

THE SPIRIT OF LAWS

BOOK I

OF LAWS IN GENERAL

I.—*Of the Relation of Laws to different Beings*

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

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

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

God is related to the universe, as Creator and Preserver; the laws by which He created all things are those by which He preserves them. He acts according to these rules, because He knows them; He knows them, because He made them; and He made them, because they are in relation of His Wisdom and power.

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

Thus the creation, which seems an arbitrary act, supposes laws as invariable as those of the fatality of the Atheists. It

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

would be absurd to say that the Creator might govern the world without those rules, since without them it could not subsist.

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

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

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

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

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

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

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

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

2.—Of the Laws of Nature

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

The law which, impressing on our minds the idea of a Creator, inclines us towards Him, is the first in importance, though not in order, of natural laws. Man in a state of nature would have the faculty of knowing, before he had acquired any knowl-

edge. Plain it is that his first ideas would not be of a speculative nature; he would think of the preservation of his being, before he would investigate its origin. Such a man would feel nothing in himself at first but impotency and weakness; his fears and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in forests,^b trembling at the motion of a leaf, and flying from every shadow.

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

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

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

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

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

Besides the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge; and thence arises a second tie, which brutes have not. Man-

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

over to England during the reign of George I.

^c In præfat. lib. "De Cive."

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

3.—Of Positive Laws

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

They should be in relation to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each

^e An Italian poet and jurist, 1664—1718.

other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered.

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

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

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

BOOK II

OF LAWS DIRECTLY DERIVED FROM THE NATURE OF GOVERNMENT

1.—Of the Nature of three different Governments

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

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

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

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

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

There can be no exercise of sovereignty but by their suffrages, which are their own will; now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage are fundamental to this government. And

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

indeed it is as important to regulate in a republic, in what manner, by whom, to whom, and concerning what suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern.

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

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

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

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

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

The people are extremely well qualified for choosing those whom they are to intrust with part of their authority. They have only to be determined by things to which they cannot be strangers, and by facts that are obvious to sense. They can

^b Declam. 17 and 18.

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

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

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

tell when a person has fought many battles, and been crowned with success; they are, therefore, capable of electing a general. They can tell when a judge is assiduous in his office, gives general satisfaction, and has never been charged with bribery: this is sufficient for choosing a prætor. They are struck with the magnificence or riches of a fellow-citizen; no more is requisite for electing an edile. These are facts of which they can have better information in a public forum than a monarch in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this surpasses their abilities.

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

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

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

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

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

Servius Tullius followed the spirit of aristocracy in the distribution of his classes. We find in Livy^f and in Dionysius

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

^f Lib. I.

Halicarnassus^g in what manner he lodged the right of suffrage in the hands of the principal citizens. He had divided the people of Rome into 193 centuries, which formed six classes; and ranking the rich, who were in smaller numbers, in the first centuries, and those in middling circumstances, who were more numerous, in the next, he flung the indigent multitude into the last; and as each century had but one vote,^h it was property rather than numbers that decided the election.

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

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

The suffrage by lot is natural to democracy; as that by choice is to aristocracy.^k

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

Yet as this method is in itself defective, it has been the endeavor 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 expense, should be given by choice, and the others by lot.

In order, however, to amend the suffrage by lot, he made a rule that none but those who presented themselves should be

^g Lib. IV. art. 15 et seq.

^h 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.

ⁱ Dionysius Halicarn., "Eulogium of Isocrates," p. 97, tom. ii. Edit. Wechel. "Pollux," VIII. cap. x. art. 130.

^j See Aristotle's "Polit." lib. II. cap. xii.

^k Ibid. lib. IV. cap. ix.

^l The mere suffrage might occasion mortification to those who were excluded, and undue pride to the favored ones. It was in order to avoid this contingency that they had recourse to lot, and thus chance precluded this danger, for it does not deal in humiliation or inflation.—Servan.

elected; that the person elected should be examined by judges,^m and that every one should have a right to accuse him if he were unworthy of the office;ⁿ this participated at the same time of the suffrage by lot and of that by choice. When the time of their magistracy had expired, they were obliged to submit to another judgment in regard to their conduct. Persons utterly unqualified must have been extremely backward in giving in their names to be drawn by lot.

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

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

Intriguing in a senate is dangerous; it is dangerous also in a body of nobles; but not so among the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on account of an actor as ever they could be for the welfare of the state. The misfortune of a republic is when intrigues are at an end; which happens when the people are gained by

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

ⁿ 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.*

^o Lib. I. and III. "de Leg."

^p They were called Leges Tabulares; two tablets were presented to each citizen, the first marked with an A, for "Antiquo," or "I forbid it"; and the other with a U and an R, for "Uti Rogas," or "Be it as you desire."

^q At Athens the people used to lift up their hands.

^b As at Venice.

^c 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 Agor.," cap. viii.

* These two tickets sufficed when the people were called upon to deliberate in a question of law; but in the election of magistrates, each citizen received as many tickets as there were candidates.—Crévier.

bribery and corruption: in this case they grow indifferent to public affairs, and avarice becomes their predominant passion. Unconcerned about the government and everything belonging to it, they quietly wait for their hire.

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

3.—Of the Laws in relation to the Nature of Aristocracy

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

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

When the nobility are numerous, there must be a senate to regulate the affairs which the body of the nobles are incapable of deciding, and to prepare others for their decision. In this case it may be said that the aristocracy is in some measure in the senate, the democracy in the body of the nobles, and the people are a cipher.

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

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

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

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

petuate abuses. At Rome, which in its early years was a kind of aristocracy, the senate did not fill up the vacant places in their own body; the new members were nominated by the censors.^b

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

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

^b They were named at first by the consuls.

^c This is what ruined the republic of

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

latter is designed to punish suspected crimes; whereas the former used rather menaces than punishment even for crimes that were openly avowed.

In all magistracies, the greatness of the power must be compensated by the brevity of the duration. This most legislators have fixed to a year; a longer space would be dangerous, and a shorter would be contrary to the nature of government. For who is it that in the management even of his domestic affairs would be thus confined? At Ragusa^d the chief magistrate of the republic is changed every month, the other officers every week, and the governor of the castle every day. But this can take place only in a small republic environed^e by formidable powers, who might easily corrupt such petty and insignificant magistrates.

The best aristocracy is that in which those who have no share in the legislature are so few and inconsiderable that the governing party have no interest in oppressing them. Thus when^f Antipater made a law at Athens, that whosoever was not worth two thousand drachms should have no power to vote, he formed by this method the best aristocracy possible; because this was so small a sum as to exclude very few, and not one of any rank or consideration in the city.

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

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

4.—Of the Relation of Laws to the Nature of Monarchical Government

The intermediate, subordinate, and dependent powers constitute the nature of monarchical government; I mean of that in which a single person governs by fundamental laws. I said the intermediate, subordinate, and dependent powers. And,

^d Tournefort's "Voyages."

^e At Lucca the magistrates are chosen only for two months.

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

indeed, in monarchies the prince is the source of all power, political and civil. These fundamental laws necessarily suppose the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and, of course, there is no fundamental law.

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

There are men who have endeavored in some countries in Europe to suppress the jurisdiction of the nobility, not perceiving that they were driving at the very thing that was done by the Parliament of England. Abolish the privileges of the lords, the clergy and cities in a monarchy, and you will soon have a popular state, or else a despotic government.

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

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

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

^g This maxim brings to mind the unfortunate Charles I, who said, "No bishop, no monarchy"; while Henry IV of France declared to the Seize, "No nobility, no monarch!"—Voltaire.

is productive of the most dreadful calamities to human nature, the very evil that restrains it is beneficial to the subject.

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

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

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

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

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

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

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

augmented that of the Commons.—Voltaire.

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

forms a kind of permanent depositary; and if this cannot be said of religion, it may of the customs that are respected instead of laws.

5.—*Of the Laws in relation to the Nature of a despotic Government*

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

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

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

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

BOOK III

OF THE PRINCIPLES OF THE THREE KINDS OF GOVERNMENT

1.—*Difference between the Nature and Principle of Government*

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

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

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

2.—*Of the Principle of different Governments*

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

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