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

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

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 reasons 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 JUDGMENTS, AND THE INFLICTING OF PUNISHMENTS

1.—*Of the Simplicity of Civil Laws in different Governments*

MONARCHIES do not permit of so great a simplicity of laws as despotic governments. For in monarchies there must be courts of judicature; these must give their decisions; the decisions must be preserved and learned, 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 honor, demands very scrupulous inquiries. The delicacy of the judge increases in proportion to the increase of his trust, and of the importance of the interests on which he determines.

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

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

ance; allodial, or held by socage; 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 have 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 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 as the despotic prince knows nothing, and can attend to nothing, he must take general measures, and govern by a rigid and inflexible will, which throughout his whole dominions produces the same effect; in short, everything bends under his feet.

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

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

One of the privileges least burdensome to society, and especially to him who confers it, is that of pleading in one court in preference to another. Here new difficulties arise, when it becomes a question before which court we shall plead.

Far different is the case of the people under despotic governments. In those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the prince, it follows that there are scarcely any civil laws in regard to landed property. From the right the sovereign has to successions, it follows, likewise, that there are none relating to inheritances. The monopolies established by the prince for himself in some countries render all sorts of commercial laws quite useless. The marriages which they usually contract with female slaves are the cause that there are scarcely 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 honor is a thing hardly known in those countries, the several difficulties relating to this article, though of such importance with us, are with them quite out of the question. Despotic power is self-sufficient; round it there is an absolute vacuum. Hence it is that when travellers favor us with the description of countries where arbitrary sway prevails, they seldom make mention of civil laws.[a]

All occasions, therefore, of wrangling and law-suits are here removed. And to this in part is it 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.

2.—*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 on a point which it most behooves mankind to know?

If we examine the set forms of justice with respect to the trouble the subject undergoes in recovering his property or

[a] In Mazulipatam it could never be found out that there was such a thing as a written law. See the "Collection of Voyages that contributed to the establishment of the East India Company," tom. iv. part I. p. 391. The Indians are regulated in their decisions by certain customs. The Vedas and such books do not contain civil laws, but religious precepts. See "Lettres édifiantes," 14, collect.

in obtaining satisfaction for an injury or affront, we shall find them doubtless too numerous: but if we consider them in the relation they bear to the liberty and security of every individual, we shall often find them too few; and be convinced that the trouble, expense, delays, and even the very dangers of our judiciary proceedings are the price that each subject pays for his liberty.

In Turkey, where little regard is shown to the honor, life, or estate of the subject, all causes are speedily decided. The method of determining them is a matter of indifference, provided they be determined. The pasha, after a quick hearing, orders which party he pleases to be bastinadoed, and then sends them about their business.

Here it would be dangerous to be of a litigious disposition; this supposes a strong desire of obtaining justice, a settled aversion, an active mind, and a steadiness in pursuing one's point. All this should be avoided in a government where fear ought to be the only prevailing sentiment, and in which 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 honor or property until after a long inquiry; and no man is bereft of life till his very country has attacked him—an attack that is never made without leaving him all possible means of making his defence.

Hence it is that when a person renders himself absolute,[b] he immediately thinks of reducing the number of laws. In a government thus constituted they are more affected with particular inconveniences than with the liberty of the subject, which is very little minded.

In republics, it is plain that as many formalities at least are necessary as in monarchies. In both governments they increase in proportion to the value which is set on the honor, 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 everything; in the latter, because they are nothing.

b Cæsar, Cromwell, and many others.

3.—*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 towards a republic, the more the manner of judging becomes settled and fixed; hence it was a fault in the Republic of Sparta for the Ephori to pass such arbitrary judgments without having any laws to direct them. The First Consuls at Rome pronounced sentence in the same manner as the Ephori; but the inconvenience of this proceeding was soon felt, and they were obliged to have recourse to express and determinate laws.

In despotic governments there are no laws; the judge himself is his own rule. There are laws in monarchies; and where these are explicit, the judge conforms to them; where they are otherwise, he endeavors to investigate their spirit. In republics, the very nature of the constitution requires the judges to follow the letter of the law; otherwise the law might be explained to the prejudice of every citizen, in cases where their honor, property, or life is concerned.

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

4.—*Of the Manner of passing Judgment*

Hence arises the different modes of passing judgment. In monarchies the judges choose the method of arbitration; they deliberate together, they communicate their sentiments for the sake of unanimity; they moderate their opinions, in order to render them conformable to those of others: and the lesser number are obliged to give way to the majority. But this is not agreeable to the nature of a republic. At Rome, and in the cities of Greece, the judges never entered into a consultation; each gave his opinion in one of these three ways: I absolve, I condemn, It does not appear clear to me:[c] this was

c Non liquet.

because the people judged, or were supposed to judge. But the people are far from being civilians; all these restrictions and methods of arbitration are above their reach; they must have only one object and one single fact set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgment.

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

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

5.—*In what Governments the Sovereign may be Judge*

Machiavel[f] attributes the loss of the liberty of Florence to the people's not judging in a body in cases of high treason against themselves, as was customary at Rome. For this purpose they had eight judges: "but the few," says Machiavel, "are corrupted by a few." I should willingly adopt the maxim of this great man. But as in those cases the political interest prevails in some measure over the civil (for it is always an inconvenience that the people should be judges in their own cause), in order to remedy this evil, the laws must provide as much as possible for the security of individuals.

With this view the Roman legislators did two things: they gave the persons accused permission to banish themselves[g] before sentence was pronounced;[h] 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 book XI. the other limitations that were set to the judicatory power residing in the people.

Solon knew how to prevent the abuse which the people might make of their power in criminal judgments. He ordained that the Court of Areopagus should re-examine the affair; that if they believed the party accused was unjustly acquitted,[i] they should impeach him again before the people; that if they believed him unjustly condemned,[j] they should prevent the execution of the sentence, 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 constitution 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, honor, affection, and security in the subject, the more extended is the power of the monarch.

We shall give here a few more reflections on this point. In monarchies, the prince is the party that prosecutes the person accused, and causes him to be punished or acquitted. Now, were he himself to sit upon the trial, he would be both judge and party.

In this government the prince has frequently the benefit of confiscation, so that here again, by determining criminal causes, he would be both judge and party.

Further, by this method he would deprive himself of the most glorious attribute of sovereignty, namely, that of grant-

d "Quas actiones ne populus prout vellet instituerat, certas solemnesque esse voluerunt."—Lib. II. sec. 6, Digest. de Orig. Jur.

e In France a person, though sued for more than he owes, loses his costs if he has not offered to pay the exact debt.

f "Discourse on the first Decade of Livy," book I. chap. vii.

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

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

i Demosthenes, "Pro Corona," p. 494. edit. Frankf. an. 1604.

j See Philostratus's "Lives of the Sophists," book I., Life of Æschines.

ing pardon,[k] for it would be quite ridiculous of him to make and unmake his decisions; surely he would not choose to contradict himself.

Besides, this would be confounding all ideas; it would be impossible to tell whether a man was acquitted, or received his pardon.

Louis XIII being desirous to sit in judgment upon the trial of the Duke de la Valette,[l] sent for some members of the Parliament and of the Privy Council, to debate the matter; upon their being ordered by the King to give their opinion concerning the warrant for his arrest, the President, De Believre, said "that he found it very strange that a prince should pass sentence upon a subject; that kings had reserved to themselves the power of pardoning, and left that of condemning to their officers; that his majesty wanted to see before him at the bar a person who, by his decision, was to be hurried away into the other world! That the prince's countenance should inspire with hopes, and not confound with fears; that his presence alone removed ecclesiastic censures; and that subjects ought not to go away dissatisfied from the sovereign." When sentence was passed, the same magistrate declared, "This is an unprecedented judgment to see, contrary to the example of past ages—a king of France, in the quality of a judge, condemning a gentleman to death."[m]

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

"Claudius," says Tacitus,[n] "having appropriated to himself the determination of law-suits, and the function of magistrates, gave occasion to all manner of rapine." But Nero, upon coming to the empire after Claudius, endeavored to conciliate

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

[l] See the relation of the trial of the Duke de la Valette. It is printed in the "Memoirs of Montresor," tom. ii. p. 62.

[m] It was afterwards revoked. See the same relation. It was ordinarily a right of the peerage that a peer criminally accused should be judged by the king, as Francis II in the trial of the Prince of Condé, and Charles VII in the case of the Duc d'Alençon. Today, the presence of the king at the trial of a peer, in order to condemn him, would seem an act of tyranny.—Voltaire.

[n] "Annal." lib. XI.

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 influence of a few freedmen."[o]

"Under the reign of Arcadius," says Zozimus,[p] "a swarm of calumniators spread themselves on every side and infested the court. Upon a person's decease, it was immediately supposed he had left no children;[q] and, in consequence of this, his property was given away by a rescript. For as the prince was surprisingly stupid, and the empress excessively enterprising, she was a slave to the insatiable avarice of her domestics and confidants; insomuch that to an honest man nothing could be more desirable than death."

"Formerly," says Procopius,[r] "there used to be very few people at court; but in Justinian's reign, as the judges had no longer the liberty of administering justice, their tribunals were deserted, while the prince's palace resounded with the litigious clamors of the several parties." Everybody knows what a prostitution there was of public judgments, and even of the very laws themselves, at that Emperor's court.

The laws are the eye of the prince; by them he sees what would otherwise escape his observation. Should he attempt the function of a judge, he would not then labor for himself, but for impostors, whose aim is to deceive him.

6.—*That in Monarchies Ministers ought not to sit as Judges*

It is likewise a very great inconvenience in monarchies for the ministers of the prince to sit as judges. We have still instances of states where there are a great number of judges to decide exchequer causes, and where the ministers nevertheless (a thing most incredible!) would fain determine them. Many are the reflections that here arise; but this single one will suffice for my purpose.

There is in the very nature of things a kind of contrast between a prince's council and his courts of judicature. The king's council ought to be composed of a few persons, and the courts of judicature of a great many. The reason is, in the

[o] "Annal." lib. XIII.

[p] "Hist." lib. V.

[q] The same disorder happened under Theodosius the younger.

[r] "Secret History."

former, things should be undertaken and conducted with a kind of warmth and passion, which can hardly be expected but from four or five men who make it their sole business. On the contrary, in courts of judicature a certain coolness is requisite, and an indifference, in some measure, to all manner of affairs.

7.—*Of a single Magistrate*

A magistracy of this kind cannot take place but in a despotic government. We have an instance in the Roman history how far a single magistrate may abuse his power. Might it not be very well expected that Appius on his tribunal should contemn all laws, after having violated that of his own enacting?[s] 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 relatives 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 enacted only in favor of the father, and that as Virginius was absent, no application could be made of it to the present case.[t]

8.—*Of Accusation in different Governments*

At Rome[u] it was lawful for one citizen to accuse another. This was agreeable to the spirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and is supposed to hold all the rights of his country in his own hands. Under the emperors, the republican maxims were still pursued; and instantly appeared a pernicious tribe, a swarm of informers. Crafty, wicked men, who could stoop to any indignity to serve the purposes of their ambition, were sure to busy themselves in the search of criminals whose condemnation might be agreeable to the prince; this was the road to honor and preferment,[v] but luckily we are strangers to it in our country.

We have at present an admirable law, namely, that by which the prince, who is established for the execution of the laws, appoints an officer in each court of judicature to prosecute all

[s] See the 2d law, sec. 24 ff. "de Orig. Jur."

[t] "Quod pater puellæ abesset, locum injuriæ esse ratus."—Livius, dec. I. lib. III.

[u] And in a great many other cities.

[v] See in Tacitus the rewards given to those informers.

sorts of crimes in his name; hence the profession of informers is a thing unknown to us, for if this public avenger were suspected to abuse his office, he would soon be obliged to mention his author.

By Plato's laws,[w] those who neglect to inform or to assist the magistrates are liable to punishment. This would not be so proper in our days. The public prosecutor watches for the safety of the citizens; he proceeds in his office while they enjoy their quiet and ease.

9.—*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 honor and virtue.

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

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

It is a constant remark of the Chinese authors,[x] that the more the penal laws were increased in their empire, the nearer they drew towards a revolution. This is because punishments were augmented in proportion as the public morals were corrupted.

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

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

[w] Lib. IX.

[x] I shall show hereafter that China is, in this respect, in the same case as a republic or a monarchy.

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

What we see practised by individuals is equally observable in regard to nations. In countries inhabited by savages who lead a very hard life, and in despotic governments, where there is only one person on whom fortune lavishes her favors, while the miserable subjects lie exposed to her insults, people are equally cruel. Lenity reigns in moderate governments.

When in reading history we observe the cruelty of the sultans in administration of justice, we shudder at the very thought of the miseries of human nature.

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

10.—*Of the ancient French Laws*

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

11.—*That when People are virtuous few Punishments are necessary*

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

a 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. of the year 1512.

b See the "Council of Peter Defontaines," chap. xiii., especially the 22d art.

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[c] or of the Porcian law.[d] It was never observed that this step did any manner of prejudice to the civil administration.

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

12.—*Of the Power of Punishments*

Experience shows that in countries remarkable for the lenity of their laws the spirit of the inhabitants is as much affected by slight penalties as in other countries by severer punishments.

If an inconvenience or abuse arises in the state, a violent government endeavors suddenly to redress it; and instead of putting the old laws in execution, it establishes some cruel punishment, which instantly puts a stop to the evil. But the spring of government hereby loses its elasticity; the imagination grows accustomed to the severe as well as the milder punishment; and as the fear of the latter diminishes, they are soon obliged in every case to have recourse to the former. Robberies on the highway became 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 became as common as ever.

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

c It was made by Valerius Publicola soon after the expulsion of the kings, and was twice renewed, both times by magistrates of the same family. As Livy observes, lib. X., the question was not to give it a greater force, but to render its injunctions more perfect. "Diligentius sanctum," says Livy, ibid.

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

e "Nihil ultra quam improbe factum adjecet."—Liv.

f They slit his nose or cut off his ears.

him with infamy for life; the penalty was pretended to be increased, while it really diminished.

Mankind must not be governed with too much severity; we ought to make a prudent use of the means which nature has given us to conduct them. If we inquire into the cause of all human corruptions, we shall find that they proceed from the impunity of criminals, and not from the moderation of punishments.

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

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

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

It often happens that a legislator, desirous of remedying an abuse, thinks of nothing else; his eyes are open only to this object, and shut to its inconveniences. When the abuse is redressed, you see only the severity of the legislator; yet there remains an evil in the state that has sprung from this severity; the minds of the people are corrupted, and become habituated to despotism.

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

"The Argives," says Plutarch,*h* "having put fifteen hundred of their citizens to death, the Athenians ordered sacrifices of

g Xenoph. "Hist." lib. III.

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

expiation,*i* that it might please the gods to turn the hearts of the Athenians from so cruel a thought."

There are two sorts of corruptions—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.

13.—*Insufficiency of the Laws of Japan*

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

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

They punish with death lies spoken before the magistrate;*k* a proceeding contrary to natural defence.

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

True it is that the character of this people, so amazingly obstinate, capricious, and resolute as to defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men who have a natural contempt for death, and who rip open their bellies for the least fancy—are such men, I say, mended or deterred, or rather are they not hardened, by the continual prospect of punishments?

The relations of travellers inform us, with respect to the education of the Japanese, that children must be treated there with mildness, because they become hardened to punishment; that their slaves must not be too roughly used, because they immediately stand upon their defence. Would not one imagine that they might easily have judged of the spirit which ought to

i Montesquieu appears to have followed Amyot, who was mistaken here. Plutarch says that the Athenians carried the victims of expiation around the assembly. It was done as an act of purification.—Crévier.

j See Kempfer.

k "Collection of Voyages that contributed to the establishment of the East India Company," tom. iii. p. 428.