SPIRIT OF THE LAWS

MONTESQUIEU

VOLUME ONE

SPIRIT
OF
THE LAWS

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VOLUME I.

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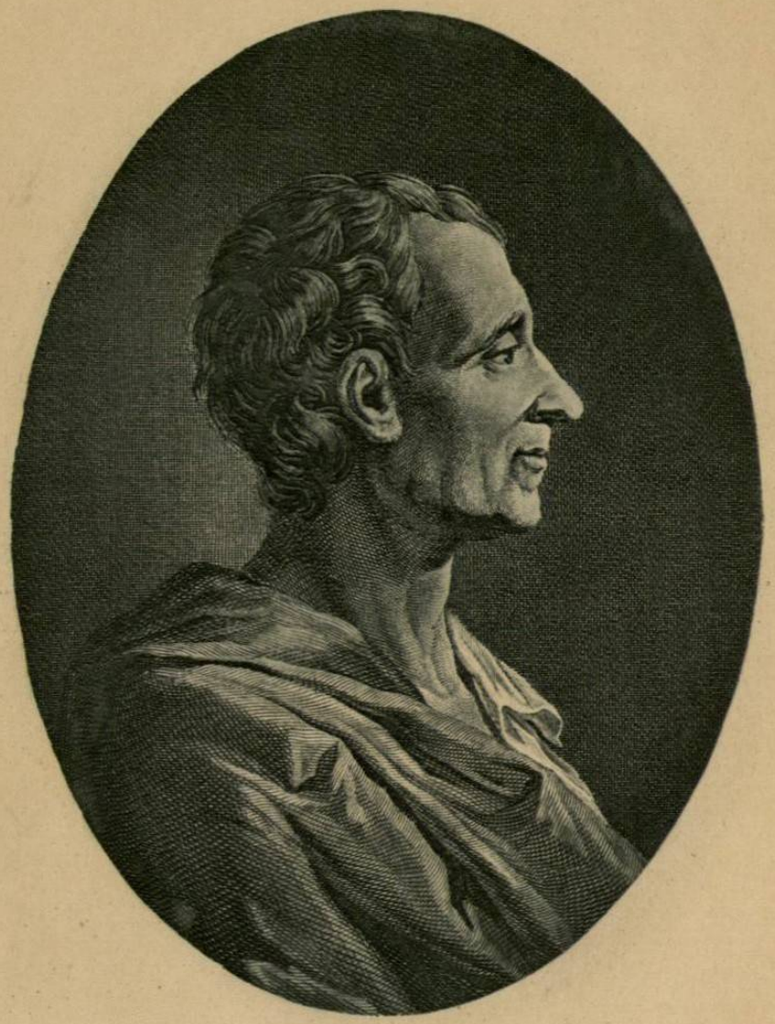

BY

BARON DE MONTESQUIEU.

(Charles De Secondat.)

Photogravure from a wood engraving.

THE SPIRIT OF LAWS

BY

BARON DE MONTESQUIEU
(CHARLES DE SECONDAT)

INCLUDING D'ALEMBERT'S ANALYSIS OF THE WORK

TRANSLATED FROM THE FRENCH BY
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WITH A SPECIAL INTRODUCTION BY
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VOLUME I

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SPECIAL INTRODUCTION

MONTESQUIEU, Charles Louis Secondat de la Brède, was born at the Château de la Brède, near Bordeaux, in the month of January, 1689. He lived sixty-six years, and died on the tenth day of February, 1755. If we should omit his literary performances from the record of his life, and consider his existence apart from his books, the record would end here, and it might be said of him, as has been justly said of some royal personages, that he was born, he lived and he died. Not only was that life uneventful, but it was studiously shut off from the public eye. He shrank from those who would peer into his privacy, and reserved that part of himself for his family and his friends. He loved fame, that is, the honorable repute that grew out of the intellectual productions with which he enriched the world. Apart from these, as Horace, whom he resembled in many ways, has said of himself: "He sought the secret way and unfrequented path of life that steals away unknown."

That he was thoroughly a gentleman in the best sense of the word—courteous, gentle, kindly and unassuming—all who knew him testify: withal a genuine Gascon in the sparkle of his speech, in the southern brogue that he patriotically exaggerated, in his wit and effervescence, in all the qualities that he derived from the sunny atmosphere of his native Gascony and the ruddy wines that flowed so freely from the land that he dearly loved to the end.

Writers with an ingenious turn for the discovery of analogies have compared him to Voltaire, who was born but a few years after Montesquieu, and survived him many years. Voltaire was undoubtedly a man of rare genius and unequalled skill when it came to the work of destruction. To demolish ancient things was the task in which he excelled and which he delighted to perform. His bitterness against the social system of

which the Church was an integral part displayed itself with all the venom of personal enmity: it was flavored with the passion of revenge rather than a desire to promote right and to prevent wrong. Throughout all his aggressive life, this feature was apparent; it existed in fact and showed itself by unmistakable symptoms. Nor was it without reason. In his early youth, he had been subjected to personal indignities at the hands of blue-blooded men who considered it the privilege of their caste to disregard the claims of those whose pedigree was not as long as their own; they laughed to scorn the demands for satisfaction of such, however grievously and wantonly they had been injured. When Voltaire sought to obtain redress for deliberate affronts, they were repeated in most brutal and offensive form; the only compensation that he received was free quarters at the Bastille and abundant opportunity, in the silence of solitary meditation, to nurse his hatred and to lick his wounds. The friend of Frederick II never forgot the humiliation of his early life: and the sharpness of his pen and tongue may both be traced in a measure to these days of wrong unavenged and unpunished. The Church was the ally and prop of the social scheme which permitted these wrongs, hence the Church must pay the penalty. His rage increased with his years, until he boasted, in the heat of his madness, that one man might destroy the religion which twelve men had founded.

But Montesquieu had no personal reasons for disliking either Church or State. No insult had embittered his early life, his unwounded pride never festered at the recollection of personal maltreatment. He was always decorous, conservative and prudent. In the rich soil of his generous nature, no seed had been sown from which hatred could grow. He was a lover of the human race, and sought to promote its happiness. If, in the effervescence of his early youth, he allowed his brilliant pen to enter upon dangerous fields of controversy, he never intended other than good results. He meant to cure, not to kill: he hoped to make, not to mar: he sought to repair and to improve, not to tear down and to destroy. His warm Gascon nature exulted in the mere fact of existence, the sunshine of the merry Gascon country was in itself a delight. He would have had the whole world as happy as himself. He loved the companionship of friends, he delighted in the society of books.

He had never known one single sorrow in his life to resist the soothing influence of these silent and eloquent companions. They were part of his life; indeed, the best part, the only part by or through which we know him, the only part through which he survives.

Montesquieu became famous in a day. His "Persian Letters," written when he was thirty years of age, charmed, delighted and irritated his countrymen, and especially his countrywomen, who were quite as ready and able as the male part of the population to make a writer's fame. The Persian visitors whom he invented and whose comments upon the society and the religion of France he gives to the public, were very free in their criticisms of what they saw, and it is not to be wondered at that the guardians of public morals looked with suspicion and alarm upon the trenchant wit of the Gascon sage, who dared to criticise abuses and to laugh at practices which Time had rendered venerable. There was, indeed, much that might create grave concern in the minds of those who studied the Letters of the Persian travellers. We must not forget that the roots and branches of State and Church were closely interwoven and intertwined. The blow aimed at the one was in effect a blow at the other. Time showed—and Voltaire lived to see the day—when the destruction of the existing State must needs bring with it a shock and disturbance to the Church. The result of the Letters was that the contagion spread which the conservatism of Montesquieu would fain have arrested and cured. He did not delay the current nor stem the rising tide. Perhaps by calling attention to abuses, he aided in producing the calamity that he would have deprecated. He gave aid and comfort to the enemies of the social system that he would have willingly saved: finally, by making these attacks plausible, half a century after he was at rest, everything gave way that he would have preserved, and the foundations of the world were shaken.

Even when the Letters were at the full tide of success many readers who were attached to the existing system of society looked with disfavor on their cold disregard of respectable barnacles. D'Argenson said: "These are reflections which a brilliant man can easily make, but which a prudent man ought never to print." Marivaux expressed the class sentiment with

accuracy when he said that a man should be sparing of his wit on such subjects. Montesquieu himself realized that he had become an object of suspicion to the "official classes" who sought every occasion to slight him, while they admired his ability—of which they thought he had too much. Indeed, it was darkly suggested that he was an infidel and possibly might be a traitor! These comments had their effect, so far as to induce him to disclaim the paternity of a work which it might not be quite safe to recognize as his offspring.

The sale of the "Persian Letters" was all that their author could wish. His Jesuit secretary, Père Desmolets, had confidently predicted the result: "The Letters will sell like bread," he had prophesied. And so they did. They expressed, in delightful speech, the thoughts of many who were neither able nor daring enough in fitting phrase to attack the powers of the day. As for himself, his reputation was, from that moment, established as a wit. He was an *homme d'esprit.* Perhaps he was surprised at the success that he had achieved, possibly a little alarmed at the construction that had been put upon the criticism of his Persians. He had never desired to be looked upon as an iconoclast. As he afterwards says, "I am not a theologian, I am a historian." If he used the knife, it was rather as a kindly surgeon than as a wilful shedder of blood. He took no delight in angry controversy. "Men forget," he said, "that when I represent a Turk, I must make him talk and act and write like a Turk." The trouble is that his Turks talk too much like Parisians and not enough like genuine Turks. Their real nationality is but ill disguised by their flowing robes, and the laughing face of the Bordeaux wine grower is seen through their foreign mask.

The "Causes of the Greatness and Decline of the Romans," next issued from Montesquieu's pen, would have assured his fame had the "Spirit of Laws" not belittled it by its own superiority. His Treatise on the Romans is marked by the same perseverance and research as his book on the Laws. He delves at the roots of History to learn how from general causes events have grown. He is no believer in chance: there is a Philosophy of History with its rules and principles and they must be studied and found before we can know the nature and reason of Things. "It is not chance that rules the world," he says; "witness the Romans, who had a constant succession of triumphs while they managed their Government on a certain plan, and an uninterrupted series of reverses when it was conducted on another. There are general causes, either moral or physical, at work in every monarchy, exalting, maintaining or overcoming it." Upon this theory, he has examined symptoms to ascertain causes, and has, with a beauty of style that well became the dignity of his subject, first taught men that the records of the past might be found to contain sermons as well as traditions, lessons as well as facts, and materials for prophecy mingled with the dust of ages.

When the "Spirit of Laws" appeared, the work upon which his title to the admiration of posterity must depend, he was well known to the literary world as the author of the "Persian Letters," but it is not clear that he was much helped by the celebrity thus acquired. If there is one reproach in the arsenal of Gallic denunciation from which a man seldom recovers who aspires to instruct his people, it is the suggestion that he is not a serious man (*un homme sérieux*), and many thought, no doubt, that the putative father of these disrespectful Persians was too witty to be serious. How could he write a grave and instructive book and at the same time masquerade in Persian silks to the tune of Parisian music! The Professor's gravity did not sufficiently appear to entitle the aspiring pedagogue to a diploma.

Although the success of the "Spirit of Laws" was not immediate in France, it was not long in doubt. In England, intelligent opinion immediately seized upon the work, and received it with enthusiasm. This was due in a great measure to the fact that the author had been a close student and admirer of the British Constitution, and had adopted the shortest road to the British heart by his intelligent tribute to the superiority of that vague, shadowy and unwritten Charter of British liberty.

The practical genius of the English mind was happily shown on this occasion. The trans-Channel admirers of Montesquieu must needs know something about this meridional wise man, who had studied, assimilated and understood and expounded the Constitution of England as intelligently and satisfactorily as though he had opened his eyes to the light at London or

Liverpool. Inquiry into his residence and occupation naturally developed the fact that the expounder was not only a book-writer but a wine-grower, whereupon British logic suggested that the man who wrote so excellent a book must also grow excellent wine. The orders for the wine grown at La Brède flowed in as rapidly as the orders for copies of the "Spirit of Laws," so that Montesquieu's frugal mind rejoiced at this double success, which delighted his pride and filled his purse. "The success of my book in that country," he said, "contributed to the success of my wine: but I think that the success of my wine has done still more for the success of my book." Whether this estimate was based on an overestimate of the bouquet of the wine or an underestimate of the greatness of the book, we have no means of ascertaining. The fame of the La Brède brand rests wholly on tradition.

It may not be without interest here to note that Montesquieu, though frugal and modest in his personal expenditures, was at heart generous and kind. He was a ready giver, but he concealed his charities as though they were grievous sins. Ostentation was abhorrent to his nature. His simplicity of life was such as to suggest avarice when it was only indifference to display. He was quite conscious that he did not live and dress and shine like the gaudy members of his own circle and felt that love of money for its own sake would be charged against him. But he repudiated the reproach. "I have never made any display in the way of expense," he said, "but I have never been avaricious. I know of no task, however easy of performance, that I would have performed to earn money. I have, I think, increased my store, but it was rather because I flattered myself that I thereby showed a certain kind of ability than from any desire to become rich." He could not remember to have spent four louis for show, but many a gold piece quietly left his purse to relieve a needy applicant.

One instance may be cited: An English watchmaker once wrote him: "I think of hanging myself: but I believe that I would not do it if I had one hundred crowns." To which Montesquieu immediately replied: "I send you one hundred crowns: do not hang yourself, my dear Sully, but come to see me." How many English clockmakers he thus saved from voluntary strangulation we do not know: he was the last man

to record the number of those or of others whom he rescued from despair.

That Montesquieu did think highly of his masterpiece, we know from his own expressions. He exulted with a schoolboy's delight at the completion of his task, and as his weary pen traced the last words of his immortal work, his memory recalled the tempest-tossed companions of Aeneas as they touched the shores of the promised land. "*Italiam, Italiam,*" he exclaimed. The joy of triumph and the hope of repose combined to make this the happiest moment of his life. The long labor of twenty years was ended and the prize of endless fame secured. Like the Augustan Poet, he felt sure that he would not wholly die, for he had erected a monument more enduring than brass. But the labor and anxiety were almost more than he could bear. As he revised his last proofs, he said: "This work has well-nigh killed me: I am going to rest: I shall labor no more." He lived eight years longer, but made no effort to add to his fame or to his claims upon the world.

It is curious to note how Montesquieu was at first alone of his immediate circle to realize and adequately measure the value of the "Spirit of Laws." Whether the long and faithful labor of years had satisfied him that he could not have thus striven in vain or the equipoise of his trained mind allowed him to judge as correctly as though he were passing on the performance of a stranger, he knew from the outset that the book would win him renown. He called his intimates and asked for their opinion. The critic who showed the most favor kindly declared that there was enough in the work to make it valuable as a notebook, from which material might be drawn for another Treatise: the sternest and possibly the most candid of the critics bluntly declared that the best plan would be to throw the manuscript into the fire as the safest method of guarding the author's reputation from the injury which it would receive from publication. But he trusted to his own judgment rather than to theirs. Undismayed and undisturbed by his comforters, he quietly sent his work to the printer, and awaited the result without anxiety.

If the "Spirit of Laws" escaped the blazing logs of the château, thanks to the self-confidence of the author, another work of his was less fortunate. He had written a "History of

Louis XI," one of the most extraordinary and complex characters in the records of the French Monarchy. Mr. Watson, in his "Story of France," says of Louis XI that he was "a great King, a thoroughly bad man, and utterly unscrupulous in method, yet his life work was upon the whole a benefit to mankind. He was crafty, deceitful, cruel and calculating." Perhaps a man may be a great King even if his character is made up of such ingredients. But as he did exhibit them in his life, it is not to be wondered at if historians, with one accord—still according to Mr. Watson—"decry him as a beast unclean." The estimate of a French historian of modern times probably comes nearer the truth. He says that Louis XI was not a great King nor a good King, but still a King! Our curiosity to know what so competent a judge as Montesquieu would have held upon this point will never be gratified. The carelessness of the secretary, who threw into the flames the complete and priceless manuscript, has inflicted a permanent injury upon mankind. Our regret is only heightened by the few samples that we have of the work that the world has lost. Who but Montesquieu could have described Richelieu in fewer words and have given a more accurate photograph of this towering figure of French History! "Richelieu made his King play the second part in the Monarchy and the first in Europe: he degraded the Sovereign but he ennobled the Throne."

The necessary limits of this paper will not permit even a brief attempt at analyzing the "Spirit of Laws." D'Alembert has made the effort, and has written many and dreary pages to show what Montesquieu intended to accomplish. But no author is more difficult to condense than Montesquieu. He is a dealer in epigrams and possessed the talent to a rare degree of squeezing the sap out of an idea and of crystallizing it into apt and pungent words. So marked is this faculty in him that one of his contemporaries, Buffon, who did not err in the same direction, accounted for this conciseness by saying that it was due to the author's defective vision. His eyes had failed many years before his death, and he was obliged to dictate to his daughter, who performed for him the same pious office that Milton's children performed for their father. As his memory was bad, says Buffon, he was obliged to formulate in his own mind brief sentences that he was able to carry while the dictation

was made, and in this way he became accustomed to the form of expression which is predominant in his work. Buffon may be right, though this compensation to short-sighted men is not usually given. If it were, the "Spirit of Laws" would not stand out as a shining example of a style that has never, in epigrammatic excellence at least, been surpassed.

The foundation of the work was the attempt to find those common principles and emotions which, operating upon men of every climate and degree of civilization, produce certain results. He was satisfied that those principles existed, and if found, would afford a scientific explanation of what without their aid would seem to be chaotic and inexplicable. Or, to come nearer to his own language, he rejoiced to find in "the nature of things" the explanation of so many different laws and customs. He was often discouraged and dismayed at what he termed "the majesty of his subject." Time and again, he flung away the unfinished page, and turned his back in despair upon his herculean task. But his courage and the philosophy of his temperament never yielded long to debilitating influences. He resumed his labors and continued them until he was able to say, like Correggio: "I, too, am a painter"!

Montesquieu has been spoken of, and was no doubt considered in his day by many, a reformer. And yet the reforming spirit in him was so mild as to be almost innocuous. He did condemn the Inquisition—but who did not even then shrink in horror from that awful and mysterious tribunal? He advocated the abolition of torture—who would restore it to-day? He was supposed to be a champion of religious toleration, but went no further in his anxiety to give the benefits of generous forbearance to dissenters than the restoration of the Edict of Nantes. Yet that Edict gave no equality, only faint-hearted toleration, to the men who believed in the same religious doctrines once held by the King who formulated the Edict (assuming that Henry IV ever entertained any fixed belief on religion). Montesquieu was not an advocate of what to-day we consider the elementary rights of conscience. He was willing that the Huguenots should be permitted, with definite restrictions, to practise their own religious rites, but he was not in favor of admitting new beliefs to disturb the State and complicate the machinery of political society. In other words, if he

was in advance of his day in these matters, his conservatism so dominated his theories of reform that before the eighteenth century had ended, he had long been outstripped in the race for toleration by the majority of his people.

The peculiarities of his style have been criticised, and affectation imputed, with scant justice. His methods were certainly unusual: his brusque transitions, the sudden breaks in the continuity of an argument, the dramatic outburst taking the place of a formal conclusion, astonish the modern reader by their unaccustomed and unexpected appearance. But they fulfilled their object, for they captivated the attention as they stimulated the curiosity of the reader. He sought to be read not only by the scholars and purists of the day, but by the many brilliant, if frivolous, people who dabbled in letters and only dreaded one thing in a book, to wit, being bored. The deadly sin of a writer was to fail in making the attention of the reader a prisoner, willing or unwilling. The solid gold of learning and wisdom was not enough: the artist's skill must call attention to the value of the metal so that the taste might be charmed while the mind was satisfied. There must be for the reader of the day frequent halting places where he might stop and get his breath. He was not always able to keep his mind stretched on the rack of continuous attention: he must be allowed at times to turn a corner abruptly and catch a new view of men or things.

A few, among the countless instances of Montesquieu's skill in cheating the sluggard and decoying the unwary, will illustrate the novelty, the charm and the effect produced by this accomplished artist. Who would not prefer an aphorism to a sermon, if the former conveyed all the instruction of the latter? As he himself has said: "It is not enough to make one read, he must be made to think." His chapter on the "Idea of Despotism" contains exactly three lines: Here it is:

CHAPTER XIII. (Book V.)

Idea of Despotism.

When the savages of Louisiana want fruit, they cut the tree at the root and pluck the fruit. This is despotic government.

His chapter on Torture, of which he was a constant and earnest adversary, closes thus: "So many illustrious writers have denounced this practice that I dare not speak after them. I was going to say that it might be adapted to despotic governments, where everything that produces fear enters into the government policy: I was going to say that the slaves in Greece and Rome. . . . But I hear the voice of nature crying out against me!"

His definition of Taxation has become classical, perhaps commonplace: "Each citizen contributes to the revenues of the State a portion of his property in order that his tenure of the rest may be secure."

His objection to severe punishment for trivial offences: "If we examine the cause of all defiance of the law, we shall see that it is to be found in the failure to punish crime, not in the moderation of the penalty."

He explains the unpopularity of the English by saying that their arrogance is such that even in peace "they seem to negotiate with none but enemies." But of course, this was much more than one century ago.

The proper limit of Conquest: "There is a *natural* limit to conquest, namely, *the power of assimilation.*"

Of Liberty, he says: "Liberty consists in the ability to do what *one ought to desire* and in not being forced to do what one ought *not* to desire."

Of Poverty: "A man is not poor because he has nothing, but because he does not work."

To multiply extracts would swell a modest preface into a volume: the temptation to pursue so easy a task must be resisted.

The close of his life was marked by the same kindly and gentle philosophy that he had exhibited from the beginning. He appears to have been a devout and consistent Christian, although making but few professions and preferring to lock up in his own heart the sentiments that he entertained on the most important problems that can occupy the mind of man. He was not only a believer in, but a great admirer of, the morality of the Gospel. He declared that he could not share the humility of the atheists, but preferred to believe that his soul was immortal and that he himself was not perishable like the

sity obliged them to it, nothing would be seen but weakness flying before force, oppressors meeting with no resistance, and those who were oppressed tamely submitting.

Behold, then, men, united and hostile at the same time, on one side, if we may be allowed the expression, embracing each other, and on the other endeavoring mutually to wound each other. Laws are the chains, more or less efficacious, which are destined to suspend or to restrain their blows. But the prodigious extent of the globe which we inhabit, the different nature of the regions of the earth, and of the people who are spread over it, not permitting that all mankind should live under one and the same government, the human race was obliged to divide itself into a certain number of states, distinguished by the difference of those laws to which they are subjected. Under one single government the human race would have been no more than one enfeebled and languishing body, extended without vigor over the surface of the earth. The different governments are so many robust and active bodies; by mutually assisting each other they form one whole, whose reciprocal action maintains and keeps up motion and life everywhere.

Book II.—We may distinguish three sorts of governments: the republican, the monarchical, the despotic. In the republican, the people in a body possess the sovereign power. In the monarchical, one single person governs by fundamental laws. In the despotic, no other law is known than the will of a master, or rather of a tyrant. Not that there are in the universe only these three kinds of government, or that there are states which belong only and strictly to some one of these forms. For the greatest number of them the three forms are mixed or blended the one with the other. Here monarchy inclines to despotism; there the monarchical government is combined with the republican; elsewhere it is not the whole people, it is only a part of them, which make the laws. But the preceding division is not on that account the less just and exact. The three kinds of government which it includes are so distinguished that they have properly nothing in common; and yet all the governments which we know participate the one in the other. It was, therefore, necessary to form particular classes of these three kinds, and afterwards to determine the laws which are proper for each; it would be easy afterwards to adapt those laws to any particular government, according as it might belong more or less to one of those different forms.

In different states the laws ought to have relation to their nature, that is to say, to that which constitutes them; and to their principle, or, to that which supports them and puts them in motion: an important distinction, the key of an infinite number of laws, and from which the author draws many consequences.

The principal laws in relation to the nature of democracy are, that the people be in some respects the monarch, and in others the subject; that it elect and judge of its magistrates, and that the magistrates on certain occasions pronounce decisions. The nature of monarchy requires that there be between the monarch and the people some body to whom the laws are intrusted, and which ought to be a mediator between the subject and the prince. The nature of despotism requires that the tyrant exercise his authority, either by himself alone or by one who represents him.

Book III.—As to the principle of the three governments, that of democracy is the love of the commonwealth, that is, of equality. In monarchies, where the single person is the dispenser of distinctions and rewards, and where they are accustomed to confound the state with this single man, the principle is honor, that is, ambition and the love of esteem. Lastly, under despotism, it is fear. The more vigorous these principles are, the more fixed the government is; the more these are altered and corrupted, the more it tends to its destruction. When the author speaks of equality in democracy, he does not mean an extreme, absolute, and consequently chimerical equality. He means that happy equilibrium which renders all the citizens equally subject to the laws and equally interested in observing them.

Book IV.—In every government the laws of education ought to be in relation to the principle of that government. We understand here by education that which is received in entering upon the world, and not that of parents and of schoolmasters, which is often contrary to it, especially in some states. In monarchies, education ought to have for its object politeness and reciprocal civilities; in despotic states, terror and the debasing of the spirits of men. In republics they have occasion