of the Romans impowered debtors, who were ſubject to be ill uſed by their creditors, to ſell themſelves. And the law of nature requires, that children whom a father, reduced to ſlavery, is no longer able to maintain, ſhould be reduced to the ſame ſtate as the father.

Theſe reaſons of the civilians are all falſe. It is falſe that killing in war is lawful, unleſs in a caſe of abſolute neceſſity; but when a man has made another his ſlave, he cannot be ſaid to have been under a neceſſity of taking away his life, ſince he actually did not take it away. War gives no other right over priſoners than to diſable them from doing any further harm, by ſecuring their perſons. All nations ‡ concur in deteſting the murdering of priſoners in cold blood.

2. Nor is it true, that a freeman can ſell himſelf. Sale implies a price; now when a perſon ſells himſelf his whole ſubſtance immediately devolves to his maſter; the maſter therefore in that caſe gives nothing, and the ſlave receives nothing. You will ſay, he has a peculium. But this peculium goes along with his perſon. If it is not lawful for a man to kill himſelf, becauſe he robs his country of his perſon, for the ſame reaſon he is not allowed to ſell himſelf. The liberty of every citizen conſtitutes a part of the public liberty, and in a democratical ſtate, is even a part of the ſovereignty. To ſell one's citizenſhip † is ſo

* Juſtinian's inſtitutes, Book i.

‡ Excepting a few cannibals.

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

repugnant to all reaſon, as to be ſcarce ſuppoſeable in any man. If liberty may be rated with reſpect to the buyer, it is beyond all price to the ſeller. The civil law, which authoriſes a diviſion of goods among men, cannot be thought to rank among ſuch goods a part of the men who were to make this diviſion. The ſame law annuls all iniquitous contracts; ſurely then it affords redreſs in a contract where the grievance is moſt enormous.

The third way is birth; which falls with the two former. For if a man could not ſell himſelf, much leſs could he ſell an unborn offſpring. If a priſoner of war is not to be reduced to ſlavery, much leſs are his children.

The lawfulneſs of putting a malefactor to death, ariſes from this; the law, by which he is puniſhed, was made for his ſecurity. A murderer, for inſtance, has enjoyed the benefit of the very law which condemns him; it has been a continual protection to him; he cannot therefore object againſt it. But it is not ſo with the ſlave. The law of ſlavery can never be beneficial to him; it is in all caſes againſt him, without ever being for his advantage; and therefore this law is contrary to the fundamental principle of all ſocieties

If it be pretended that it has been beneficial to him, as his maſter has provided for his ſubſiſtence; ſlavery at this rate ſhould be limited to thoſe who are incapable of earning their livelihood. But who will take up with ſuch ſlaves? As for infants. nature, who has ſupplied their mothers with milk, had provided for their ſuſtenance, and the remainder of their childhood approaches ſo near the age in which they are moſt capable of being of ſervice, that he who ſupports them cannot be ſaid to give them an equivalent, which can intitle him to be their maſter.

Nor is ſlavery leſs oppoſite to the civil law than to that of nature. What civil law can reſtrain a ſlave from running away, ſince he is not a member of ſociety, and conſequently has no intereſt in any civil laws? He can be retained only by a family law, that is, by the maſter's authority.

CHAP. III.

Another origin of the right of ſlavery.

I WOULD as ſoon ſay, that the right of ſlavery proceeds from the contempt of one nation for another, founded on a difference in cuſtoms.

Lopez de Gamar relates, "that the Spaniards "found near St Martha ſeveral baſkets full of crabs, "ſnails, graſshoppers, and locuſts, which proved to "be the ordinary proviſion of the natives. This the "conquerors turned to a heavy charge againſt the "conquered." The author owns that this, with their ſmoking tobacco, and trimming their beards in a different manner, gave riſe to the law by which the Americans became ſlaves to the Spaniards. Knowledge humaniſes mankind, and reaſon inclines to mildneſs, but prejudices eradicate every tender diſpoſition.

CHAP. IV.

Another origin of the right of ſlavery.

I WOULD as ſoon ſay that religion gives its profeſſors a right to enſlave thoſe who diſſent from it, in order to render its propagation more eaſy.

This was the notion that encouraged the ravagers of America in their iniquity *. Under the influence of this idea, they founded their right of enſlaving ſo many nations; for theſe robbers, who would abſolutely be both robbers and Chriſtians, were ſuperlatively devout.

Lewis XIII. † was extremely uneaſy at a law, by which all the negroes of his colonies were to be made ſlaves; but, it being ſtrongly urged to him as the rea-

* See hiſt. of the conqueſt of Mexico, by Solis, and that of Peru, by Garcilaſſo de la Vega.

† Labat's new voyage to the iſles of America, vol. iv. p. 114 1722, in 12mo.

dieſt means for their converſion, he acquieſced without further ſcruple.

CHAP. V.

Of the ſlavery of the negroes.

WERE I to vindicate our right to make ſlaves of the negroes, theſe ſhould be my arguments.

The Europeans, having extirpated the Americans, were obliged to make ſlaves of the Africans for clearing ſuch vaſt tracts of land.

Sugar would be too dear, if the plants which produce it were cultivated by any other than ſlaves.

Theſe creatures are all over black, and with ſuch a flat noſe, that they can ſcarcely be pitied.

It is hardly to be believed that God, who is a wiſe being, ſhould place a ſoul, eſpecially a good ſoul, in ſuch a black ugly body.

It is ſo natural to look upon colour as the criterion of human nature, that the Aſiatics, among whom eunuchs are employed, always deprive the Blacks of their reſemblance to us by a more opprobrious diſtinction.

The colour of the ſkin may be determined by that of the hair, which, among the Egyptians, the beſt philoſophers in the world, was of ſuch importance, that they put to death all the red-haired men who fell into their hands.

The negroes prefer a glaſs-necklace to that gold, which polite nations ſo highly value: Can there be a greater proof of their wanting common ſenſe?

It is impoſſible for us to ſuppoſe theſe creatures to be men; becauſe, allowing them to be men, a ſuſpicion would follow, that we ourſelves are not Chriſtians.

Weak minds exaggerate too much the wrong done to the Africans; for, were the caſe as they ſtate it, would the European powers, who make ſo many needleſs conventions among themſelves, have failed to make a general one in behalf of humanity and compaſſion?

CHAP. VI.

The true origin of the right of ſlavery.

IT is time to enquire into the true origin of the right of ſlavery. It ought to be founded on the nature of things: let us ſee if there be any caſes where it can be derived from thence.

In all deſpotic governments, people make no difficulty in ſelling themſelves; the political ſlavery, in ſome meaſure, annihilates the civil liberty.

According to Mr Perry *, the Muſcovites ſell themſelves very readily: the reaſon for it is evident; their liberty is not worth keeping.

At Achim every one is for ſelling himſelf. Some of the chief lords † have not leſs than a thouſand ſlaves, all principal merchants, who have a great number of ſlaves themſelves, and theſe alſo are not without their ſlaves. Their maſters are their heirs, and put them into trade. In thoſe ſtates, the freemen, being overpowered by the government, have no better reſource than making themſelves ſlaves to the tyrants in office.

This is the juſt and rational origin of that mild law of ſlavery, which obtains in ſome countries; and mild it ought to be, as founded on a free choice a man makes of a maſter for his own benefit, which forms a mutual convention betwixt the two parties.

CHAP. VII.

Another origin of the right of ſlavery.

THERE is another origin of the right of ſlavery, and even of the moſt cruel ſlavery which is to be ſeen among men.

There are countries where the exceſs of heat enervates the body, and renders men ſo ſlothful and diſpi-

* Preſent ſtate of Ruſſia. † Dampier's voyages, vol. iii.

sited, that nothing but the fear of chaſtiſement can oblige them to perform any laborious duty: ſlavery is there more reconcileable to reaſon; and, the maſter being as lazy with reſpect to his ſovereign, as his ſlave is to him, this adds a political to a civil ſlavery.

Ariſtotle ‡ endeavours to prove, that there are natural ſlaves; but what he ſays is far from proiving it. If there be any ſuch, I believe they are thoſe of whom I have been ſpeaking.

But, as all men are born equal, ſlavery muſt be accounted unnatural, though in ſome countries it be founded on natural reaſon; and a wide difference ought to be made betwixt ſuch countries, and thoſe where even natural reaſon rejects it, as in Europe, where it has been ſo happily aboliſhed.

Plutarch, in his life of Numa, ſays, that in Saturn's time there was neither ſlave nor maſter. Chriſtianity has reſtored that age in our climates.

CHAP. VIII.

Inutility of ſlavery among us.

NATURAL ſlavery, then, is to be limited to ſome particular parts of the world. In all other countries, even the moſt laborious works of ſociety may be performed by freemen.

Experience verifies my aſſertion. Before Chriſtianity had aboliſhed civil ſlavery in Europe, working in the mines was judged too toilſome for any but ſlaves or malefactors: but, at preſent, there are men employed in them, who are known to live † happily. They have, by ſome ſmall privileges, encouraged this profeſſion; to an increaſe of labour they have joined an increaſe of gain, and have gone ſo far as to make them better pleaſed with their condition than with any other which they could have embraced.

‡ Polit. Lib. i. Chap. 1.

† As may be ſeen in the nines of Hartz in Lower Germany, and in thoſe of Hungary.

No labour is ſo heavy, but it may be brought to a level with the workman's ſtrength, when regulated by equity, and not by avarice. The violent fatigues which ſlaves are made to undergo in other parts, may be ſupplied by commodious machines, invented by art, and ſkilfully applied. The Turkiſh mines in the Bannat of Temeſwar, though richer than thoſe of Hungary, did not yield ſo much, becauſe their invention reached no farther than the ſtrength of their ſlaves.

I know not whether this article be dictated by my underſtanding, or by my heart. Poſſibly there is not that climate upon earth, where the moſt laborious ſervices might not, with proper encouragement, be performed by freemen. Bad laws having made lazy men, they have been reduced to ſlavery becauſe of their lazineſs.

CHAP. IX.

Several kinds of ſlavery.

SLAVERY is of two kinds, real and perſonal. The real annexes the ſlave to the land, which Tacitus * makes the condition of ſlaves among the Germans. They were not employed in the family; a ſtated tribute of corn, cattle, or other moveables paid to their maſter, was the whole of their ſervitude. And ſuch a ſervitude ſtill continues in Hungary, Bohemia, and ſeveral parts of Lower Germany.

Perſonal ſlavery conſiſts in domeſtic ſervices, and relates more to the maſter's perſon.

The worſt degree of ſlavery is, when it is at once both real and perſonal, as that of the Helotes among the Lacedæmonians. They underwent the fatigues of the field, and ſuffered all manner of inſults within the houſe. This Helotiſm is contrary to the nature of things. The real ſlavery is to be found only among

* De moribus Germanorum.

nations * of a plain manner of living, all family-business being done by the wives and children. The personal slavery is peculiar to voluptuous nations, luxury requiring the service of slaves in the house. But Helotism joins in the same persons this slavery established by voluptuous nations, and that of the most simple.

CHAP. X.

Regulations necessary in respect to slavery.

BUT, of whatsoever kind the slavery be, the civil laws should endeavour, on the one hand, to abolish the abuses of it, and on the other to guard against its dangers.

CHAP. XI.

Abuses of slavery.

IN Mahometan states †, not only the life and goods of female slaves, but also what is called their virtue or honour, are at their master's disposal. One of the misfortunes of those countries is, that the greatest part of the nation are born only to be subservient to the pleasures of the other. This servitude is alleviated by the laziness in which such slaves live, which is an additional disadvantage to the state.

It is this indolence which renders the ‡ eastern seraglios so delightful to those very persons whom they were made to confine. People who dread nothing but labour may imagine themselves happy in these places of indolence and ease. But this shows how contrary they are to the very institutions of slavery.

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

† Sir John Chardin's travels to Persia.

‡ Sir John Chardin, vol. ii. in his description of the market of Izagour.

Reaſon requires that the maſter's power ſhall not extend to what does not appertain to his ſervice. Slavery ſhould be calculated for utility, and not for pleaſure. The laws of chaſtity ariſe from thoſe of nature, and ought in all nations to be reſpected.

If a law which preſerves the chaſtity of ſlaves be good in thoſe ſtates where an arbitrary power bears down all before it, how much more will it be ſo in monarchies, and how much more ſtill in republics?

The law of the Lombards * has a regulation which ought to be adopted by all governments. "If a maſter debauches his ſlave's wife, the ſlave and his "wife ſhall be reſtored to their freedom." An admirable expedient, which, without ſeverity, lays a powerful reſtraint on the incontinency of maſters.

The Romans ſeem to me to have erred on this head. They allowed an unlimited ſcope to the maſter's luſt, and in ſome meaſure denied their ſlaves the privilege of marrying. It is true, they were the loweſt part of the nation; yet there ſhould have been ſome care taken of their morals, eſpecially as, in prohibiting their marriage, they corrupted the morals of the citizens.

CHAP. XII.

Danger from the multitude of ſlaves.

THE multitude of ſlaves has different effects in different governments. It is no grievance in a deſpotic ſtate, where the political ſlavery of the whole body takes away the ſenſe of civil ſlavery. Thoſe who are called Freemen in reality are little more ſo than they who do not come within that claſs; and as the latter, in quality of eunuchs, freedmen, or ſlaves, have generally the management of all affairs, the condition of a freeman and that of a ſlave are very nearly allied. This makes it therefore almoſt a matter of indifference, whether in ſuch ſtates the ſlaves be few or numerous.

* Lib. i. tit. 32. § 5.

But, in moderate ſtates, it is a point of the higheſt importance, that there ſhould not be a great number of ſlaves. The political liberty of thoſe ſtates adds to the value of civil liberty, and he who is deprived of the latter is alſo deprived of the former. He ſees the happineſs of a ſociety, of which he is not ſo much as a member; he ſees the ſecurity of others fenced by laws, himſelf without any protection. He ſees his maſter has a ſoul that can enlarge itſelf, while his own is conſtrained to ſubmit to continual depreſſion. Nothing more aſſimilates a man to a beaſt, than living among freemen, himſelf a ſlave. Such people as theſe are the natural enemies of the ſociety, and their number muſt be dangerous.

It is not therefore to be wondered at, that moderate governments have been ſo frequently diſturbed by revolts of ſlaves; and that this ſo ſeldom happens in deſpotic ſtates *.

CHAP. XIII.

Of armed ſlaves.

THE danger of arming ſlaves is not ſo great in monarchies as in republics. In the former a warlike people, and a body of nobility, are a ſufficient check upon theſe armed ſlaves; whereas the pacific members of a republic would have a hard talk to quell a ſet of men, who, having offenſive weapons in their hands, would find themſelves a match for the citizens.

The Goths who conquered Spain, ſpread themſelves over the country, and ſoon became very weak. They made three important regulations; they aboliſhed an ancient cuſtom which prohibited intermarriages with the † Romans; they enacted that all the freed-

* The revolt of the Mamalucs was a different caſe; this was a body of the militia who uſurped the empire.

† Law of the Viſigoths, lib. iii. tit. 1. § 1.

men † belonging to the fiſc, ſhould ſerve in war, under penalty of being reduced to ſlavery; and they ordained, that each Goth ſhould arm and bring into the field the tenth part ‡ of his ſlaves. This was but a ſmall proportion: beſides, theſe ſlaves thus carried to the field, did not form a ſeparate body; they were in the army, and might be ſaid to continue in the family.

CHAP. XIV.

The ſame ſubject continued.

WHEN a whole nation is of a martial temper, the ſlaves in arms are leſs to be feared.

By a law of the Allemans, a ſlave who had committed a clandeſtine theft ‖ was liable to the ſame puniſhment as a freeman in the like caſe; but, if he was found guilty of a forcible robbery §, he was only bound to reſtore the thing ſo taken. Among the Allemans, courage and intrepidity extenuated the guilt of an action. They employed their ſlaves in their wars. Moſt republics have been attentive to diſpirit their ſlaves: but the Allemans, relying on themſelves, and being always armed, were ſo far from fearing theirs that they were rather for augmenting their courage; they were the inſtruments either of their depredations or of their glory.

CHAP. XV.

Precautions to be uſed in moderate governments.

LENITY and humane treatment may prevent the dangers to be apprehended from the multitude of ſlaves in a moderate government. Men grow reconciled to every thing, and even to ſervitude, if not aggravated by the ſeverity of the maſter. The Athe-

† Ibid. lib. v. tit. 7. § 20
‡ Ibid. lib ix. tit. 2. § 9. ‖ Law of the Allemans. c. v. § 3.
§ Law of the Allemans, chap. v. § 5. *per virtutem.*

nians treated their ſlaves with great lenity; and this ſecured that ſtate from the commotions raiſed by the ſlaves amongſt the auſtere Lacedæmonians.

It does not appear that the primitive Romans met with any trouble from their ſlaves. Thoſe civil wars *, which have been compared to the Punic wars, were the conſequences of their having diveſted themſelves of all humanity towards their ſlaves.

A frugal and laborious people generally uſe their ſlaves more kindly, than thoſe who are above labour. The primitive Romans lived, worked, and ate with their ſlaves; they behaved towards them with great juſtice and humanity. The greateſt puniſhment they made them ſuffer, was to make them paſs before their neighbours with a forked piece of wood on their backs. Their manners were ſufficient to ſecure the fidelity of their ſlaves; there was no neceſſity for laws.

But when the Romans aggrandiſed themſelves; when their ſlaves were no longer the companions of their labour, but the inſtruments of their luxury and pride; as they then wanted morals, they had need of laws. It was even neceſſary for theſe laws to be of the moſt terrible kind, in order to eſtabliſh the ſafety of thoſe cruel maſters, who lived in the midſt of their ſlaves, as in the midſt of enemies. They made the Syllanian *ſenatuſconſultum*, and other laws ‡, which decreed, that, when a maſter was murdered, all the ſlaves under the ſame roof, or in any place ſo near the houſe as to be within the hearing of a man's voice, ſhould without diſtinction be condemned to die. Thoſe who in this caſe ſheltered a ſlave, in order to ſave him, were puniſhed as † murderers; he whom his maſter ‖ ordered to kill him, and who obeyed,

* Sicily, ſays Florus, ſuffered more in the ſervile than in the Punic war, lib iii.

‡ See the whole title of the ſenat. conſult. Syllan. in ff.

† Leg. ſi quis § 12. ff. de ſenat. conſult Syllan.

‖ When Antony commanded Eros to kill him, it was the ſame as commanding him to kill himſelf, becauſe, if he had obeyed, he would have been puniſhed as the murderer of his maſter.

was reputed guilty; even he, who did not hinder him from killing himſelf, was liable to be puniſhed ‖. If a maſter was murdered on a journey, they put to death † thoſe who were with him, and thoſe who fled. All theſe laws took place even againſt thoſe whoſe innocence was proved: the intent of them was to give their ſlaves a prodigious reſpect for their maſter. They were not dependent on the civil government, but on a fault or imperfection of the civil government. They were not derived from the equity of civil laws, ſince they were contrary to the principle of civil laws. They were properly founded on the principles of war, with this difference, that the enemies were in the boſom of the ſtate. The Syllanian *ſenatuſconſultum* was derived from the law of nations, which requires that a ſociety, however imperfect, ſhould be preſerved.

It is a misfortune in government when the magiſtracy thus find themſelves under a neceſſity of making cruel laws; becauſe they have rendered obedience difficult, they are obliged to increaſe the penalty of diſobedience, or the ſuſpicion of fidelity. A prudent legiſlator foreſees the ill conſequences of rendering the legiſlature terrible. The ſlaves amongſt the Romans could have no confidence in the laws, and therefore the laws could have no confidence in them.

CHAP. XVI.

Regulations between maſters and ſlaves.

THE magiſtrate ought to take care that the ſlave has his proviſions and cloathing; and this ought to be regulated by law.

The laws ought to provide that care be taken of them in ſickneſs and old age. Claudius * decreed, that the ſlaves, who in ſickneſs had been abandoned by their maſters, ſhould in caſe they recovered be free.

‖ Leg i. § 22. ff. de ſenat. conſult. Syllan.
† Leg. i. § 31. ff. ibid. * Xiphilin. in Claudio.

This law insured their liberty; but should not there have been some care also taken to preserve their lives?

When the law permitted a master to take away the life of his slave, he was invested with a power which he ought to exercise as judge, and not as master; it was necessary that the law should ordain those formalities, which take away the suspicion of an act of violence.

When fathers at Rome were no longer permitted to put their children to death, the magistrates ordained the ‖ punishment which the father would have inflicted. A like custom between the master and his slaves would be highly reasonable in a country where masters have the power of life and death.

The law of Moses was extremely severe. "If any "one struck his slave so that he died under his hand, "he was to be punished; but, if he survived a day "or two, he was not, because he was as his money." Strange that a civil law should thus amongst these people relax the law of nature!

By a law of the Greeks *, a slave too roughly treated by his master might insist upon being sold to another. In the latter times there was a law of the same nature † at Rome. A master displeased with his slave, and a slave with his master, ought to be separated.

When a citizen uses a slave of another ill, the latter ought to have liberty to complain before the judge. The laws of Plato ‡, and of most nations, took away from slaves the right of natural defence. It was necessary then that they should give them a civil defence.

At Sparta, slaves could have no justice against either insults or injuries. So excessive was their misery, that they were not only the slaves of a citizen, but also of the public; they belonged to all, as well as to one. At Rome, when they considered the injury done

‖ See law third in the code *de patria potestate*, by the emperor Alexander.

* Plutarch on superstition.

† See the constitution of Antoninus Pius, instit. lib. i. tit. 7.

‡ Lib. ix.

to a ſlave, they had regard only to the intereſt ‖ of the maſter. In the breach of the Aquilian law, they confounded a wound given to a beaſt, and that given to a ſlave; they regarded only the diminution of their value. At Athens *, he who had abuſed the ſlave of another was puniſhed ſeverely, and ſometimes even with death. The law of Athens was very reaſonable, in not adding the loſs of ſafety to that of liberty.

CHAP. XVII.

Of infranchiſements.

IT is eaſy to perceive, that many ſlaves in a republican government create a neceſſity of making many free. The evil is, if they have too many ſlaves, they cannot keep them in due bounds; if they have too many freedmen, they cannot live, and muſt become a burthen to the republic: beſides, it may be as much in danger from the too great number of freedmen, as from the too great number of ſlaves. It is neceſſary therefore that the laws ſhould have an eye to theſe two inconveniences.

The ſeveral laws and decrees of the ſenate made at Rome, both for and againſt ſlaves, ſometimes to limit and at other times to facilitate their infranchiſement, plainly ſhew the embarraſſment in which they found themſelves in this reſpect. There were even times in which they durſt not make laws. When under Nero † they demanded of the ſenate a permiſſion for the maſters to reduce again to ſlavery the ungrateful freedmen, the emperor declared that they ought to decide the affairs of individuals, and to make no general decree.

Much leſs can I determine what ought to be the regulations of a good republic in an affair of this kind;

‖ This was frequently the ſpirit of the laws of thoſe nations who came out of Germany, as may be ſeen by their codes.

* Demoſthenes orat. contra Midiam. p. 610. Frankfort, 1604.

† Annals of Tacitus, lib. xiii.

this depends on too many circumſtances. Let us however make ſome reflections.

A conſiderable number of freedmen ought not ſuddenly to be made by a general law. We know that amongſt the Volſinienſes * the freedmen becoming maſters of the ſuffrages, made an abominable law, which gave them the right of lying firſt with the girls married to the free-born.

There are ſeveral ways of introducing inſenſibly new citizens into a republic. The laws may favour the acquiring a *peculium*, and put ſlaves into a condition of buying their liberty: they may give a term to ſervitude like thoſe of Moſes, which limited that of the Hebrew ſlaves † to ſix years. It is eaſy to give every year freedom to a certain number of thoſe ſlaves, who, by their age, health, or induſtry, are capable of getting a ſubſiſtence. The evil may be even cured in its root, as a great number of ſlaves are connected with the ſeveral employments which are given them; to divide amongſt the free-born a part of theſe employments, for example, commerce, or navigation, is diminiſhing the number of ſlaves.

When there are many freedmen, it is neceſſary that the civil laws ſhould determine what they owe to their patron, or elſe that theſe duties ſhould be fixed by the contract of infranchiſement.

It is certain that their condition ſhould be more favoured in the civil, than in the political ſtate, becauſe, even in a popular government, the power ought not to fall into the hands of the vulgar.

At Rome, where they had ſo many freedmen, the political laws with regard to them were admirable. They gave them little, but excluded them almoſt from nothing: they had even a ſhare in the legiſlature; but the reſolutions they were capable of taking were almoſt of no weight. They might bear a part in the public offices, and even in the dignity of the

* Freinſhemius's ſupplement, decad. ii. lib. v.
† Exodus xxi.

prieſthood *; but this privilege was in ſome ſort rendered uſeleſs by the diſadvantages they had to encounter with in the elections. They had a right to enter into the army; but they were to be regiſtered in a certain claſs of the Cenſus, before they could be ſoldiers. Nothing hindered the freedmen † from being united by marriage with the families of the free-born; but they were not permitted to mix with thoſe of the ſenators. In ſhort, their children were free-born, though they were not ſo themſelves.

CHAP. XVIII.

Of freedmen and eunuchs.

THUS, in a republican government, it is frequently of advantage, for the ſituation of the freedmen to be but little below that of the free-born, and that the laws be adapted to remove a diſlike of their condition. But in a deſpotic government, where luxury and arbitrary power prevail, they have nothing to do in this reſpect; the freedmen almoſt always find themſelves above the free-born. They rule in the court of the prince, and in the palaces of the great; and, as they ſtudy the foibles, and not the virtues of their maſter, they lead him not by his virtues, but by his weakneſs. Such were the freedmen at Rome in the times of the emperors.

When the principal ſlaves are eunuchs, let ever ſo many privileges be granted them, they can hardly be regarded as freedmen; for, as they cannot have a family of their own, they are naturally attached to that of another, and it is only by a kind of fiction that they are conſidered as citizens.

And yet there are countries where the magiſtracy is entirely in their hands: "In ‡ Tonquin, (ſays Dam-

* Annals of Tacitus, lib iii.

† Auguſtus's ſpeech in Dio, lib. lvi.

‡ It was formerly the ſame in China. The two Mahometan Arabs, who travelled thither in the ninth century, uſe the word *eunuch* whenever they ſpeak of the governor of a city.

pier†,) all the mandarines civil and military are eunuchs." They have no families, and though they are naturally avaricious, the maſter or the prince in the end takes advantage of this very avarice.

Dampier ‡ tells us too, that, in this country, the eunuchs cannot live without women, and therefore marry. The law which permits their marriage may be founded, on the one hand, on their reſpect for theſe eunuchs; and, on the other, on their contempt for women.

Thus they are truſted with the magiſtracy, becauſe they have no family, and permitted to marry, becauſe they are magiſtrates.

Then it is that the ſenſe which remains would fain ſupply that they have loſt; and the enterpriſes of deſpair become a kind of enjoyment. So in Milton, that ſpirit who has nothing left but deſires, enraged at his degradation, would make uſe of his impotency itſelf.

We ſee in the hiſtory of China a great number of laws to deprive eunuchs of all civil and military employments, but they always returned to them again. It ſeems as if the eunuchs of the Eaſt were a neceſſary evil.

BOOK XVI.

How the Laws of domeſtic Slavery have a Relation to the Nature of the Climate.

CHAP. I.

Of domeſtic ſervitude.

SLAVES are eſtabliſhed for the family; but they are not a part of it. Thus I diſtinguiſh their ſervitude from that which the women in ſome countries

† Vol. iii p. 91.

‡ Tome iii. p. 94.

ſuffer, and which I ſhall properly call domeſtic ſervitude.

CHAP. II.

That in the countries of the ſouth there is a natural inequality between the two ſexes.

WOMEN in hot climates, are * marriageable at eight, nine, or ten years of age; thus, in thoſe countries, infancy and marriage almoſt always go together They are old at twenty: their reaſon therefore never accompanies their beauty. When beauty demands the empire, the want of reaſon forbids the claim, when reaſon is obtained, beauty is no more. Theſe women ought then to be in a ſtate of dependence; for reaſon cannot procure in old age that empire, which even youth and beauty could not give. It is therefore extremely natural, that, in theſe places, a man, when no law oppoſes it, ſhould leave one wife to take another, and that polygamy ſhould be introduced.

In temperate climates, where the charms of women are beſt preſerved, where they arrive later at maturity, and have children at a more advanced ſeaſon of life, the old age of their huſbands in ſome degree follows theirs; and, as they have more reaſon and knowledge at the time of marriage, if it be only on account of their having continued longer in life, it muſt naturally introduce a kind of equality between the two ſexes, and, in conſequence of this, the law of having only one wife.

In cold countries the almoſt neceſſary cuſtom of drinking ſtrong liquors eſtabliſhes intemperance

* Mahomet married Cadhisja at five, and took her to his bed at eight years old. In the hot countries of Arabia and the Indies, girls are marriageable at eight years of age, and are brought to bed the year after. *Prideaux, life of Mahomet.* We ſee women in the kingdom of Algiers pregnant at nine, ten, and eleven years of age. *Hiſt. of the kingdom of Algiers by Laugier de Taſſis, p. 61.*

amongſt men. Women, who in this reſpect have a natural reſtraint, becauſe they are always on the defenſive, have therefore the advantage of reaſon over them.

Nature, which has diſtinguiſhed men by their reaſon and bodily ſtrength, has ſet no other bounds to their power than thoſe of this ſtrength and reaſon. It has given charms to women, and ordained that their aſcendant over man ſhall end with theſe charms; but, in hot countries, theſe are found only at the beginning, and never in the progreſs of life.

Thus the law, which permits only one wife, is phyſically conformable to the climate of Europe, and not to that of Aſia. This is the reaſon why Mahometaniſm was eſtabliſhed with ſuch facility in Aſia, and ſo difficultly extended in Europe; why Chriſtianity is maintained in Europe, and has been deſtroyed in Aſia; and, in fine, why the Mahometans have made ſuch progreſs in China, aad the Chriſtians ſo little.

Some particular reaſons induced Valentinian * to permit polygamy in the empire. That law, ſo improper for our climates, was abrogated by † Theodoſius, Arcadius, and Honorius.

CHAP. III.

That a plurality of wives depends greatly on the means of ſupporting them.

THOUGH, in countries where polygamy is once eſtabliſhed, the number of wives is principally determined by the riches of the huſband; yet it cannot be ſaid, that riches eſtabliſhed polygamy in theſe ſtates, ſince poverty may produce the ſame effect, as I ſhall prove when I come to ſpeak of the ſavages.

Polygamy in powerful nations is leſs a luxury in it-

* See Jornandes *De regno et tempor. ſucceſ.* and the eccleſiaſtic hiſtorians.

† See law 7. of the Code *De Judæis et Cælicolis*, and nov. 18. c. 5.

ſelf, than the occaſion of great luxury. In hot * climates they have few wants, and it coſts little to maintain a wife and children; they may therefore have a greater number of wives.

CHAP. IV.

That the law of polygamy is an affair that depends on calculation.

ACCORDING to the calculations made in ſeveral parts of Europe, there are here born more boys than girls †; on the contrary, by the accounts we have of Aſia, there are there born more ‡ girls than boys. The law which in Europe allows only one wife, and that in Aſia which permits many, have therefore a certain relation to the climate.

In the cold climates of Aſia, there are born, as in Europe, more males than females; and from hence, ſay the ‖ Lamas, is derived the reaſon of that law, which amongſt them permits a woman to have § many huſbands.

But it is difficult for me to believe that there are many countries, where the diſproportion can be great enough to require the introducing either the law in favour of many wives, or that of many huſbands. This would only imply, that a plurality of women,

* In Ceylan a man may live on ten ſols a-month; they eat nothing there but rice and fiſh. *Collection of voyages made to eſtabliſh an India Company.*

† Dr Arbuthnot finds that in England the number of boys exceeds that of girls: but people have been to blame to conclude that the caſe is the ſame in all climates.

‡ See Kempfer, who relates that, upon numbering the people of Meaco, there were found one hundred eighty-two thouſand and ſeventy-two males, and two hundred twenty-three thouſand five hundred and ſeventy-three females.

‖ Du Halde's hiſt. of China, vol. iv. p. 461.

§ Albazeit-el-haſſen, one of the Mahometan Arabs, who, in the ninth century, went into India and China, thought this cuſtom a proſtitution. And indeed nothing could be more contrary to the ideas of a Mahometan.

or even a plurality of men, is more conformable to nature in certain countries than in others.

I confeſs, that if what hiſtory tells us be true, that at Bantam ‡ there are ten women to one man, this muſt be a caſe particularly favourable to polygamy.

In all this I only give their reaſons, but do not juſtify their cuſtoms.

CHAP. V.

The reaſon of a law of Malabar.

IN the tribe of the † Naires, on the coaſt of Malabar, the man can have only one wife, while a woman on the contrary may have many huſbands. The origin of this cuſtom is not, I believe, difficult to diſcover. The Naires are the tribe of nobles, who are the ſoldiers of all thoſe nations. In Europe, ſoldiers are forbid to marry: in Malabar, where the climate requires greater indulgence, they are ſatisfied with rendering marriages as little burdenſome to them as poſſible; they give a wife amongſt many men, which conſequently diminiſhes the attachment to a family, and the cares of houſe-keeping, and leaves them in the free poſſeſſion of a military ſpirit.

CHAP. VI.

Of polygamy conſidered in itſelf.

WITH regard to polygamy in general, independently of the circumſtances which may render it tolerable, it is not of the leaſt ſervice to mankind, nor to either of the two ſexes, whether it be that

‡ Collection of voyages for the eſtabliſhment of an India company, Vol. i.

† See Francis Pirard, c. 27; Edifying Letters, 3d and 10th collection on the Malleani on the coaſt of Malabar. This is conſidered as an abuſe of the military profeſſion, as a woman, ſays Pirard, of the tribe of the Bramins never would marry many huſbands.

which abuſes, or that which is abuſed Neither is it of ſervice to the children; for one of its greateſt inconveniencies is, that the father and mother cannot have the ſame affection for their off-pring; a father cannot love twenty children with the ſame tenderneſs as a mother can love two. It is much worſe when a wife has many huſbands; for then paternal love is only held by this opinion, that a father may believe, if he will, or that others may believe, that certain children belong to him.

A plurality of wives, who would think it! leads to that paſſion which nature diſallows; for one depravation always draws on another. I remember, that in the revolution which happened at Conſtantinople, when Sultan Ahmet was depoſed, hiſtory ſays, that the people having plundered the Kiaya's houſe, they found not a ſingle woman; they tell us, that at * Algiers, in the greateſt part of their ſeraglios, they have none at all.

Beſides, the poſſeſſion of many wives does not always prevent their entertaining deſires † for thoſe of others: it is with luſt as with avarice, whoſe thirſt increaſes by the acquiſition of treaſures.

In the reign of Juſtinian, many philoſophers, diſpleaſed with the conſtraint of Chriſtianity, retired into Perſia. What ſtruck them the moſt, ſays Agathias ‡, was, that polygamy was permitted amongſt men who did not even abſtain from adultery.

CHAP. VII.

Of an equality of treatment in the caſe of many wives.

FROM the law which permitted a plurality of wives, followed that of an equal behaviour to each. Mahomet, who allowed of four, would have

* Hiſt. of Algiers by Logier de Taſſis.

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

‡ Life and actions of Juſtinian, p. 403.

every thing, as provisions, dress, and conjugal duty, equally divided between them. This law is also in force in the Maldivian isles †, where they are at liberty to marry three wives.

The law of Moses ‡ even declares, that if any one has married his son to a slave, and this son should marry afterwards a free woman, he shall diminish nothing of her food, her raiment, or duty of marriage. They might give more to the new wife; but the first was not to have less than she had before.

CHAP. VIII.

Of the separation of women from men.

THE prodigious number of wives possessed by those who live in rich and voluptuous nations is a consequence of the law of polygamy. Their separation from men, and their close confinement, naturally follow from the greatness of this number. Domestic order renders this necessary; thus an insolvent debtor seeks to conceal himself from the pursuit of his creditors. There are climates where the impulses of nature have such strength that morality has almost none. If a man be left with a woman, the temptation and the fall will be the same thing; the attack certain, the resistance none. In these countries, instead of precepts, they have recourse to bolts and bars.

One of the Chinese classic authors considers the man as a prodigy of virtue, who, finding a woman alone in a distant apartment, can forbear violating her *.

† See Pirard, Chap. xii. ‡ Exod. xxi. 10, 11.

* "It is an admirable touchstone, to find by one's self a treasure which we can make ourselves master of, or a beautiful woman in a distant apartment, or to hear the voice of an enemy who must perish without our assistance." Translation of a Chinese piece on morality, which may be seen in Du Halde, vol iii. p. 151.

CHAP. IX.

Of the connection between domeſtic and political government.

IN a republic the condition of citizens is limited; equal, mild, and agreeable; every thing partakes of the benefit of public liberty. An empire over the women cannot amongſt them be ſo well exerted; and where the climate demands this empire, it is moſt agreeable to the government of a ſingle perſon. This is one of the reaſons why it has always been difficult to eſtabliſh a popular government in the Eaſt.

On the contrary, the ſlavery of women is perfectly conformable to the genius of a deſpotic government, which delights in treating all with ſeverity. Thus at all times have we ſeen in Aſia domeſtic ſlavery and deſpotic government walk hand in hand with an equal pace.

In a government which requires, above all things, that a particular regard be paid to its tranquillity, and where the extreme ſubordination forms that tranquillity, it is abſolutely neceſſary to ſhut up the women; for their intrigues would prove fatal to their huſbands. A government, which has not time to examine into the conduct of its ſubjects, views them with a ſuſpicious eye, only becauſe they appear, and ſuffer themſelves to be known.

Let us only ſuppoſe that the levity of mind, the indiſcretions, the taſtes and diſguſts of our women, attended by their paſſions of a higher and a lower kind, with all their active fire, and in that full liberty with which they appear amongſt us, were conveyed into an eaſtern government; where would be the father of a family who could enjoy a moment's repoſe? The men would be every where ſuſpected, every where enemies; the ſtate would be overturned, and the kingdom overflowed with rivers of blood.

CHAP. X.

The principle on which the morals of the Eaſt are founded.

IN the caſe of a multiplicity of wives, the more a family ceaſes to be united, the more ought the laws to reunite its detached parts in a common centre; and the greater the diverſity of intereſts, the more neceſſary it is for the laws to bring them back to a common intereſt.

This is more particularly done by confinement. The women ſhould not only be ſeparated from the men by the walls of the houſe, but they ought alſo to be ſeparated in the ſame incloſure, in ſuch a manner that each may have a diſtinct houſehold in the ſame family From hence each derives all that relates to the practice of morality, modeſty, chaſtity, reſerve, ſilence, peace, dependence, reſpect, love, and, in ſhort, a general direction of her thoughts to that which in its own nature is a thing of the greateſt importance, a ſingle and entire attachment to her family.

Women have naturally ſo many duties to fulfil, duties which are peculiarly theirs, that they cannot be enough excluded from every thing capable of inſpiring other ideas, from every thing that goes by the name of *amuſements*, and from every thing which we call *buſineſs*.

We find the manners more pure in the ſeveral parts of the Eaſt, in proportion as the confinement of women is more ſtrictly obſerved. In great kingdoms, there are neceſſarily great lords. The greater their wealth, the more enlarged is their ability of keeping their wives in an exact confinement, and of preventing them from entering again into ſociety. From hence it proceeds, that in the empires of Turkey, Perſia, of the Mogul, China, and Japan, the manner of their wives are admirable.

But the caſe is not the ſame with India, where a

multitude of iſlands, and the ſituation of the land, have divided the country into an infinite number of little ſtates, which, from cauſes that we have not here room to mention, are rendered deſpotic.

There are none there but the wretches who pillage, and the wretches who are pillaged. Their grandees have very moderate fortunes, and thoſe whom they call rich have only a bare ſubſiſtence. The confinement of their women cannot therefore be very ſtrict; nor can they make uſe of any great precautions to keep them within due bounds; from hence it proceeds that the corruption of their manners is ſcarcely to be conceived.

We may there ſee to what an extreme the vices of a climate, indulged in full liberty, will carry licenciouſneſs. It is there that nature has a ſtrength, and modeſty a weakneſs, that exceeds all comprehenſion. At Patan * the wanton deſires † of the women are ſo outrageous, that the men are obliged to make uſe of a certain apparel to ſhelter them from their deſigns. In theſe countries, the two ſexes loſe even thoſe laws which properly belong to each.

CHAP. XI.

Of domeſtic ſlavery independently of polygamy.

IT is not only a plurality of wives, which in certain places of the Eaſt requires their confinement, but alſo the climate itſelf. Thoſe who conſider the horrible crimes, the black villainies, the poiſonings, the aſſaſſinations, which the liberty of women has occaſioned at Goa, and in the Portugueſe ſettlements in

* Collection of voyages for the eſtabliſhment of an India company, vol. ii. p. 2.

† In the Maldivian iſles the fathers marry their daughters at ten and eleven years of age, becauſe it is a great ſin, ſay they, to ſuffer them to endure the want of a huſband See Pirard, chap. 12. At Bantam, as ſoon as a girl is twelve or thirteen years old, ſhe muſt be married if they would not have her lead a debauched life. *Collection of voyages for the eſtabliſhment of an India Company.*

the Indies, where religion permits only one wife, and who compare them with the innocence and purity of manners of the women of Turkey, Perſia, Mogulſtan, China, and Japan, will clearly ſee that it is frequently as neceſſary to ſeparate them from the men, when they have but one, as when they have many.

Theſe are things which ought to be decided by the climate. What purpoſe would it anſwer to ſhut up women in our northern countries, where their manners are naturally good; where all their paſſions are calm; and where love rules over the heart with ſo regular and gentle an empire, that the leaſt degree of prudence is ſufficient to conduct it?

It is a happineſs to live in thoſe climates which permit a communication between each other, where that ſex which has moſt charms ſeems to embelliſh ſociety, and where wives, reſerving themſelves for the pleaſures of one, contribute to the amuſement of all.

CHAP XII.

Of natural modeſty.

ALL nations are equally agreed in fixing contempt and ignominy on the incontinence of women. Nature has dictated this to all. She has eſtabliſhed the attack, and ſhe has eſtabliſhed too the defence; and having implanted deſires in both, ſhe has given to the one boldneſs, and to the other ſhame. She has given to individuals a long extent of years, in which they are to ſeek their own preſervation; but to perpetuate themſelves, ſhe has given only a moment.

It is then far from being true, that to be incontinent is to follow the laws of nature; ſince this is, on the contrary, a violation of them: it is only by modeſty and diſcretion that we can follow theſe laws.

Beſides, it is natural for intelligent beings to feel their imperfections. Nature has therefore fixed modeſty in our minds, that is, a ſhame of our imperfections.

When therefore the phyſical power of certain cli-

mates violates the natural law of the two ſexes, and that of intelligent beings, it belongs to the legiſlature to make civil laws to oppoſe the nature of the climate, and to re-eſtabliſh the primitive laws.

CHAP. XIII.

Of jealouſy.

WITH reſpect to nations, we ought to diſtinguiſh between the paſſion of jealouſy, and a jealouſy ariſing from cuſtoms, manners, and laws. The one is a hot raging fever; the other cold, but ſometimes terrible, may be joined with indifference and contempt.

The one, which is an abuſe of love, derives its birth from love itſelf. The other depends only on manners, on the cuſtoms of a nation, on the laws of the country, and ſometimes even on religion *.

It is almoſt always the effect of the phyſical power of the climate; and, at the ſame time, the remedy of this phyſical power.

CHAP. XIV.

Of the eaſtern manner of domeſtic government.

WIVES are changed ſo often in the Eaſt, that they cannot have the power of domeſtic government. This care is therefore committed to the eunuchs, whom they intruſt with all their keys, and the management of all their houſehold affairs. "In "Perſia," ſays Sir John Chardin, "they give wives "their cloaths, as we do to children." Thus that care which ſeems ſo well to become them, that care which every where elſe is the firſt of their cares, does not at all concern them.

* Mahomet deſired his followers to watch their wives; a certain Iman, when he was dying, ſaid the ſame thing; and Confucius preached the ſame doctrine.

CHAP. XV.

Of divorce and repudiation.

THERE is this difference between a divorce and a repudiation, that a divorce is made by mutual conſent, occaſioned by mutual antipathy; while a repudiation is made by the will, and for the advantage of one of the two parties, independently of the will and advantage of the other.

The neceſſity there is ſometimes for women to repudiate, and the difficulty that always attends it, render that law very tyrannical which gives this right to men, without giving it to women. A huſband is the maſter of the houſe; he has a thouſand ways of keeping his wife to her duty, or of bringing her back to it; ſo that in his hands it ſeems as if repudiation could be only a new abuſe of power. But a wife who repudiates, only makes uſe of a dreadful kind of remedy. It is always a great misfortune for her to go in ſearch of a ſecond huſband, when ſhe has loſt the moſt part of her attractions with another. One of the advantages attending the charms of youth in the female ſex is, that in an advanced age the huſband is led to complacency and love by the remembrance of paſt pleaſures.

It is then a general rule, that in all countries where the laws have given to men the power of repudiating, they ought alſo to give it to women.

Nay, in climates where women live in domeſtic ſlavery, one would think that the law ought to permit women the right of repudiation, and to huſbands only that of divorce.

When wives are confined in a ſeraglio, the huſband ought not to repudiate on account of an oppoſition of manners; it is the huſband's fault if their manners are incompatible.

Repudiation, becauſe of the barrenneſs of the woman, ought never to take place but where there is

only one wife; when there are many, this is of no importance to the husband.

A law of the Maldivians * permitted them to take again a wife whom they had repudiated. A law of Mexico forbade † their being re-united under pain of death. The law of Mexico was more rational than that of the Maldivians; at the time even of the dissolution it attended to the perpetuity of marriage; instead of this, the law of the Maldivians seemed equally to sport with marriage and repudiation.

The law of Mexico admitted only of divorce. This was a particular reason for their not permitting those who were voluntarily separated, to be ever re-united. Repudiation seems chiefly to proceed from a hastiness of temper, and from the dictates of some of the passions; while divorce appears to be an affair of deliberation.

Divorces are frequently of great political use; but as to the civil utility, they are established only for the advantage of the husband and wife, and are not always favourable to their children.

CHAP. XVI.

Of repudiation and divorce amongst the Romans.

ROMULUS permitted a husband to repudiate his wife, if she had committed adultery, prepared poison, or procured false keys. He did not give to women the right of repudiating their husbands. Plutarch ‡ calls this a law extremely severe.

As the Athenian law gave the power ‖ of repudiation to the wife as well as the husband, and as this right was obtained by the women amongst the primitive Romans, notwithstanding the law of Romulus, it is evident that this institution was one of those

* They took them again preferably to any other, because in this case there was less expence. *Pirard's travels.*

† History of the conquest of Mexico by Solis, page 499.

‡ Life of Romulus.

‖ This was a law of Solon.

which the deputies of Rome brought from Athens, and which were inſerted into the laws of the twelve tables.

Cicero ſays ‡, that the reaſons of repudiation ſprung from the law of the twelve tables. We cannot then doubt, but that this law increaſed the number of the reaſons for repudiation eſtabliſhed by Romulus.

The power of divorce was alſo an appointment, or at leaſt a conſequence of the law of the twelve tables. For from the moment that the wife or the huſband had ſeparately the right of repudiation, there was a much ſtronger reaſon for their having the power of quitting each other by mutual conſent.

The law did not require that they ſhould lay open the cauſes of divorce ‖. In the nature of the thing, the reaſons for repudiation ſhould be given, while thoſe for divorce are unneceſſary; becauſe whatever cauſes the law may admit as ſufficient to break a marriage, a mutual antipathy muſt be ſtronger than them all.

The following fact, mentioned by Dionyſius Halicarnaſſus †, Valerius Maximus ‡, and Aulus Gellius ‖, does not appear to me to have the leaſt degree of probability: Though they had at Rome (ſay they), the power of repudiating a wife, yet they had ſo much reſpect for the auſpices, that nobody, for the ſpace of five hundred and twenty years §, ever made uſe of this right till Carvilius Ruga repudiated his wife, becauſe of her ſterility. We need only be ſenſible of the nature of the human mind, to perceive how very extraordinary it muſt be, for a law to give ſuch right to a whole nation, and yet for nobody to make uſe of it.

‡ "Minam res ſuas ſibi habere juſſit; ex duodecim tabulis cauſam addidit." *Philip.* 2.

‖ Juſtinian altered this. nov. 117. c. 10.

† Lib. ii. ‡ Lib. ii. c. 4. ‖ Lib. iv. c. 3, 8.

§ According to Dionyſ. Halicarn. and Valerius Maximus, and five-hundred and twenty-three according to Aulus Gellius. So alſo they did not agree in placing this under the ſame conſuls.

Coriolanus ſetting out on his exile, adviſed his wife † to marry a man more happy than himſelf. We have juſt ſeen that the law of the twelve tables, and the manners of the Romans, greatly extended the law of Romulus. But to what purpoſe were theſe extenſions, if they never made uſe of a power to repudiate? Beſides, if the citizens had ſuch a reſpect for the auſpices, that they would never repudiate, how came the legiſlators of Rome to have leſs than they; and how came the laws inceſſantly to corrupt their manners?

All that is ſurpriſing in the fact in queſtion will ſoon diſappear, only by comparing two paſſages in Plutarch. The regal law * permitted a huſband to repudiate in the three caſes already mentioned, and "it enjoined," ſays Plutarch ††, "that he who repudiated in any other caſe, ſhould be obliged to give the half of his ſubſtance to his wife, and that the other half ſhould be conſecrated to Ceres." They might then repudiate in all caſes, if they were but willing to ſubmit to the penalty. Nobody had done this before Carvilius Ruga ‡; who, as Plutarch ſays in another place ‖, "put away his wife for her ſterility, two hundred and thirty years after Romulus:" that is, ſhe was repudiated ſeventy-one years before the law of the twelve tables, which extended both the power and the cauſes of repudiation.

The authors I have cited ſay, that Carvilius Ruga loved his wife; but that the cenſors made him take an oath to put her away, becauſe of her barrenneſs, to the end that he might give children to the republic; and that this rendered him odious to the people. We muſt know the genius and temper of the Romans,

† See the ſpeech of Veturia in Dionyſ. Halicarn. lib. 8.

* Plutarch, life of Romulus. †† Ibid.

‡ Indeed ſterility is not a cauſe mentioned by the law of Romulus; but, to all appearance, he was not ſubject to a confiſcation of his effects, ſince he followed the orders of the cenſors.

‖ In his compariſon between Theſeus and Romulus.

before we can discover the true cause of the hatred they had conceived for Carvilius. He did not fall into disgrace with the people for repudiating his wife; this was an affair that did not at all concern them. But Carvilius had taken an oath to the censors, that because of the sterility of his wife, he would repudiate her to give children to the republic. This was a yoke which the people saw the censors were going to put upon them. I shall disclose, in the prosecution of this work *, the repugnance which they always felt for regulations of the like kind We should explain the laws by the laws, and history by history.

BOOK XVII.

How the Laws of Political Servitude have a Relation to the Nature of the Climate.

CHAP. I.

Of political servitude.

POLITICAL servitude does not less depend on the nature of the climate, than that which is civil and domestic; and this we are going to make appear.

CHAP. II.

The difference between nations in point of courage.

WE have already observed, that great heat enervates the strength and courage of men, and that in cold climates they have a certain vigour of body and mind which renders them capable of long, painful, great, and intrepid actions. This remark holds

* Book xxiii. c. 21.

true not only between one nation and another, but even in the different parts of the ſame country. In the north of China †, people are more courageous than in the ſouth, and thoſe in the ſouth of Corea * have leſs bravery than thoſe in the north.

We ought not then to be aſtoniſhed, that the effeminacy of the people in hot climates has almoſt always rendered them ſlaves; and that the bravery of thoſe in cold climates has enabled them to maintain their liberties. This is an effect which ſprings from a natural cauſe.

This has alſo been found true in America; the deſpotic empires of Mexico and Peru were near the line, and almoſt all the little free nations were, and are ſtill, near the poles.

CHAP. III.

Of the climate of Aſia.

THE relations of travellers inform us ‡, that the vaſt continent of the north of Aſia, which extends from forty degrees or thereabouts to the pole, and from the frontiers of Muſcovy even to the Eaſtern ocean, is in an extremely cold climate; that this immenſe tract of land is divided by a chain of mountains, which run from weſt to eaſt, leaving Siberia on the north, and Great Tartary on the ſouth; that the climate of Siberia is ſo cold, that excepting ſome places it cannot be cultivated; and that though the Ruſſians have ſettlements all along the Irtis, they cultivate nothing; that in this country there grows only ſome little firs and ſhrubs; that the natives of the country are divided into wretched colonies, like thoſe of Canada; that the reaſon of this cold proceeds on the one hand from the height of the land, and on the

† Du Halde, vol. i. page 112.

* The Chineſe books make mention of this, *ibid.* vol. iv. page 448.

‡ See travels to the North, vol. 8. the hiſtory of the Tartars, and Du Halde, vol. iv.

ther from the mountains, which, in proportion as they run from south to north, are levelled in such a manner that the north wind every where blows without oppoſition; that this wind, which renders Nova Zembla uninhabitable, blowing in Siberia makes it a barren waſte; that in Europe, on the contrary, the mountains of Norway and Lapland are admirable bulwarks, which cover the northern countries from this wind; ſo that at Stockholm, which is about fifty-nine degrees latitude, the earth produces plants, fruits, and corn; and that about Abo, which is ſixty-one degrees, and even to ſixty-three and ſixty-four, there are mines of ſilver, and the land is fruitful enough.

We ſee alſo in theſe relations, that Great Tartary, which is to the ſouth of Siberia, is alſo exceeding cold; that the country cannot be cultivated; that nothing can be found but paſturage for their flocks and herds; that trees cannot grow there, but only brambles as in Iceland; that there are near China and India ſome countries where there grows a kind of millet, but that neither corn nor rice will ripen; that there is ſcarcely a place in Chineſe Tartary at forty-three, forty-four, and forty-five degrees, where it does not freeze ſeven or eight months in the year, ſo that it is as cold as Iceland, though it might be imagined from its ſituation to be as hot as the ſouth of France; that there are no cities, except four or five towards the Eaſtern ocean, and ſome which the Chineſe, for political reaſons, have built near China; that in the reſt of Great Tartary there are only a few ſituated in Buchar, Turqueſtan, and Cathay; that the reaſon of this extreme cold proceeds from the nature of the nitrous earth, full of ſaltpetre and ſand, and more particularly from the height of the land. Father Verbieſt found, that a certain place, eighty leagues north of the great wall towards the ſource of Kavamhuram, exceeded the height of the ſea near Pekin three thouſand geometrical paces; that this height * is the cauſe

* Tartary is then a kind of a flat mountain.

that though almoſt all the great rivers of Aſia have their ſource in this country, there is however ſo great a want of water, that it can be inhabited only near the rivers and lakes.

The facts being laid down, I reaſon thus. Aſia has properly no temperate zone, as the places ſituated in a very cold climate immediately touch upon thoſe which are exceeding hot, that is, Turkey, Perſia, India, China, Corea, and Japan.

In Europe, on the contrary, the temperate zone is very extenſive, though ſituated in climates widely different from each other; there being no affinity between the climates of Spain and Italy, and thoſe of Norway and Sweden. But as the climate grows inſenſibly cold upon our advancing from ſouth to north, nearly in proportion to the latitude of each country, it thence follows that each reſembles the country joining to it, that there is no very extraordinary difference between them, and that, as I have juſt ſaid, the temperate zone is very extenſive.

From hence it comes, that in Aſia the ſtrong nations are oppoſed to the weak; the warlike, brave, and active people touch immediately on thoſe who are indolent, effeminate, and timorous. The one muſt therefore conquer, and the other be conquered. In Europe, on the contrary, ſtrong nations are oppoſed to the ſtrong; and thoſe who border on each other have nearly the ſame courage. This is the grand reaſon of the weakneſs of Aſia, and of the ſtrength of Europe; of the liberty of Europe, and of the ſlavery of Aſia; a cauſe that I do not recollect ever to have ſeen remarked. From hence it proceeds, that liberty in Aſia never increaſes; whilſt in Europe it is enlarged or diminiſhed according to particular circumſtances.

The Ruſſian nobility have indeed been reduced to ſlavery by the ambition of one of their princes; but they have always diſcovered thoſe marks of impatience and diſcontent which are never to be ſeen in the ſouthern climates. Have they not been able for a ſhort time to eſtabliſh an ariſtocratical goverſn-

ment? Another of the Northern kingdoms has loſt its laws; but we may truſt to the climate, that they are not loſt in ſuch a manner as never to be recovered.

CHAP. IV.

The conſequences reſulting from this.

WHAT we have juſt ſaid is perfectly conformable to hiſtory. Aſia has been ſubdued thirteen times; ſeven times by the northern nations, and twice by thoſe of the ſouth. In the early ages it was conquered three times by the Scythians; afterwards it was conquered once by the Medes, and once by the Perſians; again by the Greeks, the Arabs, the Moguls, the Turks, the Tartars, the Perſians, and the Afghans. I mention only the Upper Aſia, and ſay nothing of the invaſions made in the reſt of the ſouth of that part of the world, which has continually ſuffered prodigious revolutions.

In Europe, on the contrary, ſince the eſtabliſhment of the Greek and Phœnician colonies, we know but of four great changes; the firſt cauſed by the conqueſts of the Romans; the ſecond by the inundations of the Barbarians, who deſtroyed theſe very Romans; the third by the victories of Charlemagne; and the laſt by the invaſions of the Normans. And if this be rightly examined, we ſhall find, even in theſe changes, a general ſtrength diffuſed through all the parts of Europe. We know the difficulty which the Romans met with in conquering Europe, and the eaſe and facility with which they invaded Aſia. We are ſenſible of the difficulties the northern nations had to encounter in overturning the Roman empire; of the wars and labours of Charlemagne; and of the ſeveral enterprizes of the Normans. The deſtroyers were inceſſantly deſtroyed.

CHAP. V.

That when the people in the north of Asia, and those of the north of Europe have conquered, the effects of the conquest were not the same.

THE nations in the north of Europe conquered as freemen; the people in the north of Asia conquered as slaves, and subdued others only to gratify the ambition of a master.

The reason is, that the people of Tartary, the natural conquerors of Asia, are themselves enslaved. They are incessantly making conquests in the south of Asia, where they form empires; but that part of the nation which continues in the country, find that they are subject to a great master, who, being despotic in the south, will also be so in the north, and exercising an arbitrary power over the conquered subjects, pretends to the same over those who are the conquerors. This is at this day plainly seen in that vast country called Chinese Tartary, which is governed by the Emperor with a power almost as despotic as that of China itself, and which he every day extends by his conquests.

We may likewise see in the history of China, that the emperors * sent Chinese colonies into Tartary. These Chinese are become Tartars, and the mortal enemies of China; but this does not prevent their carrying into Tartary the spirit of the Chinese government.

A part of the Tartars who have conquered, have very often been themselves driven out; when they have carried into their deserts that servile spirit which they had acquired in the climate of slavery. The history of China furnishes us with great examples of this, as does also our ancient history †.

* As Vouty V Emperor of the fifth dynasty.

† The Scythians three times conquered Asia, and were three times driven from thence. *Justin. l.* ii.

From hence it proceeds, that the genius of the Getic or Tartarian nation has always resembled that of the empires of Asia. The people in these are governed by the cudgel; the people in Tartary by long whips. The spirit of Europe has always been contrary to these manners; and in all ages what the people of Asia have called punishment, the people of Europe have called the most outrageous abuse *.

The Tartars, who destroyed the Grecian empire, established in the conquered countries slavery and despotic power; the Goths, conquering the Roman empire, every where founded monarchy and liberty.

I do not know whether the famous Rudbeck, who in his Atlantica has bestowed such praises on Scandinavia, has made mention of that great prerogative which ought to set this people above all the nations upon earth; namely, this country's having been the source from whence spring the liberties of Europe, that is, of almost all the freedom which at present subsists amongst mankind.

Jornandez the Goth has called the north of Europe the forge † of the human race. I should rather call it the forge of the instruments which broke the chains framed in the south. In the north were formed those valiant nations, which sallied forth and left their countries to destroy tyrants and slaves, and to teach men, that nature having made them equal, reason could not render them dependent, except where it was necessary to their happiness.

* This is no way contrary to what I shall say in book 28, chap. 20, concerning the manner of thinking among the German nations, in respect to the cudgel; let the instrument be what it will, the power or action of beating was always considered by them as an affront.

† Humani generis officinam.

CHAP. VI.

A new phyſical cauſe of the ſlavery of Aſia, and of the liberty of Europe.

IN Aſia they have always had great empires: in Europe theſe could never ſubſiſt. Aſia has larger plains; it is cut out into much more extenſive diviſions, by mountains and ſeas; and as it lyes more to the ſouth, its ſprings are more eaſily dried up; the mountains are leſs covered with ſnow; and the rivers being not * ſo large, form ſmaller barriers.

Power in Aſia ought then to be always deſpotic: for if their ſlavery was not ſevere, they would ſoon make a diviſion inconſiſtent with the nature of the country.

In Europe the natural diviſion forms many nations of a moderate extent, in which the government of the laws is not incompatible with the maintenance of the ſtate; on the contrary, it is ſo favourable to it, that without this the ſtate would fall into decay, and become inferior to all others.

It is this which has formed a genius for liberty, that renders every part extremely difficult to be ſubdued and ſubjected to a foreign power, otherwiſe than by the laws and the advantage of commerce.

On the contrary, there reigns in Aſia a ſervile ſpirit, which they have never been able to ſhake off; and it is impoſſible to find, in all the hiſtories of this country, a ſingle paſſage which diſcovers a free ſoul: we ſhall never ſee any thing there but the heroiſm of ſlavery.

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

CHAP. VII.

Of Africa and America.

THIS is what I had to ſay of Aſia and Europe. Africa is in a climate like that of the ſouth of Aſia, and is in the ſame ſervitude. America * being deſtroyed, and lately repeopled by the nations of Europe and Africa, can now ſcarcely ſhew its true genius; but what we know of its ancient hiſtory is very conformable to our principles.

BOOK XVIII.

Of Laws in the Relation they bear to the Nature of the Soil.

CHAP. I.

How the nature of the ſoil has an influence on the laws.

THE goodneſs of the land in any country, naturally eſtabliſhes ſubjection and dependence. The huſbandmen, who compoſe the principal part of the people, are not very jealous of their liberty: They are too buſy and too intent on their own private affairs. A country which overflows with wealth, is afraid of pillage, afraid of an army. "Who is there "that forms this goodly party?" ſaid Cicero to Atticus †: "Are they the men of commerce and of huſ-"bandry? Let us not imagine that theſe are averſe

* The petty barbarous nations of America are called by the Spaniards Indios Bravos, and are much more difficult to ſubdue than the great empires of Mexico and Peru.

† Lib. 17.

" to monarchy, theſe to whom all governments are
" equal, as ſoon as they beſtow tranquillity."

Thus monarchy is more frequently found in fruitful countries, and a republican government in thoſe which are not ſo; and this is ſometimes a ſufficient compenſation for the inconveniencies they ſuffer by the ſterility of the land.

The barrenneſs of the Attic ſoil eſtabliſhed there a popular government; and the fertility of that of Lacedæmon an ariſtocratical form of government. For, in thoſe times, Greece was averſe to the government of a ſingle perſon; and ariſtocracy had the neareſt reſemblance to that government.

Plutarch ſays *, that the Cilonian ſedition having been appeaſed at Athens, the city fell into its ancient diſſenſions, and was divided into as many parties as there were kinds of territory in Attica. The men who inhabited the eminences, would by all means have a popular government; thoſe of the plain demanded a government compoſed of the chiefs; and they who were near the ſea, were for a government made up of both.

CHAP. II.

The ſame ſubject continued.

THESE fertile countries are always plains. where the inhabitants are unable to diſpute againſt a ſtronger body: They are then obliged to ſubmit, and when they have once ſubmitted, the ſpirit of liberty cannot return; the wealth of the country is a pledge of their fidelity. But in mountainous countries, as they have but little, they may preſerve what they have. The liberty they enjoy, or, in other words, the government they are under, is the only bleſſing worthy of their defence. It reigns therefore more in mountainous and difficult countries, than in thoſe which nature ſeems to have moſt favoured.

* Life of Solon.

The mountaineers preserve a more moderate government; becauſe they are not ſo liable to be conquered. They defend themſelves eaſily, and are attacked with difficulty; ammunition and proviſions are collected and carried againſt them with great expence, for the country furniſhes none. It is then more difficult to make war againſt them, a more hazardous enterpriſe; and all the laws that can be made for the ſafety of the people are there of leaſt uſe.

CHAP. III.

What countries are beſt cultivated.

COUNTRIES are not cultivated in proportion to their fertility, but to their liberty; and if we make an imaginary diviſion of the earth, we ſhall be aſtoniſhed to ſee in moſt ages, deſerts in the moſt fruitful parts, and great nations in thoſe where nature ſeems to refuſe every thing.

It is natural for a people to leave a bad country to ſeek a better; and not to leave a good country to ſeek a worſe. Moſt of the invaſions have therefore been made in countries which nature ſeems to have formed for happineſs; and as nothing is more nearly allied than deſolation and invaſion, the beſt countries are moſt frequently depopulated; while the frightful countries of the north continue always inhabited, from their being almoſt uninhabitable.

We find, by what hiſtorians tell us of the paſſage of the people of Scandinavia along the banks of the Danube, that this was not a conqueſt, but only a migration into deſert countries.

Theſe happy climates muſt therefore have been depopulated by other migrations, though we know not the tragical ſcenes that happened.

"It appears by many monuments of antiquity," ſays Ariſtotle *, "that the Sardinians were a Grecian "colony. They were formerly very rich; and Ariſ-

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

" teus, ſo famed for his love of agriculture, was their
" lawgiver. But they are ſince fallen to decay: for
" the Carthaginians becoming their maſters, deſtroyed
" every thing proper for the nouriſhment of man,
" and forbade the cultivation of the lands on pain of
" death." Sardinia was not recovered in the time of Ariſtotle, nor is it to this day.

The moſt temperate parts of Perſia, Turkey, Muſcovy and Poland, have not been able to recover perfectly from the devaſtations of the Tartars.

CHAP. IV.

New effects of the fertility and barrenneſs of countries.

THE barrenneſs of the earth renders men induſtrious, ſober, inured to hardſhip, courageous and fit for war; they are obliged to procure by labour what the earth refuſes to beſtow ſpontaneouſly. The fertility of a country gives eaſe, effeminacy, and a certain fondneſs for the preſervation of life. It has been remarked, that the German troops raiſed in thoſe places where the peaſants are rich, as, for inſtance, in Saxony, are not ſo good as the others. Military laws may provide againſt this inconvenience by a more ſevere diſcipline.

CHAP. V.

Of the inhabitants of iſlands.

THE people of the iſles have a higher reliſh for liberty than thoſe of the continent. Iſlands are commonly of a ſmall * extent; one part of the people cannot be ſo eaſily employed to oppreſs the other; the ſea ſeparates them from great empires; ſo that they cannot be countenanced by tyranny; conquerors are ſtopped by the ſea; the iſlanders themſelves are

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

not involved in conquests, and more easily preserve their laws.

CHAP. VI.

Of countries raised by the industry of men.

THOSE countries which the industry of men has rendered habitable, and which stand in need of the same industry to provide for their subsistence, require a mild and moderate government. There are principally three of this species, the two fine provinces of Kianguan and Tchekian in China, Egypt and Holland.

The ancient Emperors of China were not conquerors. The first thing they did to aggrandize themselves, was what gave the highest proof of their wisdom. They raised from beneath the waters two of the finest provinces of the empire; these owe their existence to the labour of man. And it is the inexpressible fertility of these two provinces which has given Europe such ideas of the felicity of this vast country. But a continual and necessary care to preserve from destruction so considerable a part of the empire, demanded rather the manners of a wise than of a voluptuous nation; rather the lawful authority of a monarch, than the tyrannic power of a despotic prince. Power was therefore necessarily moderated in that country, as it was formerly in Egypt, and as it is still in that part of the Turkish empire. Power was necessarily moderated as it is in Holland, which nature has made to attend to herself, and not to be abandoned to negligence or caprice.

Thus, in spite of the climate of China, where they are naturally led to a servile obedience; in spite of the apprehensions which follow a too great extent of empire, the first legislators of this country were obliged to make most excellent laws, and the government was frequently obliged to follow them.

CHAP. VII.

Of the works of men.

MEN by their care, and by the influence of good laws, have rendered the earth more proper for their abode. We ſee rivers flow where there have been lakes and marſhes: This is a benefit which nature has not beſtowed; but it is a benefit maintained and ſupplied by nature. When the Perſians * were maſters of Aſia, they permitted thoſe who conveyed a ſpring to any place which had not been watered before, to enjoy the benefit for five generations; and as a number of rivulets flowed from mount Taurus, they ſpared no expence in directing the courſe of their ſtreams. At this day, without knowing how they came thither, they are found in their fields and gardens.

Thus as deſtructive nations produce evils more durable than themſelves, the actions of induſtrious nations are the ſource of bleſſings which laſt when they are no more.

CHAP. VIII.

The general relation of laws.

THE laws have a very great relation to the manner in which the ſeveral nations procure their ſubſiſtence. There ſhould be a code of laws of a much larger extent, for a nation attached to trade and navigation, than for a people who are contented with cultivating the earth. There ſhould be a much greater for theſe, than for a people who live by their flocks and herds. There muſt be a greater for this laſt, than for thoſe who live by hunting.

* Polybius, lib. 10.

CHAP. IX.

Of the ſoil of America.

THE cauſe of there being ſo many ſavage nations in America, is the fertility of the earth, which ſpontaneouſly produces many fruits capable of affording them nouriſhment. If the women cultivate a ſpot of land round their cabins, the maiz grows up preſently; and hunting and fiſhing put the men in a ſtate of complete abundance. Beſides, animals that feed on graſs, as cows, buffaloes, &c. ſucceed there better than carnivorous beaſts.

We ſhould not, I believe, have all theſe advantages in Europe, if the land was left uncultivated; it would produce ſcarce any thing beſides foreſts of oaks, and other barren trees.

CHAP. X.

Of the number of men with regard to the manner in which they procure ſubſiſtence.

LET us ſee in what proportion the number of men is found, in nations who do not cultivate the earth. As the produce of uncultivated land is to the produce of land improved by culture; ſo the number of ſavages in one country is to the number of ſavages in another: And when the people who cultivate the land, cultivate alſo the arts, the number of ſavages is, to the number of this people, in the compound proportion of the number of ſavages to that of the huſbandmen, and of the number of huſbandmen to that of men who cultivate the arts.

They can ſcarcely form a great nation. If they are herdmen and ſhepherds, they have need of an extenſive country to furniſh ſubſiſtence for a ſmall number; if they live by hunting, their number muſt be ſtill leſs, and, in order to find the means of life, they muſt form a very ſmall nation.

Their country is commonly full of foreſts; which, as the men have not the art of draining off the waters, are filled with bogs; here each troop canton themſelves, and form a little nation.

CHAP. XI.

Of ſavage nations, and nations of barbarians.

THERE is this difference between ſavage and barbarous nations; the firſt are little diſperſed nations, which, for ſome particular reaſon, cannot be united; and the barbarians are commonly ſmall nations, capable of being united. The firſt are generally nations of hunters; the ſecond of herdmen and ſhepherds. This appears plain in the north of Aſia. The people of Siberia cannot live in bodies, becauſe they cannot find ſubſiſtence; the Tartars may live in bodies for ſome time, becauſe their herds and flocks may for a time be re-aſſembled. All the clans may then be re-united, and this is done when one chief has ſubdued many others; after which they may do two things, either ſeparate, or ſet out with a deſign to make a great conqueſt in ſome empire in the ſouth.

CHAP. XII.

Of the law of nations amongſt people who do not cultivate the earth.

AS theſe people do not live in limited and circumſcribed boundaries, many cauſes of ſtrife ariſe between them; they diſpute the uncultivated land, as we diſpute about inheritances. Thus they find frequent occaſions for war, in defence of their hunting, their fiſhing, the paſture for their cattle, and the taking of their ſlaves; and having no territory, they have many things to regulate by the law of nations, and but few to decide by the civil law.

CHAP. XIII.

Of the civil laws of thoſe nations who do not cultivate the earth.

THE diviſion of lands is what principally encreaſes the civil code. Amongſt nations where they have not made this diviſion, there are very few civil laws.

The inſtitutions of theſe people may be called *manners* rather than *laws*.

Amongſt ſuch nations as theſe, the old men, who remember things paſt, have great authority; they cannot there be diſtinguiſhed by wealth, but by wiſdom and valour.

Theſe people wander and diſperſe themſelves in paſture-grounds or in foreſts. Marriage cannot there have the ſecurity which it has amongſt us, where it is fixed by the habitation, and where the wife continues in one houſe; they may then more eaſily change their wives, poſſeſs many, and ſometimes mix indifferently like brutes.

Nations of herdmen and ſhepherds cannot leave their cattle, which are their ſubſiſtence, neither can they ſeparate themſelves from their wives, who look after them. All this ought then to go together, eſpecially as living generally in great plains, where there are few places of conſiderable ſtrength, their wives, their children, their flocks, may become the prey of their enemies.

Their laws regulate the diviſion of plunder, and have, like our Salic laws, a particular attention to thefts.

CHAP. XIV.

Of the political ſtate of the people who do not cultivate the lands.

THESE people enjoy great liberty: for, as they do not cultivate the earth, they are not fixed, they are wanderers and vagabonds; and, if one chief would deprive them of their liberty, they would immediately go and ſeek it under another, or retire into the woods, and live there with their families. The liberty of the man is ſo great among theſe people, that it neceſſarily draws after it the liberty of the citizens.

CHAP. XV.

Of people who know the uſe of money.

ARISTIPPUS being ſhipwrecked ſwam and got ſafe to the next ſhore, where ſeeing geometrical figures traced in the ſand, he was ſeized with a tranſport of joy, judging that he was amongſt Greeks, and not in a nation of barbarians.

Being alone, and caſt by ſome accident amongſt an unknown people; if you ſee a piece of money, be aſſured that you are arrived in a civilized nation.

The culture of lands requires the uſe of money. This culture ſuppoſes many arts and degrees of knowledge; and we always ſee ingenuity, the arts, and a ſenſe of want, making their progreſs with an equal pace. All this conduces to the eſtabliſhment of a ſymbol of value.

Torrents and eruptions * have made the diſcovery that metals were concealed in the earth. When they have once been ſeparated, they have eaſily been applied to their proper uſes.

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

CHAP. XVI.

Of civil laws amongſt people who know not the uſe of money.

WHEN a people have not the uſe of money, they are ſeldom acquainted with any other injuſtice than that which ſprings from violence; and the weak, by uniting, defend themſelves from its effects. They have nothing there but political regulations. But, where money is eſtabliſhed, they are ſubject to that injuſtice which proceeds from craft: an injuſtice that may be exerciſed a thouſand ways. From hence they are forced to have good civil laws, which ſpring up with the new means, and the ſeveral methods of becoming wicked.

In countries where they have no money, the robber takes only bare moveables, which have no reſemblance to each other. In countries where they make uſe of money, the robber takes the ſigns, and theſe always reſemble each other. In the firſt nothing can be concealed, becauſe the robber always takes along with him the proofs of his conviction; but in the others it is quite the contrary.

CHAP. XVII.

Of political laws amongſt nations who have not the uſe of money.

THE greateſt ſecurity of the liberties of a people, who do not cultivate the earth, is their not knowing the uſe of money. What is gained by hunting, fiſhing, or keeping herds of cattle, cannot be aſſembled in ſuch great quantities, nor be ſufficiently preſerved, for one man to find himſelf in a condition to corrupt many others: but when, inſtead of this, a man has the ſign of riches, he may obtain a large quantity of theſe ſigns, and diſtribute them amongſt whom he pleaſes.

The people who have no money have but few wants, and theſe are ſupplied both with eaſe, and in an equal manner. Equality is then unavoidable; and from hence it proceeds, that their chiefs are not deſpotic.

CHAP. XVIII.

Of the power of ſuperſtition.

IF what travellers tell us be true, the conſtitution of a nation of Louiſiana, called the Natches, is an exception to this. Their * chief diſpoſes of the goods of all his ſubjects, and makes them labour according to his pleaſure He has a power like that of the Grand Signor, and they cannot even refuſe him their heads. When the preſumptive heir enters into the world, they give him all the ſucking children to ſerve him during his life. One would imagine that this is the great Seſoſtris. He is treated in his cabin with as much ceremony as an emperor of Japan or China.

The prejudices of ſuperſtition are ſuperior to all other prejudices, and its reaſons to all other reaſons. Thus, though the ſavage nations have naturally no knowledge of deſpotic tyranny, yet this people feel it. They adore the ſun; and, if their chief had not imagined that he was the brother of this glorious luminary, they would have thought him a miſerable wretch like themſelves.

CHAP. XIX.

Of the liberty of the Arabs, and the ſervitude of the Tartars.

THE Arabs and Tartars are nations of herdmen and ſhepherds. The Arabs find themſelves in that general ſituation, of which we have been ſpeak-

* Edifying Letters, 20th collect.

ing, and are therefore free; whilſt the Tartars, (the moſt ſingular people on earth), are involved in a * political ſlavery. I have already given ſome reaſons for this †, and ſhall now give others.

They have no towns, they have no foreſts, and but few marſhes; their rivers are almoſt always frozen, and they dwell in an immenſe plain. They have paſture for their herds and flocks, and conſequently property; but they have no kind of retreat, or place of ſafety. A Khan is no ſooner overcome than they cut off his ‡ head; his children are treated in the ſame manner, and all his ſubjects belong to the conqueror. Theſe are not condemned to a civil ſlavery; they would in that caſe be a burden to a ſimple nation who have no lands to cultivate, and no need of any domeſtic ſervice. They therefore augment the nation; but inſtead of civil ſlavery, a political one muſt naturally be introduced amongſt them.

It is apparent, that in a country where the ſeveral clans make continual war, and are perpetually conquering each other; in a country where, by the death of the chief, the body politic of the vanquiſhed clan is always deſtroyed, the nation in general can enjoy but little freedom; for there is not a ſingle party that muſt not have been a very great number of times ſubdued.

A conquered people may preſerve ſome degree of liberty, when, by the ſtrength of their ſituation, they are in a ſtate that will admit of their capitulating after their defeat. But the Tartars, always defenceleſs, being once overcome, can never be able to ſtand upon conditions.

I have ſaid, in Chap. II. that the inhabitants of cultivated plains are ſeldom free. Circumſtances have

* When a Khan is proclaimed, all the people cry, that his word ſhall be as a ſword.

† Book xvii. chap. 5.

‡ We ought not therefore to be aſtoniſhed at Mahomet the ſon of Miriveis, who, upon taking Iſpahan, put all the princes of the blood to the ſword.

concurred to put the Tartars who dwell in uncultivated plains in the ſame ſituation.

CHAP. XX.

Of the LAW OF NATIONS *as practiſed by the Tartars.*

THE Tartars appear to be mild and humane amongſt themſelves, and yet they are moſt cruel conquerors: when they take cities, they put the inhabitants to the ſword, and imagine that they do them a favour when they ſell them or diſtribute them amongſt their ſoldiers. They have deſtroyed Aſia from India even to the Mediterranean, and all the country which forms the eaſt of Perſia they have made a deſert.

This law of nations is owing, I think, to the following cauſe. This people have no towns; all their wars are carried on with eagerneſs and impetuoſity. They fight whenever they hope to conquer; and, when they have no ſuch hopes, they join the ſtronger army. With ſuch cuſtoms, it is contrary to their law of nations, that a city which cannot reſiſt ſhould ſtop their progreſs. They regard not cities as an aſſembly of inhabitants, but as places made to ſet limits to their power. They beſiege them without art, and expoſe themſelves greatly in their ſieges; and therefore revenge themſelves by the blood of all thoſe who have ſpilt theirs.

CHAP. XXI.

The CIVIL LAW *of the Tartars.*

FATHER du Halde ſays, that, amongſt the Tartars, the youngeſt of the males is always the heir, by reaſon, that, as ſoon as the elder are capable of leading a paſtoral life, they leave the houſe with a certain number of cattle given them by the father, and go to build a new habitation. The laſt of the

males who continues in the houſe with the father is then his natural heir.

I have heard that a like cuſtom was alſo obſerved in ſome ſmall diſtricts of England. This was doubtleſs a paſtoral law conveyed thither by ſome of the people of Brittany, or eſtabliſhed by ſome German nation. We are informed by Cæſar and Tacitus, that theſe laſt cultivated but little land.

CHAP. XXII.

Of a CIVIL LAW *of the German nations.*

I SHALL here explain how that particular paſſage of the Salic law, which is commonly diſtinguiſhed by the term of "the Salic law," relates to the inſtitutions of a people who do not cultivate the earth, or at leaſt who cultivate it but very little.

The * Salic law ordains, that, when a man has left children behind him, the males ſhall ſucceed to the Salic land, to the prejudice of the females.

To underſtand the nature of thoſe Salic lands, there needs no more than to ſearch into the uſages or cuſtoms with reſpect to land amongſt the Franks before they came out of Germany.

Mr Echard has very plainly proved, that the word Salic is derived from Sala, which ſignifies a houſe, and that therefore the Salic land was the land of the houſe. I ſhall go farther, and examine what was the houſe, and what the land belonging to the houſe, among the Germans.

"They dwell not in towns," ſays † Tacitus, "nor "can they bear to have their houſes joined to thoſe "of others; every one leaves a ſpace or ſmall piece "of ground about his houſe which is incloſed and

* Tit. 62.

† "Nullas Germanorum populis urbes habitari ſatis notum "eſt, ne pati quidem inter ſe junctas ſedes; colunt diſcreti, "ut nemus placuit. Vicos locant, non in noſtrum morem "connexis et cohærentibus ædificiis; ſuam quiſque domum "ſpatio circumdat." *De morib. German.*

"shut up." Tacitus is very exact in this account; for many laws of the ‡ barbarian codes have different decrees against those who threw down this inclosure, as well as against those who broke into the house.

We learn from Tacitus and Cæsar, that the lands cultivated by the Germans were given them only for the space of a year, after which they again became public. They had no other patrimony but the house and a piece of land within the ‖ inclosure that surrounded it. It was this particular patrimony which belonged to the males. And indeed how could it belong to the daughters? they were to pass into another house.

The Salic land was then within that inclosure which belonged to a German house; this was the only property they had. The Franks, after their conquests, acquired new possessions, and continued to call them "Salic lands."

When the Franks lived in Germany, their wealth consisted of slaves, flocks, horses, arms, &c. the house and the small portion of land adjoining to it, were naturally given to the male-children, who were to dwell there. But afterwards, when the Franks had by conquest acquired large divisions of land, they thought it hard, that the daughters and their children should be incapable of enjoying any part of them. They introduced a custom of permitting the father to recall his daughter and her children. They silenced the law; and it appears that these recalls were frequent, since they were entered in the formularies †.

Among all these formularies I find one * of a singular nature. A grandfather recalled his grand-children to succeed with his sons and daughters. What

‡ The law of the Allemans, chap. x. and law of the Bavarians tit. x. § 1. and 4.

‖ This inclosure is called Cartis in the charters.

† See Marculfus, lib. ii. form. 10. and 12. append. to Marculfus form xlix. and the ancient formularies of Sirmondus, form. xxii.

* Form 55. in Lindenbrock's collection.

then became of the Salic law? In thoſe times either it could not be obſerved, or the continual uſe of recalling the daughters had made them regard their ability to inherit, as a caſe authoriſed by cuſtom.

The Salic law had not in view a preference of one ſex to the other, much leſs had it a regard to the perpetuity of a family, a name, or the tranſmiſſion of land. Theſe things did not enter into the heads of the Germans; it was purely a law of œconomy which gave the houſe, and the land dependent on the houſe, to the males who ſhould dwell in it, and to whom it conſequently was of moſt ſervice.

We need here only tranſcribe the title of the *allodial lands* of the Salic law, that famous text of which ſo many have ſpoken, and which ſo few have read.

" If a man dies without iſſue, his father or mother " ſhall ſucceed him. 2. If he has neither father nor " mother, his brother or ſiſter ſhall ſucceed him. 3. If " he has neither brother nor ſiſter, the ſiſter of his " mother ſhall ſucceed him. 4. If his mother has no " ſiſter, the ſiſter of his father ſhall ſucceed him. 5. If " his father has no ſiſter, the neareſt relation by the " male ſhall ſucceed. 6. Not * any part of the Sa- " lic land ſhall paſs to the females; but it ſhall be- " long to the males; that is, the male children ſhall " ſucceed their father."

It is plain that the five articles relate to the inheritance of a man who dies without iſſue, and the ſixth to the ſucceſſion of him who has children.

When a man dies without children, the law ordains that neither of the two ſexes ſhall have the preference to the other, except in certain caſes. In the two firſt degrees of ſucceſſion, the advantages of the males and females were the ſame; in the third and fourth, the females had the preference, and the males in the fifth.

Tacitus gives us the ſeeds of theſe extravagancies:

* " De terra vero Salica in mulierem nulla portio hereditaria " tranſit, ſed hoc virilis ſexus acquirit; hoc eſt, filii in ipſa he- " reditate ſuccedunt." *Tit.* 62. § 6.

" The ſiſters † children, (ſays he,) are as dear to " their uncle as to their own father. There are men " who regard this degree of kindred as more ſtrict, " and even more holy. They prefer it when they " recieve hoſtages." From hence it proceeds that our earlieſt ‡ hiſtorians ſpeak in ſuch ſtrong terms of the love of the kings of the Franks for their ſiſters, and their ſiſters children. And indeed, if the children of the ſiſter were conſidered in her brother's houſe as his own children, it was natural for theſe to regard their aunt as their mother.

The ſiſter of the mother was preferred to the father's ſiſter; this is explained by other texts of the Salic law. When a * woman was a widow, ſhe fell under the guardianſhip of her huſband's relations; the law preferred to this guardianſhip the relations by the females before thoſe by the males. Indeed a woman who entered into a family, joining herſelf with thoſe of her own ſex, became more united to her relations by the female than by the male. Moreover, when ‖ a man had killed another, and had not wherewithal to pay the pecuniary penalty he had incurred, the law permitted him to deliver up his ſubſtance, and his relations were to ſupply what was wanting. After the father, mother, and brother, the ſiſter of the mother was to pay, as if this tie had ſomething in it moſt tender. Now, the degree of kindred, which gives the burthens, ought to give alſo the advantages.

The Salic law enjoins, that, after the father's ſiſter, the ſucceſſion ſhould be held by the neareſt relation

† " Sororum filiis idem apud avunculum quam apud patrem " honor. Quidam ſanctiorem arctioremque hunc nexum ſan- " guinis arbitrantur, et in accipiendis obſidibus magis exigunt, " tanquam ii et animum firmius et domum latius teneant." *De moribus Germanorum.*

‡ See in Gregory of Tours, lib. viii. c. 18. and 20. and lib. ix. c. 16. and 20. the rage of Gontram at Leovigild's ill treatment of Ingunda his niece, which Childebert her brother took up arms to revenge.

* Salic laws tit. 47.

‖ Ibid. tit. 61. § 1.

male; but, if this relation was beyond the fifth degree, he ſhould not inherit. Thus a woman of the fifth degree might inherit to the prejudice of a male of the ſixth: And this may be ſeen in the ‡ law of the Ripuarian Franks, (a faithful interpretation of the Salic law), under the title of *allodial lands*, where it follows ſtep by ſtep the Salic law on the ſame ſubject.

If the father left iſſue, the Salic law would have the daughters excluded from the inheritance of the Salic land, and that it ſhould belong to the male children.

It would be eaſy for me to prove, that the Salic law did not abſolutely exclude the daughters from the poſſeſſion of the Salic land, but only in the caſe where they were excluded by their brothers. This appears from the Salic law itſelf, which, after having ſaid that the women ſhall poſſeſs none of the Salic land, but only the males, interprets and reſtrains itſelf, by adding, "that is, the ſon ſhall ſucceed to the inheri-" tance of the father."

2. The text of the Salic law is cleared up by the law of the Ripuarian Franks, which has alſo a title * on allodial lands, very conformable to that of the Salic law.

3. The laws of theſe barbarous nations, who all ſprung from Germany, interpret each other, more particularly as they all have nearly the ſame ſpirit. The Saxon law † injoined the father and mother to leave their inheritance to their ſon, and not to their daughter; but, if there were none but daughters, they were to have the whole inheritance.

4. We have two ancient formularies ‖ that ſtate the

‡ "Et deinceps uſquæ at quintum genuculum qui proximus "fuerit in hereditatem ſuccedat." *Tit.* 56. § 3.

* Tit. 56.

† Tit. 7. § 1. "Pater aut mater defuncti, filio non filiæ he-"reditatem relinquant; § 4. qui defunctus, non filios, ſed "filias reliquerit, ad eas omnis hereditas pertineat."

‖ In Marculfus, lib. ii. form. 12. and in the appendix to Marculfus, form. 49.

caſe, in which, according to the Salic law, the daughters were excluded by the males, that is, when they were in competition with their brother.

5. Another formulary ‖ proves, that the daughter ſucceeded to the prejudice of the grandſon; ſhe was therefore excluded only by the ſon.

6. If daughters had been generally excluded by the Salic law from the inheritance of land, it would be impoſſible to explain the hiſtories, formularies, and charters, which are continually mentioning the lands and poſſeſſions of the women under the firſt race.

People have been to blame to aſſert †, that the Salic lands were fiefs. 1. This head is diſtinguiſhed by the title of allodial lands. 2. Fiefs at firſt were not hereditary. 3. If the Salic lands had been fiefs, how could Marculfus treat that cuſtom as impious which excluded the women from inheriting, when the males themſelves did not ſucceed to fiefs? 4. The charters, which have been cited to prove that the Salic lands were fiefs, only prove that they were freeholds. 5. Fiefs were not eſtabliſhed till after the conqueſt, and the Salic cuſtoms ſubſiſted long before the Franks left Germany. 6. It was not the Salic law, which, by ſetting bounds to the ſucceſſion of women, formed the eſtabliſhment of fiefs; but it was the eſtabliſhment of fiefs that ſet limits to the ſucceſſion of women, and to the regulations of the Salic law.

After what had been ſaid, one would not imagine that the perpetual ſucceſſion of the males to the crown of France ſhould have taken its riſe from the Salic law, and yet this is a point undoubtedly certain. I prove it from the ſeveral codes of the barbarous nations. The Salic law * and the law of the Burgundians † refuſed the daughters the right of ſucceeding to the land in conjunction with their brothers; neither did they ſucceed to the crown. The law of the

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

Viſigoths ‡, on the contrary, permitted the daughters to inherit the land with the brothers ‖; and the women were capable of inheriting the crown. Amongſt theſe people the regulations of the civil law had an effect on the political.

This was not the only caſe in which the political law of the Franks gave way to the civil law. By the Salic law all the brothers ſucceeded equally to the land, and this was alſo decreed by a law of the Burgundians. Thus, in the kingdom of the Franks, and in that of the Burgundians, all the brothers ſucceeded to the crown, if we except a few murders and uſurpations which took place amongſt the Burgundians.

CHAP. XXIII.

Of the ornaments of royalty.

A PEOPLE who do not cultivate the land have not ſo much as an idea of luxury. We may ſee in Tacitus the admirable ſimplicity of the German nations; the arts were not employed in their ornaments; theſe were founded in nature. If the family of their chief was to be diſtinguiſhed by any ſign, it was no other than that which nature beſtowed. The kings of the Franks, of the Burgundians, and the Viſigoths, had their long hair for a diadem.

CHAP. XXIV.

Of the marriages of the kings of the Franks.

I HAVE already ſaid, that with theſe people who do not cultivate the earth, marriages are leſs fixed than with others, and that they generally take many wives. "The Germans were almoſt the only

‡ Lib iv. tit. 2. § 1.

‖ The German nations, ſays Tacitus, had common cuſtoms, and alſo thoſe which were peculiar to each.

" people of * all the barbarous nations who were sa-
" tisfied with one wife, if we except †," says Tacitus,
" some persons, who, not from a dissoluteness of
" manners, but because of their nobility, had many."

This explains the reason why the kings of the first race had so great a number of wives. These marriages were less a proof of incontinence, than an attribute of dignity: and it would have wounded them in a tender point to have deprived them of such a prerogative ‡. This explains the reason why the example of the kings was not followed by the subjects.

CHAP. XXV.

CHILDERIC.

" MARRIAGES amongst the Germans," says
" Tacitus," are strictly observed §. Vice is not
" there a subject of ridicule. To corrupt, or be cor-
" rupted, is not called a point of fashion, or a man-
" ner of living; there are few examples ‖ in this po-
" pulous nation of the violation of conjugal faith."

This was the reason of the expulsion of Childeric; he shocked their rigid virtue, which conquest had not had time to corrupt.

CHAP. XXVI.

Of the time when the kings of the Franks became of age.

BARBARIANS who do not cultivate the earth have, strictly speaking, no territory, and are, as we have

* " Prope soli barbarorum singulis uxoribus contenti sunt." *De morib. Germanorum.*

† " Exceptis admodum paucis, qui non libidine, sed ob nobili-
" tem, plurimis nuptiis ambiuntur " *Ibid.*

‡ See Fredegarius's chronicle of the year 628.

§ " Severa matrimonio ——— nemo illic vitia ridet, nec cor-
" rumpere et corrumpi sæculum vocatur." *De morib German.*

‖ " Paucissima in tam numerosa gente adulteria." *Ibid.*

already ſaid, rather governed by the law of nations, than by civil laws. They are therefore always armed. Thus Tacitus tell us, "that the Germans* undertook no affairs either of a public or private nature, unarmed." They gave their † opinion by a ſign with their arms ‡. As ſoon as they could carry them they were preſented to the aſſembly: they put a javelin ‖ into their hands; from that moment § they were out of their infancy; they had been a part of the family, now they became a part of the republic.

Childebert II. was ** fifteen years old, when Gontram his uncle declared that he was of age, and capable of governing by himſelf. "I have put," ſays he ††, "this javelin into thy hands, as a token that I "have given thee all my kingdom ‡‡:" and then turning towards the aſſembly, he added, "You ſee that my ſon "Childebert is become a man; obey him."

We find in the Ripuarian laws, that the age of fifteen, the ability of bearing arms, and majority, went together; it is there ſaid §§§, "that, if a Ripuarian "dies, or is killed, and leaves a ſon behind him, that "ſon can neither proſecute, nor be proſecuted, till "he has completely attained the age of fifteen; and

* "Nihil neque publicæneque privatæ rei, niſi armati, agunt." *Ibid.*

† "Si diſplicuit ſententia, fremitu aſpernantur; ſi placuit, "frameas concutiunt." *Ibid.*

‡ "Sed arma ſumere ante cuiquam moris quam civitas ſuffec-"turum probaverit."

‖ "Tum in ipſo conſilio vel principum aliquis, vel pater vel "propinquus, ſcuto frameaque juvenem ornant."

§ "Hæc apud illos toga, hic primus juventæ honos; ante hoc "domus pars videntur, mox reipublicæ."

** He was ſcarcely five years old, ſays Gregory of Tours. l. v. c. 1. when he ſucceeded to his father in the year 575. Gontram declares him of age in the year 585; he was therefore at that time no more than fifteen.

†† "Gontrammus, data in Childeberti manu haſta, dixit, Hoc eſt "indicium, quod tibi omne regnum meum tradidi." *Ib.* l. 7. c 33.

‡‡ Gontram declared that his nephew Childebert, who was already king, was out of his minority, and beſides he made him his heir.

§§§ Tit. 81.

" then he may either anſwer for himſelf, or chuſe a " champion." It was neceſſary that his mind ſhould be ſufficiently formed, that he might be able to defend himſelf in court, and that his body ſhould have all the ſtrength that was proper for his defence in combat. Amongſt the Burgundians *, who alſo made uſe of combat in their judiciary proceedings, they were of age at fifteen.

Agathias tells us, that the arms of the Franks were light, they might therefore be of age at fifteen. In ſucceeding times the arms made uſe of were heavy, and they were already greatly ſo in the time of Charlemagne, as appears by our capitularies and romances. Thoſe who ‡ had fiefs, and were conſequently obliged to do military ſervice, were not then of age till they were twenty-one years old †.

CHAP. XXVII.

The ſame ſubject continued.

WE have ſeen that the Germans did not appear in their aſſemblies, before they were of age; they were a part of the family, but not of the republic. This was the reaſon that the children of Clodomir king of Orleans, and conquerer of Burgundy, were not declared kings, becauſe they were of too tender an age to be preſent at the aſſembly. They were not yet kings, but they had a right to be kings as ſoon as they were able to bear arms; and in the mean time Clotilda, their grandmother, governed the ſtate §. But their uncles Clotarius and Childebert aſſaſſinated them, and divided their kingdom. This action was

* Tit. 87.

‡ There was no change in the time in regard to the common people.

† St Lewis was not of age till twenty-one; this was changed by an edict of Charles V. in the year, 1374.

§ It appears from Gregory of Tours, l. iii. that ſhe choſe two natives of Burgundy, which had been conquered by Clodomir, to raiſe them to the ſee of Tours, which alſo belonged to Clodomir.

the cauſe that, in the following ages, princes in their minority were declared kings immediately after the death of their fathers. Thus Duke Gondovald ſaved Childebert II. from the cruelty of Chilperic, and cauſed him to be declared king † when he was only five years old.

But even in this change they followed the original ſpirit of the nation; for the acts did not paſs in the name of the young king: ſo that the Franks had a double adminiſtration; the one which concerned the adminiſtration of the infant king, and the other which regarded the kingdom; and in the fiefs there was a difference between the guardianſhip and the civil adminiſtration.

CHAP. XXVIII.

Of the ſanguinary temper of the kings of the Franks.

CLOVIS was not the only prince who had invaded Gaul. Many of his relations had entered this country with particular tribes; but, as he had much greater ſucceſs, and could give conſiderable eſtabliſhments to thoſe that followed him, the Franks ran to him from all the tribes, ſo that the other chiefs found themſelves too weak to reſiſt him. He formed a deſign of exterminating his whole race, and he ſucceeded ‡. He feared, ſays Gregory of Tours ‖, leſt the Franks ſhould chuſe another chief. His children and ſucceſſors followed this practice to the utmoſt of their power. Thus the brother, the uncle, the nephew, and, what is ſtill worſe, the father or the ſon, were perpetually conſpiring againſt their whole family. The law continually divided the monarchy; while fear, ambition, and cruelty, wanted to re-unite it.

† Gregory of Tours, l. v. c. 1. "Vix luſtro ætatis uno jam peracto, qui die Dominicæ natalis regnare cœpit."

‡ Gregory of Tours, l. ii. ‖ Ibid.

CHAP. XXIX.

Of the national aſſemblies of the Franks.

IT has been remarked above, that nations who do not cultivate the land enjoy great liberty. This was the caſe of the Germans. Tacitus ſays, that they gave their kings or chiefs a very moderate degree of power *; and Cæſar adds farther †, that in times of peace they had no common magiſtrates; but their princes diſtributed juſtice in each village. Thus, as Gregory of Tours § ſufficiently proves, the Franks in Germany had no king.

"The princes," ſays Tacitus ‖, "deliberate on "ſmall matters, while affairs of great importance are "laid before the whole nation; but in ſuch a man-"ner, that theſe very affairs, which are under the "cognizance of the people, are at the ſame time laid "before the princes." This cuſtom was obſerved by them after their conqueſts, as may be ſeen ↓ in all their records.

Tacitus ſays ‡, that capital crimes might be carried before the aſſembly. It was the ſame after the conqueſt, when the great vaſſals were tried before that body.

* "Nec regibus libera aut infinita poteſtas. Ceterum neque "animadvertere, neque vincire, neque verberare, &c." *De morib. Germ.*

† "In pace nullus eſt communis magiſtratus, ſed principes "regionum atque pagorum inter ſuos jus dicunt." *De bello Gal. lib.* 6.

§ Lib. 2.

‖ "De minoribus principes conſultant, de majoribus omnes; "ita tamen ut ea quorum penes plebem arbitrium eſt, apud "principes pertractentur." *De morib. Germ.*

↓ "Lex conſenſu populi ſit et conſtitutione regis." *Capitularies of Charles the Bald, anno* 864, *art.* 6.

‡ "Licet apud concilium accuſare et diſcrimen capitis in-"tendere." *De morib. Germ.*

CHAP. XXX.

Of the authority of the clergy under the firſt race.

THE prieſts of barbarous nations are commonly inveſted with power, becauſe they have both that authority which is due to them from their religious character, and that influence which amongſt ſuch a people ariſes from ſuperſtition. Thus we ſee in Tacitus, that prieſts were held in great veneration by the Germans, and that they preſided * in the aſſembly of the people. They were permitted † to chaſtiſe, to bind, to ſmite; which they did, not by order of the prince, or as his miniſters of juſtice, but as by an inſpiration of the Deity, who was always ſuppoſed to be preſent with thoſe who made war.

We ought not to be aſtoniſhed, if, from the very beginning of the firſt race, we ſee biſhops the diſpenſers of ‡ juſtice, if we ſee them appear in the aſſemblies of the nation, if they have ſuch a prodigious influence on the minds of kings, and if they acquire ſo large a ſhare of property.

* "Silentium per ſacerdotes; quibus et coercendi jus eſt, "imperatur." *De morib. Germ.*

† "Nec regibus libera aut infinita poteſtas. Ceterum neque "animadvertere, neque vincire, neque verberare, niſi ſacerdo- "tibus, eſt permiſſum, non quaſi in pœnam, nec ducis juſſu, ſed "velut deo imperante, quam adeſſe bellatoribus credunt." *De morib. German.*

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

BOOK XIX.

Of Laws in Relation to the Principles which form the general Spirit, the Morals, and Customs of a Nation.

CHAP. I.

Of the subject of this book.

THIS subject is of a great extent. In that croud of ideas which present themselves to my mind, I shall be more attentive to the order of things, than to the things themselves. I shall be obliged to wander to the right and to the left, that I may search into and discover the truth.

CHAP. II.

That it is necessary people's minds should be prepared for the reception of the best laws.

NOTHING could appear more insupportable to the Germans * than the tribunal of Varus. That which Justinian † erected amongst the Lazi, to proceed against the murderers of their king, appeared to them as an affair the most horrid and barbarous. Mithridates, ‡ haranguing against the Romans, reproached them more particularly for their ‖ formalities of justice. The Parthians could not bear with one of their kings, who, having been educated at Rome,

* They cut out the tongues of the advocates, and cried, Viper, don't hiss. *Tacitus.*

† Agathias, lib. 4.

‡ Justin. lib. 38.

‖ "Calumnius litium." *Ibid.*

rendered himself affable and § easy of access to all. Liberty itself has appeared insupportable to those nations who have not been accustomed to enjoy it. Thus a pure air is sometimes disagreeable to those who have lived in a fenny country.

Balbi, a Venetian, being at * Pegu, was introduced to the king. When the monarch was informed that they had no king at Venice, he burst into such a fit of laughter, that he was seized with a cough, and had much ado to speak to his courtiers. What legislator could propose a popular government to a people like this?

CHAP. III.

Of tyranny.

THERE are two sorts of tyranny; the one real, which arises from the oppressions of government; the other is seated in opinion, and is sure to be felt, whenever those who govern establish things shocking to the turn of thought, and inconsistent with the ideas of a nation.

Dio tells us, that Augustus was desirous of being called Romulus; but having been informed, that the people feared that he would cause himself to be crowned king, he changed his design. The old Romans were averse to a king, because they could not suffer any man to enjoy such power; these would not have a king, because they could not bear his manners: for though Cæsar, the triumvirs, and Augustus, were really kings, they had preserved all the outward appearance of equality, while their private lives were a kind of contrast to the pomp and luxury of foreign monarchs; so that, when they were resolved to have no king, this only signified that they would preserve

§ "Prompti aditus, nova comitas, ignotæ Parthis virtutes" "nova vitia." *Tacitus.*

* He has described this interview which happened in the year 1596, in the collection of voyages for the establishment of an India Company, vol. iii. part 1. page 33.

their cuſtoms, and not take up thoſe of the African and Eaſtern nations.

The ſame writer informs us, that the Romans were exaſperated againſt Auguſtus for making certain laws which were too ſevere; but, as ſoon as he had recalled Pylades the comedian, whom the jarring of different factions had driven out of the city, the diſcontent ceaſed. A people of this ſtamp have a more lively ſenſe of tyranny when a player is baniſhed, than when they are deprived of all their laws.

CHAP. IV.

Of the general ſpirit of mankind.

MEN are influenced by various cauſes, by the climate, the religion, the laws, the maxims of government, by precedents, morals, and cuſtoms; from whence is formed a general ſpirit, which takes its riſe from theſe.

In proportion as in every nation any one of theſe cauſes acts with more force, the others in the ſame degree become weak. Nature and the climate rule almoſt alone over the ſavages; cuſtoms govern the Chineſe; the laws tyrannize in Japan; morals had formerly all their influence at Sparta; maxims of government, and the ancient ſimplicity of manners once prevailed at Rome.

CHAP. V.

How far we ſhould be attentive, leſt the general ſpirit of a nation ſhould be changed.

IF in any part of the world there had been a nation whoſe inhabitants were of a ſociable temper, open-hearted, pleaſed with life, poſſeſſed of judgment, and a facility in communicating their thoughts; who were ſprightly, agreeable, gay, ſometimes imprudent, often indiſcreet; and beſides had courage, generoſity, frankneſs, and a certain point of honour: no one ought

to endeavour to reſtrain their manners by laws, unleſs he would lay a conſtraint on their virtues. If in general the character is good, the little faults that may be found in it will be of ſmall importance.

They might lay a reſtraint upon women, make laws to correct their manners, and to limit their luxury; but who knows but that, by this means, they might loſe that peculiar taſte which would be the ſource of the riches of the nation, and that politeneſs which would render the country frequented by ſtrangers?

It is the buſineſs of the legiſlature to follow the ſpirit of the nation, when it is not contrary to the principles of government; for we do nothing ſo well as when we act with freedom, and follow the bent of our natural genius.

If an air of pedantry be given to a nation that is naturally gay, the ſtate will gain no advantage from it either at home or abroad. Leave it to do frivolous things in the moſt ſerious manner, and with gaiety things the moſt ſerious.

CHAP. VI.

That every thing ought not to be corrected.

LET them but leave us as we are, ſaid a gentleman of a nation which had a very great reſemblance to that we have been deſcribing, and nature will repair whatever is amiſs. She has given us a vivacity capable of offending, and hurrying us beyond the bounds of reſpect: this ſame vivacity is corrected by the politeneſs it procures us, inſpiring a taſte for the world, and, above all, for the converſation of women.

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

CHAP. VII.

Of the Athenians and Lacedæmonians.

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

CHAP. VIII.

Effects of a ſociable temper.

THE more communicative a people are, the more eaſily they change their habits, becauſe each is in a greater degree a ſpectacle to the other, and the ſingularities of individuals are better ſeen. The climate which makes one nation delight in being communicative, makes it alſo delight in change; and that which makes it delight in change, forms its taſte.

The ſociety of women ſpoils the manners, and forms the taſte; the deſire of giving greater pleaſure than others, eſtabliſhes the ornaments of dreſs; and the deſire of pleaſing others more than ourſelves, eſtablithes faſhions. The mode is a ſubject of importance: by giving a trifling turn of mind, it continually increaſes the branches of its commerce †.

CHAP. IX.

Of the vanity and pride of nations.

VANITY is as advantageous to a government as pride is dangerous. To be convinced of this we need only repreſent, on the one hand, the numberleſs

† Fable of the bees.

benefits which reſult from vanity; from thence ariſes luxury, induſtry, arts, faſhions, politeneſs, taſte: and, on the other, the infinite evils which ſpring from the pride of certain nations, lazineſs, poverty, and univerſal neglect, the deſtruction of the nations which have accidentally fallen into their hands, as well as of their own. Lazineſs ‡ is the effect of pride; labour a conſequence of vanity: the pride of a Spaniard leads him to refuſe labour; the vanity of a Frenchman, to know how to work better than others.

All lazy nations are grave; for thoſe who do not labour, regard themſelves as the ſovereigns of thoſe who do.

If we ſearch amongſt all nations, we ſhall find that, for the moſt part, gravity, pride, and indolence, go hand in hand.

The people of Achim § are proud and lazy; thoſe who have no ſlaves hire one, if it be only to carry a quart of rice a hundred paces; they would be diſhonoured if they carried it themſelves.

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

Women in the Indies ‖ believe it ſhameful for them to learn to read: this is, they ſay, the buſineſs of the ſlaves, who ſing their ſpiritual ſongs in the temples of their pagods. In one tribe they do not ſpin; in another they make nothing but baſkets and mats; they are not even to pound rice; and in others they muſt not go to fetch water. Theſe rules are eſtabliſhed by pride, and the ſame paſſion makes them followed.

‡ The people who follow the Khan Malacamber, of 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 Indoſtan, employ themſelves, and enjoy the conveniencies of life like the Europeans. *Collection of voyages for the eſtabliſhment of an India Company*, vol. i. p. 14.

§ See Dampier, vol. iii.

‖ Edifying Letters, 12th collect. p. 80.

CHAP. X.

Of the characters of the Spaniards and Chineſe.

THE characteriſtics of the ſeveral nations are formed of virtues and vices, of good and bad qualities. From the happy mixture of theſe, great advantages reſult, and frequently where it would be leaſt expected; there are others from whence great evils ariſe, evils which one would not ſuſpect.

The Spaniards have been in all ages famous for their honeſty. Juſtin † mentions their fidelity in keeping whatever was entruſted to their care; they have frequently ſuffered death rather than reveal a ſecret. They have ſtill the ſame fidelity for which they were formerly diſtinguiſhed. All the nations who trade to Cadiz, truſt their fortunes to the Spaniards, and have never yet repented it. But this admirable quality, joined to their indolence, forms a mixture from whence ſuch effects reſult as to them are the moſt pernicious. The people of Europe carry on in their very ſight all the commerce of their monarchy.

The character of the Chineſe is formed of another mixture, directly oppoſite to that of the Spaniards. The precarioufneſs of their ſubſiſtence *, inſpires them with a prodigious activity, and ſuch an exceſſive deſire of gain, that no trading nation can confide in them †. This acknowledged infidelity has ſecured them the poſſeſſion of the trade to Japan. No European merchant has ever dared to undertake it in their name, how eaſy ſoever it might be for them to do it from their maritime provinces in the north.

† Lib. 43.

* By the nature of the ſoil and climate.

† Du Halde, vol. ii.

CHAP. XI.

A reflection.

I HAVE ſaid nothing here with a view to leſſen that infinite diſtance which there muſt ever be between virtue and vice. God forbid that I ſhould be guilty of ſuch an attempt! I would only make my readers comprehend, that all political vices are not moral vices, and that all moral are not political vices; and that thoſe who make laws which ſhock the general ſpirit of a nation, ought not to be ignorant of this.

CHAP. XII.

Of cuſtoms and manners in a deſpotic ſtate.

IT is a capital maxim, that the manners and cuſtoms of a deſpotic empire ought never to be changed; for nothing would more ſpeedily produce a revolution. The reaſon is, that in theſe ſtates there are no laws, that is, none that can be properly called ſo; there are only manners and cuſtoms; and if you overturn theſe, you overturn all.

Laws are eſtabliſhed, manners are inſpired; theſe proceed from a general ſpirit, thoſe from a particular inſtitution: now, it is as dangerous, nay more ſo, to overturn the general ſpirit, as to change a particular inſtitution.

There is leſs communication in a country, where each, either as ſuperior or inferior, exerciſes or ſuffers an arbitrary power, than there is in thoſe where liberty reigns in every ſtation. They do not therefore ſo often change their manners and behaviour. Fixed and eſtabliſhed cuſtoms have a near reſemblance to laws. Thus it is here neceſſary that a prince or a legiſlator ſhould leſs oppoſe the manners and cuſtoms of the people, than in any other country upon earth.

Their women are commonly confined, and have no influence in ſociety. In other countries, where they

live with men, their desire of pleasing, and the desire men also have of giving them pleasure, produce a continual change of customs. The two sexes spoil each other, they both lose their distinctive and essential quality; what was naturally fixed becomes quite unsettled, and their customs and behaviour change every day.

CHAP. XIII.

Of the customs of the Chinese.

BUT China is the place where the customs of the country can never be changed. Besides, their women being absolutely separated from the men, their customs, like their morals, are taught in the schools. A man of † letters may be known by his easy address. These things being once taught by precept, and inculcated by grave doctors, become fixed, like the principles of morality, and are never changed.

CHAP. XIV.

What are the natural means of changing the manners and customs of a nation.

WE have said, that the laws were the particular and precise institutions of a legislator, and manners and customs the institutions of a nation in general. From hence it follows, that when these manners and customs are to be changed, it ought not to be done by laws; this would have too much the air of tyranny; it would be better to change them by introducing other manners and other customs.

Thus, when a prince would make great alterations in his kingdom, he should reform by laws what is established by laws, and change by customs what is established by customs; for it is very bad policy to

* Du Halde.

change by laws what ought to be changed by customs.

The law which obliged the Muſcovites to cut off their beards, and to ſhorten their cloaths, and the rigour with which Peter I. made them crop, even to their knees, the long cloaks of thoſe who entered into the cities, were inſtances of tyranny. There are means that may be made uſe of to prevent crimes, theſe are puniſhments; there are methods of changing our cuſtoms, theſe are examples.

The facility and eaſe with which this nation has been poliſhed, plainly ſhows that this prince had a worſe opinion of his people than they deſerved, and that they were not brutes, though he was pleaſed to call them ſo. The violent meaſures which he employed were needleſs, he would have attained his end as well by milder methods.

He himſelf experienced the eaſineſs of bringing about theſe alterations. The women were ſhut up, and in ſome ſort ſlaves; he called them to court; he ſent them ſilks and ſtuffs, and made them dreſs like the German ladies. This ſex immediately reliſhed a manner of life which ſo greatly flattered their taſte, their vanity, and their paſſions, and by their means it was reliſhed by the men.

What rendered the change the more eaſy was, their manners being at that time foreign to the climate; and their having been introduced among them by conqueſt, and by a mixture of nations. Peter I. in giving the manners and cuſtoms of Europe to an European nation, found a facility which he did not himſelf expect. The empire of the climate is the firſt, the moſt powerful of all empires.

He had then no occaſion for laws to change the manners and cuſtoms of his country; it would have been ſufficient to have introduced other manners and other cuſtoms.

Nations are in general very tenacious of their cuſtoms; to take them away by violence is to render them unhappy: we ſhould not therefore change them, but engage the people to make the change themſelves.

All punishment which is not derived from necessity, is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province.

CHAP. XV.

The influence of domestic government on the political.

THE changing the manners of women had, without doubt, a great influence on the government of Muscovy. One thing is very closely united to another: the despotic power of the prince is naturally connected with the servitude of women, the liberty of the women with the spirit of monarchy.

CHAP. XVI.

How some legislators have confounded the principles which govern mankind.

MANNERS and customs are those habits which are not established by the laws, either because they were not able, or were not willing to establish them.

There is this difference between laws and manners, that the laws are most adapted to regulate the actions of the subject, and manners to regulate the actions of the man. There is this difference between manners and customs, that the first principally relate to the interior conduct, the others to the exterior.

These things * have been sometimes confounded. Lycurgus made the same code for the laws, manners, and customs; and the legislators of China have done the same.

We ought not to be surprised that the legislators of China and Sparta should confound the laws, manners, and customs: the reason is, their manners re-

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

present their laws, and their customs their manners.

The principal object which the legislators of China had in view, was to make the people live in peace and tranquillity. They would have people filled with a veneration for one another, that each should be every moment sensible how greatly he was indebted to others, and that there was not a subject who did not in some degree depend on another subject. They therefore gave rules of the most extensive civility.

Thus the inhabitants of the † villages of China observe amongst themselves the same ceremonies as those observed by persons of an exalted station: a very proper method of inspiring mild and gentle dispositions, of maintaining peace and good order amongst the people, and of banishing all the vices which spring from an asperity of temper. In effect, would not the freeing them from the rules of civility, be to search out a method for them to indulge their faults more at ease.

Civility is in this respect of more value than politeness. Politeness flatters the vices of others, and civility prevents ours from being brought to light. It is a barrier which men have placed in themselves to prevent the corruption of each other.

Lycurgus, whose institutions were severe, had no regard to civility in forming the external behaviour; he had a view to that warlike spirit which he would fain give to his people. A people who were ever correcting or ever corrected, always instructing or always instructed, endued with equal simplicity and rigour, atoned by their virtues for their want of complaisance.

CHAP. XVII.

Of the peculiar quality of the Chinese government.

THE legislators of China went farther *. They confounded together their religion, laws, man-

† See Du Halde.

* See the classic books from which Father Du Halde gives us some excellent extracts.

ners, and cuſtoms; all thoſe were morals, all theſe were virtue. The precepts relating to theſe four points were what they called rites; and it was in the exact obſervance of theſe that the Chineſe government triumphed. They ſpent their whole youth in learning them, their whole life in their practice. They were taught by their men of learning, they were inculcated by the magiſtrates; and as they included all the ordinary actions of life, when they found the means of making them ſtrictly obſerved, China was well governed.

Two things have contributed to the eaſe with which theſe rites are engraved on the hearts and minds of the Chineſe; the one the difficulty of writing, which during the greateſt part of their lives wholly employs their mind †, becauſe it is neceſſary to prepare them to read and underſtand the books in which they are compriſed; the other, that the ritual precepts having nothing in them that is ſpiritual, but being merely rules of common practice, they are more adapted to convince and ſtrike the mind than things merely intellectual.

Thoſe princes, who, inſtead of governing by theſe rites, governed by the force of puniſhments, wanted to accompliſh that by puniſhments which is not in their power to produce, that is, to give habits of morality. By puniſhments a ſubject is very juſtly cut off from ſociety, who having loſt the purity of his manners, violates the laws; but if all the world were to loſe their moral habits, would theſe re-eſtabliſh them? Puniſhments may be juſtly inflicted to put a ſtop to many of the conſequences of the general evil, but it will not remove the evil itſelf. Thus when the principles of the Chineſe government were diſcarded, and morality loſt, the ſtate fell into anarchy, and revolutions were ſeen to take place.

† It is this which has eſtabliſhed emulation, which has baniſhed lazineſs, and cultivated a love of learning.

CHAP. XVIII.

A conſequence drawn from the preceding chapter.

FROM hence it follows, that the laws of China are not deſtroyed by conqueſt. Their cuſtoms, manners, laws, and religion, being the ſame thing, they cannot change all theſe at once; and as it will happen, that either the conqueror or the conquered muſt change, in China it has always been the conqueror. For the manners of the conquering nation not being its cuſtoms, nor its cuſtoms its laws, nor its laws its religion, it has been more eaſy for them to conform by degrees to the vanquiſhed people, than the vanquiſhed people to them.

There ſtill follows from hence a very unhappy conſequence, which is, that it is almoſt impoſſible for Chriſtianity † ever to be eſtabliſhed in China. The vows of virginity, the aſſembling of women in churches, their neceſſary communication with the miniſters of religion, their participation in the ſacraments, auricular confeſſion, extreme unction, the marriage of only one wife, all theſe overturn the manners and cuſtoms of the country, and with the ſame blow ſtrike at their religion and laws.

The Chriſtian religion, by the eſtabliſhment of charity, by a public worſhip, by a participation of the ſame ſacraments, ſeems to demand, that all ſhould be united; while the rites of China ſeem to ordain, that all ſhould be ſeparated.

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

CHAP. XIX.

How this union of religion, laws, manners, and cuſtoms, amongſt the Chineſe was produced.

THE principal object of government which the Chineſe legiſlators had in view, was the peace and tranquillity of the empire: and ſubordination appeared to them as the moſt proper means to maintain it. Filled with this idea, they believed it their duty to inſpire a reſpect for fathers, and therefore aſſembled all their power to effect it. They eſtabliſhed an infinite number of rites and ceremonies to do them honour when living, and after their death. It was impoſſible for them to pay ſuch honours to deceaſed parents, without being led to honour the living. The ceremonies at the death of a father were more nearly related to religion; thoſe for a living father had a greater relation to the laws, manners and cuſtoms: However, theſe were only parts of the ſame code, but this code was very extenſive.

A veneration for fathers was neceſſarily connected with a ſuitable reſpect for all who repreſented fathers, ſuch as old men, maſters, magiſtrates, and the emperor. This reſpect for fathers, ſuppoſed a return of love toward children, and conſequently the ſame return from old men to the young, from magiſtrates to thoſe who were under their juriſdiction, and from the emperor to his ſubjects. This formed the rites, and theſe rites the general ſpirit of the nation.

We ſhall now ſhow the relation which things, in appearance the moſt indifferent, may have to the fundamental conſtitution of China. This empire is formed on the plan of the government of a family. If you diminiſh the paternal authority, or even if you retrench the ceremonies which expreſs your reſpect for it, you weaken the reverence due to magiſtrates, who are conſidered as fathers; nor would the magiſtrates have the ſame care of the people whom they ought to conſider as their children, and that tender reka-

tion which ſubſiſts between the prince and his ſubjects would inſenſibly be loſt. Retrench but one of theſe habits, and you overturn the ſtate. It is a thing in itſelf very indifferent, whether the daughter-in-law riſes every morning to pay ſuch-and-ſuch duties to her mother in-law: but if we conſider that theſe exterior habits inceſſantly revive an idea neceſſary to be imprinted on all minds, an idea that forms the governing ſpirit of the empire, we ſhall ſee that it is neceſſary that ſuch or ſuch a particular action be performed.

CHAP. XX.

An explication of a paradox relating to the Chineſe.

IT is very remarkable that the Chineſe, whoſe lives are guided by rites, are nevertheleſs the greateſt cheats upon earth. This appears chiefly in their trade, which, in ſpite of its natural tendency, has never been able to make them honeſt. He who buys of them ought to carry with him his own ‖ weights, every merchant having three ſorts, the one heavy for buying, another light for ſelling, and another of the true ſtandard, for thoſe who are upon their guard. It is poſſible, I believe, to explain this contradiction.

The legiſlators of China had two objects in view; they were deſirous that the people ſhould be ſubmiſſive and peaceful, and that they ſhould alſo be laborious and induſtrious. By the nature of the ſoil and climate, their ſubſiſtence is very precarious; nor can it be any other way ſecured, than by the aſſiſtance of induſtry and labour.

When every one obeys, and every one is employed, the ſtate is in a happy ſituation. It is neceſſity, and perhaps the nature of the climate, that has given to the Chineſe an inconceivable greedineſs for gain, and

‖ Lange's journal in 1721 and 1722, in voyages to the North, vol. viii. page 363.

laws have never been made to put a ſtop to it. Every thing has been forbidden, when acquired by acts of violence; every thing permitted, when obtained by artifice or labour. Let us not then compare the morals of China with thoſe of Europe. Every one in China is obliged to be attentive to what will be for his advantage; if the cheat has been watchful over his own intereſt, he who is the dupe ought to have thought of his. At Sparta they were permitted to ſteal; in China they are ſuffered to deceive.

CHAP. XXI.

How the laws ought to have a relation to manners and cuſtoms.

IT is only ſingular inſtitutions which thus confound laws, manners and cuſtoms, things naturally diſtinct and ſeparate: but though they are things in themſelves different, there is nevertheleſs a great relation between them.

Solon being aſked, if the laws he had given to the Athenians were the beſt, he replied, "I have given "them the beſt they were able to bear." A fine expreſſion, that ought to be perfectly underſtood by all legiſlators! When Divine Wiſdom ſaid to the Jews, "I have given you precepts which are not good," this ſignified that they had only a relative goodneſs; which is the ſponge that wipes out all the difficulties that are to be found in the law of Moſes.

CHAP. XXII.

The ſame ſubject continued.

WHEN a people have pure and regular manners, their laws become ſimple and natural. Plato § ſays, that Rhadamanthus, who governed a people ex-

§ Of laws, lib. 12.

tremely religious, finiſhed every proceſs with extraordinary diſpatch, adminiſtering only the oath on every acculation. But, ſays the ſame Plato ‡, when a people are not religious, we ſhould never have recourſe to an oath, except he who ſwears is entirely without intereſt, as in the caſe of a judge and a witneſs.

CHAP. XXIII.

How the laws are founded on the manners of a people.

AT the time when the manners of the Romans were pure, they had no particular law againſt the embezzlement of the public money. When this crime began to appear, it was thought ſo infamous, that to be condemned to reſtore * what they had taken was conſidered as a ſufficient diſgrace: for a proof of this ſee the ſentence of L. Scipio †.

CHAP. XXIV.

The ſame ſubject continued.

THE laws which gave the right of tutelage to the mother, were moſt attentive to the preſervation of the infant's perſon; thoſe which gave it to the next heir, were moſt attentive to the preſervation of the eſtate. When the manners of a people are corrupted, it is much better to give the tutelage to the mother. Amongſt thoſe whoſe laws conſide in the manners of the ſubjects, the guardianſhip is given either to the next heir, or to the mother, and ſometimes to both.

If we reflect on the Roman laws, we ſhall find that the ſpirit of theſe was conformable to what I have advanced. At the time when the laws of the twelve tables were made, the manners of the Romans were

‡ Ibid.
* In ſimplum. † Livy, lib. 38.

moſt admirable. The guardianſhip was given to the neareſt relation of the infant, from a conſideration that he ought to have the trouble of the tutelage, who might enjoy the advantage of poſſeſſing the inheritance. They did not imagine the life of the heir in danger, though it was put into a perſon's hands who would reap advantage by his death. But when the manners of Rome were changed, its legiſlators changed their conduct. If in the pupillary ſubſtitution, ſays Caius * and Juſtinian †, the teſtator is afraid that the ſubſtitute will lay any ſnares for the pupil, he may leave the vulgar ‡ ſubſtitution open, and put the pupillary into a part of the teſtament, which cannot be opened till after a certain time. Theſe fears and precautions were unknown to the primitive Romans.

CHAP. XXV.

The ſame ſubject continued.

THE Roman law gave the liberty of making preſents before marriage; after the marriage they were not allowed. This was founded on the manners of the Romans, who were led to marriage, only by frugality, ſimplicity, and modeſty; but who might ſuffer themſelves to be ſeduced by domeſtic cares, by complaiſance, and the happineſs of a whole life.

A law of the Viſigoths ‖ forbade the man giving more to the woman he was to marry than the tenth part of his ſubſtance, and his giving her any thing during the firſt year of their marriage. This alſo took its riſe from the manners of the country. The legiſla-

* Inſtitut. lib. ii. tit. 6. § 2. Ozel's compilement at Leyden, in 1658.

† Inſtitut. lib 2. de pupil. ſubſtit. § 3.

‡ The form of the vulgar ſubſtitution ran thus: "If ſuch a "one is unwilling to take the inheritance, ſubſtitute in his "ſtead, &c." The pupillary ſubſtitution, "If ſuch a one dies "before he arrives at the age of puberty, I ſubſtitute, &c."

‖ Lib. iiii. tit. 1. § 5.

tors were willing to put a ſtop to that Spaniſh oſtentation, which only led them to diſplay an exceſſive liberality in acts of magnificence.

The Romans, by their laws, put a ſtop to ſome of the inconveniencies which aroſe from the moſt durable empire in the world, that of virtue; the Spaniards, by theirs, would prevent the bad effects of a tyranny, the moſt frail and fleeting, that of beauty.

CHAP. XXVI.

The ſame ſubject continued.

THE law of Theodoſius and Valentinian * drew the cauſes of repudiation from the ancient manners and cuſtoms of the Romans †. It placed in the number of theſe cauſes, the behaviour of a huſband ‡ who beat his wife, in a manner that diſgraced the character of a free-born woman. This cauſe was omitted in the following laws ‖; for their manners were in this reſpect changed: the Eaſtern cuſtoms had 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 ſee how the manners follow the laws.

* Leg. 8 cod. de repudiis.

† And the law of the twelve tables. See Cicero's ſecond Philippic.

‡ "Si verberibus quæ ingenuis aliena ſunt, afficientem probaverit."

‖ In Nov. 117. c. 14.

CHAP. XXVII.

How the laws contribute to form the manners, customs, and character of a nation.

THE customs of an enslaved people are a part of their servitude; those of a free people are a part of their liberty.

I have spoken in the eleventh book * of a free people, and have given the principles of their constitution; let us now see the effects which follow from this liberty, the character it is capable of forming, and the customs which naturally result from it.

I do not deny that the climate may have produced great part of the laws, manners and customs of this nation; but I maintain that its manners and customs have a close connection with its laws.

As there are in this state two visible powers, the legislative and executive, and as every citizen has a will of his own, and may at pleasure assert his independence; most men have a greater fondness for one of these powers than for the other, and the multitude have commonly neither equity nor sense enough to show an equal affection to both.

As the executive power, by disposing of all employments, may give great hopes, and no fears, every man who obtains any favour from it, is ready to espouse its cause; while it is liable to be attacked by those who have nothing to hope from it.

All the passions being unrestrained, hatred, envy, jealousy, and an ambitious desire of riches and honours, appear in their full extent: were it otherwise, the state would be in the condition of a man weakened by sickness, who is without passions, because he is without strength.

The hatred which arises between the two parties will always subsist, because it will always be impotent.

* Chap. 6.

These parties being compoſed of freemen, if the one becomes too powerful, as a conſequence of liberty, it will be ſoon brought down; while the citizens endeavour to raiſe up the other, with the ſame readineſs as the hands lend their aſſiſtance to the body.

Every individual is independent, and being commonly led by caprice and humour, frequently changes parties; he abandons one where he left all his friends, to unite himſelf to another in which he finds all his enemies; ſo that in this nation it frequently happens that the people forget the laws of friendſhip, as well as thoſe of hatred.

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

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

As thoſe, who with the greateſt warmth oppoſe the executive power, dare not avow the ſelf-intereſted motives of their oppoſition, ſo much the more do they encreaſe 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 effects.

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

Soon we ſhould ſee a frightful calm, during which every one would unite againſt that power which had violated the laws.

If when the uneaſineſs proceeds from no certain object, ſome foreign power ſhould threaten the ſtate, or put its proſperity or its glory in danger, their little intereſts of party would then yield to the more ſtrong and binding, and there would be a perfect coalition in favour of the executive power.

But if the diſputes were occaſioned by a violation of the fundamental laws, and a foreign power ſhould appear; there would be a revolution that would neither alter the conſtitution nor the form of government. For a revolution formed by liberty, becomes a confirmation of liberty.

A free nation may have a deliverer; a nation enſlaved can have only another oppreſſor.

For whoever has a power ſufficient to dethrone an abſolute prince, has a power ſufficient to enable him to become abſolute himſelf.

As the enjoyment of liberty, and even its ſupport and preſervation, conſiſts in every man's being allowed to ſpeak his thoughts, and to lay open his ſentiments; a citizen in this ſtate will ſay or write whatever the laws does 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 effects 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 liberty is true and real; and it is poſſible for it; in its defence, to ſacrifice its wealth, its eaſe, its intereſt, and to ſupport the burthen of the moſt heavy taxes, even ſuch as a deſpotic prince durſt not lay upon his ſubjects.

But as the people have a certain knowledge of the neceſſity of ſubmitting to them, they pay from the well founded hope of their ſoon paying them no longer; their burthens are heavy, but they do not feel their weight: while in other ſtates the uneaſineſs is infinitely greater than the evil.

This nation muſt therefore have a fixed and certain credit, becauſe it borrows of itſelf, and pays itſelf. It is poſſible for it to undertake things above its natural ſtrength, and employ againſt its enemies immenſe ſums of fictitious riches, which the credit and nature of its government may render real.

To preſerve its liberty, it borrows of its ſubjects; and its ſubjects ſeeing that its credit would be loſt, if ever it was conquered, have a new motive to make freſh efforts in defence of its liberty.

This nation, inhabiting an iſland, is not fond of conquering, becauſe it would be weakened by diſtant conqueſts; eſpecially as the ſoil of the iſland is good: becauſe it has then no need of enriching itſelf by war; and, as no citizen is ſubject to another, each ſets a greater value on his own liberty, than on the glory of one, or any number of citizens.

Military men are there regarded as belonging to a profeſſion which may be uſeful, but is often dangerous; and as men whoſe very ſervices are burthenſome to the nation: Civil qualifications are therefore more eſteemed than the military.

This nation, which liberty and the laws render eaſy, being freed from pernicious prejudices, is become a trading people; and, as it has ſome of thoſe primitive materials of trade, out of which are made ſuch things as from the artiſt's hand receive a conſiderable value, it has made ſettlements proper to procure

the enjoyment of this gift of Heaven in its fulleſt extent.

As this nation is ſituated towards the north, and has many ſuperfluous commodities, it muſt want alſo a great number of merchandiſes which its climate will not produce: It has therefore entered into a great and neceſſary commerce with the ſouthern nations; and making choice of thoſe ſtates whom it is willing to favour with an advantageous commerce, it enters into ſuch treaties with the nation it has choſen, as are reciprocally uſeful to both.

In a ſtate where, on the one hand, the opulence is extreme, and, on the other, the taxes are exceſſive, they are hardly able to live on a ſmall fortune without induſtry: Many, therefore, under a pretence of traveling, or of health, retire from amongſt them, and go in ſearch of plenty, even to the countries of ſlavery.

A trading nation has a prodigious number of little particular intereſts: it may then injure or be injured an infinite number of different ways. Thus it becomes immoderately jealous, and is more afflicted at the proſperity of others, than it rejoices at its own.

And its laws, otherwiſe mild and eaſy, may be ſo rigid with reſpect to the trade and navigation carried on with it, that it may ſeem to trade only with enemies.

If this nation ſends colonies abroad, it muſt rather be to extend its commerce than its dominion.

As men are fond of introducing into other places what they have eſtabliſhed amongſt themſelves, they have given the people of their colonies the form of their own government; and this government carrying proſperity along with it, they have formed great nations in the foreſts they were ſent to inhabit.

Having formerly ſubdued a neighbouring nation, which, by its ſituation, the goodneſs of its ports, and the nature of its products, inſpires it with jealouſy; though it has given this nation its own laws, yet it

holds it in great dependence: The ſubjects there are free, and the ſtate itſelf in ſlavery.

The conquered ſtate has an excellent civil government, but it is oppreſſed by the laws of nations; laws are impoſed by one nation on the other, and theſe are ſuch as render its proſperity precarious, and dependent on the will of a maſter.

The ruling nation, inhabiting a large iſland, and being in poſſeſſion of a great trade, hath with extraordinary eaſe grown powerful at ſea; and, as the preſervation of its liberties requires that it ſhould have neither ſtrong-holds, nor fortreſſes, nor land-forces, it has occaſion for a formidable navy to preſerve it from invaſions; a navy which muſt be ſuperior to that of all other powers, who, employing their treaſures in wars at land, have not ſufficient for thoſe at ſea.

The empire of the ſea has always given thoſe who have enjoyed it a natural pride, becauſe, thinking themſelves capable of extending their inſults wherever they pleaſe, they imagine that their power is as boundleſs as the ocean.

This nation has a great influence in the affairs of its neighbours; for, as its power is not employed in conqueſts, its friendſhip is more courted, and its reſentment more dreaded, than could naturally be expected from the inconſtancy of its government, and its domeſtic commotions.

Thus it is the fate of the executive power to be almoſt always diſturbed at home, and reſpected abroad.

Should this nation on ſome occaſions become the centre of the negotiations of Europe, probity and good faith would be carried to a greater height than in other places, becauſe the miniſters being frequently obliged to juſtify their conduct before a popular council, their negotiations could not be ſecret, and they would be forced to be in this reſpect a little more honeſt.

Beſides, as they would in ſome ſort be anſwerable

for the events which an irregular conduct might produce, the ſureſt, the ſafeſt way for them, would be to take the ſtreighteſt path.

If the nobles were formerly poſſeſſed of an immoderate power, and the monarch had found the means of abaſing them by raiſing the people, the point of extreme ſervitude muſt have been that between humbling the nobility, and that in which the people began to feel their power.

Thus this nation, having been formerly ſubject to an arbitrary power, on many occaſions preſerves the ſtyle of it in ſuch a manner, as to let us frequently ſee, upon the foundation of a free government, the form of an abſolute monarchy.

With regard to religion, as in this ſtate every ſubject has a free will, and muſt conſequently be either conducted by the light of his own mind, or by the caprices of fancy, it neceſſarily follows, that every one muſt either look upon all religion with indifference, by which means they muſt be led to embrace the eſtabliſhed religion, or that they muſt be zealous for religion in general, by which means the number of ſects muſt be encreaſed.

It is not impoſſible but that in this nation there may be men of no religion, who would not however bear to be obliged to change that which they would chuſe, if they cared to chuſe any; for they would immediately perceive that their lives and fortunes are not more peculiarly theirs than their manner of thinking, and that whoever would deprive them of the one, might, even with better reaſon, take away the other.

If, amongſt the different religions, there is one that has been attempted to be eſtabliſhed by the methods of ſlavery, it muſt there be odious, becauſe, as we judge of things by the appendages we join with them, it could never preſent itſelf to the mind in conjunction with the idea of liberty.

The laws againſt thoſe who profeſs this religion

could not however be of the ſanguinary kind; for liberty can never inflict theſe ſorts of punihments: but they may be ſo rigorous as to do all the miſchief that could be done in cold blood.

It is poſſibſe that a thouſand circumſtances might concur to give the clergy ſo little credit, that other citizens may have more. Therefore, inſtead of ſeparating themſelves, they have choſe rather to ſupport the ſame burthens as the laity, and in this reſpect to make only one body with them: but, as they always ſeek to conciliate the reſpect of the people, they diſtinguiſh themſelves by a more retired life, a conduct more reſerved, and a greater purity of manners.

The clergy, not being able to protect religion, nor to be protected by it, not having power to conſtrain, ſeek only to perſuade: Their pens, therefore, furniſh us with excellent works in proof of a revelation, and of the providence of a Supreme Being.

Yet the ſtate prevents the ſitting of their aſſemblies, and does not ſuffer them to correct their own abuſes; it chuſes thus, through a caprice of liberty, rather to leave their reformation imperfect, than ſuffer the clergy to be the reformers.

Thoſe dignities, which make a fundamental part of the conſtitution, are more fixed than elſewhere; but on the other hand, the great in this country of liberty are nearer upon a level with the people; their ranks are more ſeparated, and their perſons more confounded.

As thoſe who govern have a power, which in ſome meaſure has need of freſh vigour every day, they have a greater regard for thoſe who are uſeful to them; than for thoſe who only contribute to their amuſement: We ſee, therefore, fewer courtiers, flatterers, and paraſites, in ſhort, fewer of all thoſe who make their own advantage of the folly of the great.

Men are leſs eſteemed for frivolous talents and attainments, than for eſſential qualities; and of this kind there are but two, riches, and perſonal merit.

They enjoy a ſolid luxury, founded not on the refinements of vanity, but on that of real wants; they aſk nothing of nature but what nature can beſtow.

The rich enjoy a great ſuperfluity of fortune, and yet have no reliſh for frivolous amuſements: Thus many, having more wealth than opportunities of expence, employ it in a fantaſtical manner: In this nation they have more judgment than taſte.

As they are always employed about their own intereſt, they have not that politeneſs which is founded on indolence; and they really have not leiſure to attain it.

The æra of Roman politeneſs is the ſame as that of the eſtabliſhment of arbitrary power. An abſolute government produces indolence, and indolence gives birth to politeneſs.

The more people there are in a nation who require a circumſpect behaviour, and a care not to diſpleaſe, the more there is of politeneſs. But it is rather the politeneſs of morals than that of manners, which ought to diſtinguiſh us from barbarous nations.

In a country where every man has in ſome ſort a ſhare in the adminiſtration of the government, the women ought ſcarcely to live with the men. They are therefore modeſt, that is, timid; and this timidity conſtitutes their virtue, whilſt the men, without a taſte for gallantry, plunge themſelves into a debauchery which leaves them at leiſure, and in the enjoyment of their full liberty.

Their laws not being made for one individual more than another, each conſiders himſelf as a monarch; and indeed the men of this nation are rather confederates than fellow-ſubjects.

As the climate has given many perſons a reſtleſs ſpirit and extended views, in a country where the conſtitution gives every man a ſhare in its government and political intereſts, converſation generally turns upon politics; and we ſee men ſpend their lives in

the calculation of events, which, conſidering the nature of things, and the caprices of fortune, or rather of men, can ſcarcely be thought ſubject to the rules of calculation.

In a free nation it is very often a matter of indifference, whether individuals reaſon well or ill; it is ſufficient that they do reaſon: from hence ſprings that liberty which is a ſecurity from the effects of theſe reaſonings.

But in a deſpotic government it is equally pernicious whether they reaſon well or ill; their reaſoning is alone ſufficient to ſhock the principle of their government.

Many people who have no deſire of pleaſing abandon themſelves to their own particular humour; moſt of thoſe who have wit and ingenuity are ingenious in tormenting themſelves; filled with a contempt or diſguſt for all things, they are unhappy amidſt all the bleſſings that can poſſibly contribute to their happineſs.

As no ſubject fears another, the whole nation is proud; for the pride of kings is founded only in their independence.

Free nations are haughty; others may more properly be called vain.

But as theſe men, who are naturally ſo proud, live much by themſelves, they are commonly baſhful when they come among ſtrangers; and we frequently ſee them behave for a conſiderable time with an odd mixture of pride and ill-placed ſhame.

The character of the nation is more particularly diſcovered in their literary performances, in which we find the men of thought and deep meditation.

As ſociety gives us a ſenſe of the ridicules of mankind, retirement renders us more fit to reflect on the folly of vice. Their ſatirical writings are ſharp and ſevere, and we find amongſt them many Juvenals, without diſcovering one Horace.

In monarchies extremely abſolute, hiſtorians betray the truth, becauſe they are not at liberty to ſpeak it;

in ſtates remarkably free, they betray the truth becauſe of their liberty itſelf, which always produces diviſions, every one becoming as great a ſlave to the prejudices of his faction, as he could be in a deſpotic ſtate.

Their poets have more frequently an original rudeneſs of invention, than that particular kind of delicacy which ſprings from taſte; we there find ſomething which approaches nearer to the bold ſtrength of a Michael Angelo, than to the ſofter graces of a Raphael.

END OF VOLUME FIRST.