

The crown was elective, and under the first five kings the Senate had the greatest share in the election.

Upon the king's decease the Senate examined whether they should continue the established form of government. If they thought proper to continue it, they named a magistrate *i* taken from their own body, who chose a king; the senate were to approve of the election, the people to confirm it, and the augurs to declare the approbation of the gods. If any of these three conditions was wanting, they were obliged to proceed to another election.

The constitution was a mixture of monarchy, aristocracy, and democracy; and such was the harmony of power, that there was no instance of jealousy or dispute in the first reigns. The king commanded the armies, and had the direction of the sacrifices: he had the power of determining *j* civil and criminal *k* causes; he called the Senate together, convened the people, laid some affairs before the latter, and regulated the rest with the senate.^l

The authority of the senate was very great. The kings oftentimes pitched upon senators with whom they sat in judgment; and they never laid any affair before the people till it had been previously debated *m* in that august assembly.

The people had the right of choosing *n* magistrates, of consenting to the new laws, and, with the king's permission, of making war and peace; but they had not the judicial power. When Tullius Hostilius referred the trial of Horatius to the people, he had his particular reasons, which may be seen in Dionysius Halicarnassus.^o

The constitution altered under *p* Servius Tullius. The Senate had no share in his election; he caused himself to be proclaimed by the people; he resigned the power of hearing civil causes,^q reserving none to himself but those of a criminal nat-

ⁱ Dionys. Halicarn. book II. p. 120, and book IV. pp. 242 and 243.

^j See Tanaquil's "Discourse on Livy," book I. dec. 1, and the regulations of Servius Tullius in Dionys. Halicarn. book IV. p. 229.

^k See Dionys. Halicarn. book II. p. 118, and book III. p. 171.

^l It was by virtue of a *senatus-consultum* that Tullius Hostilius ordered Alba to be destroyed.—Dionys. Halicarn. book III. pp. 167 and 172.

^m Ibid. book IV. p. 276.

ⁿ Ibid., book II. And yet they could not have the nomination of all offices, since Valerius Publicola made that famous law by which every citizen was forbidden to exercise any employment, unless he had obtained it by the suffrage of the people.

^o Book III. p. 159.

^p Ibid., book IV.

^q He divested himself of half the regal power, says Dionys. Halicarn. book IV. p. 229.

ure; he laid all affairs directly before the people, eased them of the taxes, and imposed the whole burden on the patricians. Hence in proportion as he weakened the regal together with the senatorian power, he augmented that of the plebeians.^r

Tarquin would neither be chosen by the Senate nor by the people; he considered Servius Tullius as a usurper, and seized the crown as his hereditary right. He destroyed most of the senators; those who remained he never consulted; nor did he even so much as summon them to assist at his decisions.^s Thus his power increased: but the odium of that power received a new addition, by usurping also the authority of the people, against whose consent he enacted several laws. The three powers were by these means reunited in his person; but the people at a critical minute recollected that they were legislators, and there was an end of Tarquin.

13.—General Reflections on the State of Rome after the Expulsion of its Kings

It is impossible to be tired of so agreeable a subject as ancient Rome: thus strangers at present leave the modern palaces of that celebrated capital to visit the ruins; and thus the eye, after recreating itself with the view of flowery meads, is pleased with the wild prospect of rocks and mountains.

The patrician families were at all times possessed of great privileges. These distinctions, which were considerable under the kings, became much more important after their expulsion. Hence arose the jealousy of the plebeians, who wanted to reduce them. The contest struck at the constitution, without weakening the government; for it was very indifferent as to what family were the magistrates, provided the magistracy preserved its authority.

An elective monarchy, like that of Rome, necessarily supposes a powerful aristocratic body to support it, without which it changes immediately into tyranny or into a popular state. But a popular state has no need of this distinction of families to maintain itself. To this it was owing that the patricians, who were a necessary part of the constitution under the regal gov-

^r It was thought that if he had not been prevented by Tarquin he would have established a popular government.—Dionys. Halicarn. book IV. p. 243.

^s Ibid., book IV.

ernment, became a superfluous branch under the consuls; the people could suppress them without hurting themselves, and change the constitution without corrupting it.

After Servius Tullius had reduced the patricians, it was natural that Rome should fall from the regal hands into those of the people. But the people had no occasion to be afraid of relapsing under a regal power by reducing the patricians.

A state may alter in two different ways, either by the amendment or by the corruption of the constitution. If it has preserved its principles and the constitution changes, this is owing to its amendment; if upon changing the constitution its principles are lost, this is because it has been corrupted.

The government of Rome, after the expulsion of the kings, should naturally have been a democracy. The people had already the legislative power in their hands; it was their unanimous consent that had expelled the Tarquins; and if they had not continued steady to those principles, the Tarquins might easily have been restored. To pretend that their design in expelling them was to render themselves slaves to a few families is quite absurd. The situation therefore of things required that Rome should have formed a democracy, and yet this did not happen. There was a necessity that the power of the principal families should be tempered, and that the laws should have a bias to democracy.

The prosperity of states is frequently greater in the insensible transition from one constitution to another than in either of those constitutions. Then it is that all the springs of government are upon the stretch, that the citizens assert their claims, that friendships or enmities are formed amongst the jarring parties, and that there is a noble emulation between those who defend the ancient and those who are strenuous in promoting the new constitution.

14.—*In what Manner the Distribution of the three Powers began to change after the Expulsion of the Kings*

There were four things that greatly prejudiced the liberty of Rome. The patricians had engrossed to themselves all public employments whatever; an exorbitant power was annexed to the consulate; the people were often insulted; and, in fine,

they had scarcely any influence at all left in the public suffrages. These four abuses were redressed by the people.

1st. It was regulated that the plebeians might aspire to some magistracies; and by degrees they were rendered capable of them all, except that of *Inter-rex*.

2d. The consulate was dissolved into several other magistracies; pretors were created, on whom the power was conferred of trying private causes; questors^u were nominated for determining those of a criminal nature; ediles were established for the civil administration; treasurers^a were made for the management of the public money; and, in fine, by the creation of censors the consuls were divested of that part of the legislative power which regulates the morals of the citizens and the transient polity of the different bodies of the state. The chief privileges left them were, to preside in the great meetings^b of the people, to assemble the Senate, and to command the armies.

3d. The sacred laws appointed tribunes, who had a power of checking the encroachments of the patricians, and prevented not only private but likewise public injuries.

In fine the plebeians increased their influence in the general assemblies. The people of Rome were divided in three different manners—by centuries, by *curiæ*, and by tribes; and whenever they gave their votes, they were convened in one of those three ways.

In the first the patricians, the leading men, the rich, and the Senate, which was very nearly the same thing, had almost the whole authority; in the second they had less; and less still in the third.

The division into centuries was a division rather of estates and fortunes than of persons. The whole people were distributed into a hundred and ninety-three centuries,^c which had each a single vote. The patricians and leading men composed the first nine-eight centuries; and the other nine-five consisted of the remainder of the citizens. In this division therefore the patricians were masters of the suffrages.

In the division into *curiæ*,^d the patricians had not the same advantages; some, however, they had, for it was necessary to

[†] Livy, dec. 1, book VI.
^u "Questores parricidii."—Pomponius, leg. 2 ff. "de Orig. Jur."
^a Plutarch, "Life of Publicola."

^b Comitiiis centuriatis.
^c See Livy, book I.; Dionys. Halicarn. books IV. and VII.
^d Dionys. Halicarn. book IX. p. 598.

consult the augurs, who were under the direction of the patricians; and no proposal could be made there to the people unless it had been previously laid before the senate, and approved of by a *senatus-consultum*. But, in the division into tribes they had nothing to do either with the augurs or with the decrees of the Senate; and the patricians were excluded.

Now the people endeavored constantly to have those meetings by *curiæ* which had been customary by centuries, and by tribes those they used to have before by *curiæ*; by which means the direction of public affairs soon devolved from the patricians to the plebeians.

Thus when the plebeians obtained the power of trying the patricians—a power which commenced in the affair of Coriolanus,^e they insisted upon assembling by tribes,^f and not by centuries; and when the new magistracies ^g of tribunes and ediles were established in favor of the people, the latter obtained that they should meet by *curiæ* in order to nominate them; and after their power was quite settled, they gained ^h so far their point as to assemble by tribes to proceed to this nomination.

15.—*In what Manner Rome, in the flourishing State of that Republic, suddenly lost its Liberty*

In the heat of the contests between the patricians and the plebeians, the latter insisted upon having fixed laws, to the end that the public judgments should no longer be the effect of capricious will or arbitrary power. The Senate, after a great deal of resistance, acquiesced; and decemvirs were nominated to compose those laws. It was thought proper to grant them an extraordinary power, because they were to give laws to parties whose views and interest it was almost impossible to unite. The nomination of all magistrates was suspended; and the decemvirs were chosen in the *comitia* sole administrators of the republic. Thus they found themselves invested with the consular and the tribunitial power. By one they had the privilege of assembling the senate, by the other that of convening the people; but they assembled neither Senate nor peo-

^e Dionys. Halicarn. book VII.
^f Contrary to the ancient custom, as may be seen in Dionys. Halicarn. book V. p. 320.

^g Dionys. Halicarn. book V. pp. 418 and 411.
^h Ibid. book IX. p. 650.

ple. Ten men only of the republic had the whole legislative, the whole executive, and the whole judiciary power. Rome saw herself enslaved by as cruel a tyranny as that of Tarquin. When Tarquin trampled on the liberty of that city, she was seized with indignation at the power he had usurped; when the decemvirs exercised every act of oppression, she was astonished at the extraordinary power she had granted.

What a strange system of tyranny—a tyranny carried on by men who had obtained the political and military power, merely from their knowledge in civil affairs, and who at that very juncture stood in need of the courage of those citizens to protect them abroad who so tamely submitted to domestic oppression!

The spectacle of Virginia's death, whom her father immolated to chastity and liberty, put an end to the power of the decemvirs. Every man became free, because every man had been injured; each showed himself a citizen, because each had a tie of the parent. The senate and the people resumed a liberty which had been committed to ridiculous tyrants.

No people were so easily moved by public spectacles as the Romans. That of the impurpled body of Lucretia put an end to the regal government. The debtor who appeared in the Forum covered with wounds caused an alteration in the republic. The decemvirs owed their expulsion to the tragedy of Virginia. To condemn Manlius, it was necessary to keep the people from seeing the Capitol. Cæsar's bloody garment flung Rome again into slavery.

16.—*Of the legislative Power in the Roman Republic*

There were no rights to contest under the decemvirs: but upon the restoration of liberty, jealousies revived; and so long as the patricians had any privileges left, they were sure to be stripped of them by the plebeians.

The mischief would not have been so great had the plebeians been satisfied with this success; but they also injured the patricians as citizens. When the people assembled by *curiæ* or centuries, they were composed of senators, patricians, and plebeians; in their disputes the plebeians gained this point,ⁱ that they alone without patricians or senate should enact the laws

ⁱ Dionys. Halicarn. book XI. p. 725.

called Plebiscita; and the assemblies in which they were made had the name of *comitia* by tribes. Thus there were cases in which the patricians *j* had no share in the legislative power, but *k* were subject to the legislation of another body of the state. This was the extravagance of liberty. The people, to establish a democracy, acted against the very principles of that government. One would have imagined that so exorbitant a power must have destroyed the authority of the senate. But Rome had admirable institutions. Two of these were especially remarkable: one by which the legislative power of the people was established, and the other by which it was limited.

The censors, and before them the consuls, modelled *l* and created, as it were, every five years, the body of the people; they exercised the legislation on the very part that was possessed of the legislative power. "Tiberius Gracchus," says Cicero, "caused the freedmen to be admitted into the tribes, not by the force of his eloquence, but by a word, by a gesture; which had he not effected, the republic, whose drooping head we are at present scarcely able to uphold, would not even exist."

On the other hand, the senate had the power of rescuing, as it were, the republic out of the hands of the people, by creating a dictator, before whom the sovereign bowed his head, and the most popular laws were silent.^m

17.—Of the executive Power in the same Republic

Jealous as the people were of their legislative power, they had no great uneasiness about the executive. This they left almost entirely to the senate and to the consuls, reserving scarcely anything more to themselves than the right of choosing the magistrates, and of confirming the acts of the senate and of the generals.

Rome, whose passion was to command, whose ambition was

j By the sacred laws, the plebeians had the power of making the plebiscita by themselves, without admitting the patricians into their assembly.—Dionys. Halicarn. book VI. p. 410, and book VII. p. 430.

k By the law enacted after the expulsion of the decemvirs, the patricians were made subject to the plebiscita, though they had not a right of voting there. Livy, book III. and Dionys.

Halicarn. book XI. p. 725. This law was confirmed by that of Publius Philo the dictator, in the year of Rome 416. Livy, book VIII.

l In the year 312 of Rome the consuls performed still the business of surveying the people and their estates, as appears by Dionys. Halicarn. book XI.

m Such as those by which it was allowed to appeal from the decisions of all the magistrates to the people.

to conquer, whose commencement and progress were one continued usurpation, had constantly affairs of the greatest weight upon her hands; her enemies were ever conspiring against her, or she against her enemies.

As she was obliged to behave on the one hand with heroic courage, and on the other with consummate prudence, it was requisite, of course, that the management of affairs should be committed to the senate. Thus the people disputed every branch of the legislative power with the senate, because they were jealous of their liberty; but they had no disputes about the executive, because they were animated with the love of glory.

So great was the share the senate took in the executive power, that, as Polybius *n* informs us, foreign nations imagined that Rome was an aristocracy. The senate disposed of the public money, and farmed out the revenue; they were arbiters of the affairs of their allies; they determined war or peace, and directed in this respect the consuls; they fixed the number of the Roman and of the allied troops, disposed of the provinces and armies to the consuls or pretors, and upon the expiration of the year of command had the power of appointing successors; they decreed triumphs, received and sent embassies: they nominated, rewarded, punished, and were judges of kings, declared them allies of the Roman people, or stripped them of that title.

The consuls levied the troops which they were to carry into the field; had the command of the forces by sea and by land; disposed of the forces of the allies; were invested with the whole power of the republic in the provinces; gave peace to the vanquished nations, imposed conditions on them, or referred them to the senate.

In the earliest times, when the people had some share in the affairs relating to war or peace, they exercised rather their legislative than their executive power. They scarcely did anything else but confirm the acts of the kings, and after their expulsion those of the consuls or senate. So far were they from being the arbiters of war, that we have instances of its having been often declared, notwithstanding the opposition of the tribunes. But growing wanton in their prosperity, they increased

n Book VI.

their executive power. Thus *o* they created the military tribunes, the nomination of whom till then had belonged to the generals; and some time before the first Punic war, they decreed that only their own body should have the right of declaring war.^p

18.—Of the judiciary Power in the Roman Government

The judiciary power was given to the people, to the senate, to the magistrates, and to particular judges. We must see in what manner it was distributed; beginning with their civil affairs.

The consuls had the judiciary power *q* after the expulsion of the kings, as the pretors were judges after the consuls. Servius Tullius had divested himself of the power of determining civil causes, which was not resumed by the consuls, except in some *r* very rare cases, for that reason called extraordinary.^s They were satisfied with naming the judges, and establishing the several tribunals. By a discourse of Appius Claudius, in Dionysius Halicarnassus,^t it appears that as early as the 259th year of Rome this was looked upon as a settled custom among the Romans; and it is not tracing it very high to refer it to Servius Tullius.

Every year the pretor made a list *a* of such as he chose for the office of judges during his magistracy. A sufficient number was pitched upon for each cause; a custom very nearly the same as that now practised in England. And what was extremely favorable to liberty *b* was the pretor's fixing the judges with the consent *c* of the parties. The great number of exceptions that can be made in England amounts pretty nearly to this very custom.

o In the year of Rome 444, Livy, dec. 1, book IX. As the war against Perseus appeared somewhat dangerous, it was ordained by a senatus-consultum that this law should be suspended, and the people agreed to it. Livy, dec. 5, book II.

p They extorted it from the Senate, says Freinshemius, dec. 2, book VI.

q There is no manner of doubt but the consuls had the power of trying civil causes before the creation of the pretors. See Livy, dec. 1, book II. p. 19; Dionys. Halicarn. book X. p. 627, and the same book, p. 645.

r The tribunes frequently tried causes by themselves only, but nothing ren-

dered them more odious.—Dionys. Halicarn. book XI. p. 709.

s *Judicia extraordinaria*. See the "Institutes," book IV.

t Book VI. p. 360.

a *Album Judicium*.

b "Our ancestors," says Cicero, pro Cluentio, "would not suffer any man whom the parties had not agreed to to be judge of the least pecuniary affair, much less of a citizen's reputation."

c See in the fragments of the Servilian, Cornelian, and other laws, in what manner these laws appointed judges for the crimes they proposed to punish. They were often pitched upon by choice, sometimes by lot, or, in fine, by lot mixed together with choice.

The judges decided only the questions relating to matter of fact; *d* for example, whether a sum of money had been paid or not, whether an act had been committed or not. But as to questions of law,^e as these required a certain capacity, they were always carried before the tribunal of the centumvirs.^f

The kings reserved to themselves the judgment of criminal affairs, and in this were succeeded by the consuls. It was in consequence of this authority that Brutus put his children and all those who were concerned in the Tarquinian conspiracy to death. This was an exorbitant power. The consuls already invested with the military command extended the exercise of it even to civil affairs; and their procedures, being stripped of all forms of justice, were rather exertions of violence than legal judgments.

This gave rise to the Valerian law, by which it was made lawful to appeal to the people from every decision of the consuls that endangered the life of a citizen. The consuls had no longer the power of pronouncing sentence in capital cases against a Roman citizen, without the consent of the people.^g

We see in the first conspiracy for the restoration of the Tarquins that the criminals were tried by Brutus the consul; in the second the senate and *comitia* were assembled to try them.^h

The laws distinguished by the name of sacred allowed the plebeians the privilege of choosing tribunes; whence was formed a body whose pretensions at first were immense. It is hard to determine which was greater, the insolence of the plebeians in demanding, or the condescension of the senate in granting. The Valerian law allowed appeals to the people, that is, to the people composed of senators, patricians, and plebeians. The plebeians made a law that appeals should be brought before their own body. A question was soon after started, whether the plebeians had a right to try a patrician; this was the subject of a dispute to which the impeachment of Coriolanus gave rise, and which ended with that affair. When Coriolanus was accused by the tribunes before the people, he

d Seneca, "de Benefic." lib. II. cap. vii. in fine.

e See Quintilian, lib. IV. p. 54, in fol. edit. of Paris, 1541.

f Leg. 2 ff. "de Orig. Jur." Magistrates who were called decemvirs presided in court, the whole under a pretor's direction.

g "Quoniam de capite civis Romani, injussu populi Romani, non erat permissum consulibus jus dicere."—See Pomponius, Leg. 2 ff. "de Orig. Jur."

h Dionys. Halicarn. book V. p. 322.

insisted, contrary to the spirit of the Valerian law, that as he was a patrician, none but the consuls had the power to try him; on the other hand, the plebeians, also contrary to the spirit of that same law, pretended that none but their body were empowered to be his judges, and accordingly they pronounced sentence upon him.

This was moderated by the law of the Twelve Tables; whereby it was ordained that none but the great assemblies of the peopleⁱ should try a citizen in capital cases. Hence the body of the plebeians, or, which amounts to the very same, the *comitia* by tribes, had no longer any power of hearing criminal causes, except such as were punished with fines. To inflict a capital punishment a law was requisite; but to condemn to a pecuniary mulct, there was occasion only for a plebiscitum.

This regulation of the law of the Twelve Tables was extremely prudent. It produced an admirable balance between the body of the plebeians and the senate. For as the full judiciary power of both depended on the greatness of the punishment and the nature of the crime, it was necessary they should both agree.

The Valerian law abolished all the remains of the Roman government in any way relating to that of the kings of the heroic times of Greece. The consuls were divested of the power to punish crimes. Though all crimes are public, yet we must distinguish between those which more nearly concern the mutual intercourse of the citizens and those which more immediately interest the state in the relation it bears to its subjects. The first are called private, the second public. The latter were tried by the people; and in regard to the former, they named by particular commission a questor for the prosecution of each crime. The person chosen by the people was frequently one of the magistrates, sometimes a private man. He was called the *questor of parricide*, and is mentioned in the law of the Twelve Tables.^j

The questor nominated the judge of the question, who drew lots for the judges, and regulated the tribunal in which he presided.^k

ⁱThe *comitia* by centuries. Thus Manlius Capitolinus was tried in these *comitia*.—Livy, dec. 1, book VI. p. 60.
^jPomponius, in the second Law in the Digest "de Orig. Jur."

^kSee a fragment of Ulpian, who gives another of the Cornelian law: it is to be met with in the Collation of the Mosaic and Roman Laws, tit. 1, de sicariis et homicidiis.

Here it is proper to observe what share the senate had in the nomination of the questor, that we may see how far the two powers were balanced. Sometimes the senate caused a dictator to be chosen, in order to exercise the office of questor;^l at other times they ordained that the people should be convened by a tribune, with the view of proceeding to the nomination of a questor:^m and, in fine, the people frequently appointed a magistrate to make his report to the senate concerning a particular crime, and to desire them to name a questor, as may be seen in the judgment upon Lucius Scipioⁿ in Livy.^o

In the year of Rome 604, some of these commissions were rendered permanent.^p All criminal causes were gradually divided into different parts; to which they gave the name of perpetual questions. Different pretors were created, to each of whom some of those questions were assigned. They had a power conferred upon them for the term of a year, of trying such criminal causes as bore any relation to those questions, and then they were sent to govern their province.

At Carthage the senate of the hundred was composed of judges who enjoyed that dignity for life.^q But at Rome the pretors were annual; and the judges were not even for so long a term, but were nominated for each cause. We have already shown in the sixth chapter of this book how favorable this regulation was to liberty in particular governments.

The judges were chosen from the order of senators, till the time of the Gracchi. Tiberius Gracchus caused a law to pass that they should be taken from the equestrian order; a change so very considerable that the tribune boasted of having cut, by one rogation only, the sinews of the senatorian dignity.

It is necessary to observe that the three powers may be very well distributed in regard to the liberty of the constitution, though not so well in respect to the liberty of the subject. At Rome the people had the greatest share of the legislative, a part of the executive, and part of the judiciary power; by which means they had so great a weight in the government as

^lThis took place, especially in regard to crimes committed in Italy, which were subject chiefly to the inspection of the Senate. See Livy, dec. 1, book IX., concerning the conspiracies at Capua.
^mThis was the case in the prosecution for the murder of Posthumius, in the year 340 of Rome. See Livy.

ⁿThis judgment was passed in the year of Rome 567.
^oBook VIII.
^pCicero, in "Bruto."
^qThis is proved from Livy, book XLIII., who says that Hannibal rendered their magistracy annual.

required some other power to balance it. The senate, indeed, had part of the executive power, and some share of the legislative; ^r but this was not sufficient to counterbalance the weight of the people. It was necessary that they should partake of the judiciary power: and accordingly they had a share when the judges were chosen from among the senators. But when the Gracchi deprived the senators of the judicial power, ^s the senate were no longer able to withstand the people. To favor, therefore, the liberty of the subject, they struck at that of the constitution; but the former perished with the latter.

Infinite were the mischiefs that thence arose. The constitution was changed at a time when the fire of civil discord had scarcely left any such thing as a constitution. The knights ceased to be that middle order which united the people to the senate; and the chain of the constitution was broken.

There were even particular reasons against transferring the judiciary power to the equestrian order. The constitution of Rome was founded on this principle, that none should be enlisted as soldiers but such as were men of sufficient property to answer for their conduct to the republic. The knights, as persons of the greatest property, formed the cavalry of the legions. But when their dignity increased, they refused to serve any longer in that capacity, and another kind of cavalry was obliged to be raised: thus Marius enlisted all sorts of people into his army, and soon after the republic was lost. ^t

Besides, the knights were the farmers of the revenue; men whose great rapaciousness increased the public calamities. Instead of giving to such as those the judicial power, they ought to have been constantly under the eye of the judges. This we must say in commendation of the ancient French laws, that they have acted towards the officers of the revenue with as great a diffidence as would be observed between enemies. When the judiciary power at Rome was transferred to the publicans, there was then an end of all virtue, polity, laws, and government.

Of this we find a very ingenious description in some fragments of Diodorus Siculus and Dio. "Mutius Scævola," says

^r The *senatus-consultums* were in force for the space of a year, though not confirmed by the people.—Dionys. Halicarn. book IX. p. 595, and book XI. p. 735.

^s In the year 630.
^t "Capite census plerosque."—Sallust, "de bello Jugurth."

Diodorus, ^u "wanted to revive the ancient manners, and the laudable custom of sober and frugal living. For his predecessors having entered into a contract with the farmers of the revenue, who at that time were possessed of the judiciary power at Rome, had infected the province with all manner of corruption. But Scævola made an example of the publicans, and imprisoned those by whom others had been confined."

Dio informs us ^a that Publius Rutilius, his lieutenant, was equally obnoxious to the equestrian order, and that upon his return they accused him of having received some presents, and condemned him to a fine; upon which he instantly made a cession of his goods. His innocence appeared in this, that he was found to be worth a great deal less than what he was charged with having extorted, and he showed a just title to what he possessed: but he would not live any longer in the same city with such profligate wretches.

The Italians, says Diodorus again, ^b bought up whole droves of slaves in Sicily, to till their lands and to take care of their cattle; but refused them a necessary subsistence. These wretches were then forced to go and rob on the highways, armed with lances and clubs, covered with beasts' skins, and followed by large mastiffs. Thus the whole province was laid waste, and the inhabitants could not call anything their own but what was secured by fortresses. There was neither proconsul nor pretor that could or would oppose this disorder, or that presumed to punish these slaves, because they belonged to the knights, who, at Rome, were possessed of the judiciary power. ^c And yet this was one of the causes of the war of the slaves. But I shall add only one word more. A profession deaf and inexorable, that can have no other view than lucre, that was always asking and never granting, that impoverished the rich and increased even the misery of the poor—such a profession, I say, should never have been intrusted with the judiciary power at Rome.

^u Fragment of this author, book XXXVI. in the collection of Constantine Porphyrogenitus, of "Virtues and Vices."

^a Fragment of his history, taken from the "Extract of Virtues and Vices."

^b Fragment of the 34th book in the "Extract of Virtues and Vices."
^c "Penes quos Romæ tum judicia erant, atque ex equestri ordine solerent sortito iudices eligi in causa Prætorum et Proconsulum, quibus post administratam provinciam dies dicta erat."

19.—*Of the Government of the Roman Provinces*

Such was the distribution of the three powers in Rome. But they were far from being thus distributed in the provinces. Liberty prevailed in the centre and tyranny in the extreme parts.

While Rome extended her dominions no farther than Italy, the people were governed as confederates, and the laws of each republic were preserved. But when she enlarged her conquests, and the senate had no longer an immediate inspection over the provinces, nor the magistrates residing at Rome were any longer capable of governing the empire, they were obliged to send pretors and proconsuls. Then it was that the harmony of the three powers was lost. The persons appointed to that office were intrusted with a power which comprehended that of all the Roman magistracies; nay, even that of the people.^d They were despotic magistrates, extremely well adapted to the distance of the places to which they were destined. They exercised the three powers; and were, if I may presume to use the expression, the bashaws of the republic.

We have elsewhere observed that in a commonwealth the same magistrate ought to be possessed of the executive power, as well civil as military. Hence a conquering republic can hardly communicate her government, and rule the conquered state according to her own constitution. And, indeed, as the magistrate she sends to govern is invested with the executive power, both civil and military, he must also have the legislative: for who is it that could make laws without him? It is necessary, therefore, that the governor she sends be intrusted with the three powers, as was practised in the Roman provinces.

It is more easy for a monarchy to communicate its government, because the officers it sends have, some the civil executive, and others the military executive power, which does not necessarily imply a despotic authority.

It was a privilege of the utmost consequence to a Roman citizen to have none but the people for his judge. Were it not for this, he would have been subject in the provinces to the arbitrary power of a proconsul or of a propretor. The city

^d They made their edicts upon entering the provinces.

never felt the tyranny which was exercised only on conquered nations.

Thus, in the Roman world, as at Sparta, the freemen enjoyed the highest degree of liberty, while those who were slaves labored under the extremity of servitude.

While the citizens paid taxes, they were raised with great justice and equality. The regulation of Servius Tullius was observed, who had distributed the people into six classes, according to their difference of property, and fixed the several shares of the public imposts in proportion to that which each person had in the government. Hence they bore with the greatness of the tax because of their proportionable greatness of credit, and consoled themselves for the smallness of their credit because of the smallness of the tax.

There was also another thing worthy of admiration, which is, that as Servius Tullius's division into classes was in some measure the fundamental principle of the constitution, it thence followed that an equal levying of the taxes was so connected with this fundamental principle that the one could not be abolished without the other.

But while the city paid the taxes as she pleased, or paid none at all,^e the provinces were plundered by the knights, who were the farmers of the public revenue. We have already made mention of their oppressive extortions, with which all history abounds.

"All Asia," says Mithridates,^f "expects me as her deliverer; so great is the hatred which the rapaciousness of the proconsuls,^g the confiscations made by the officers of the revenue, and the quirks and cavils of judicial proceedings,^h have excited against the Romans."

Hence it was that the strength of the provinces did not increase, but rather weakened, the strength of the republic. Hence it was that the provinces looked upon the loss of the liberty of Rome as the epoch of their own freedom.

^e After the conquest of Macedonia the Romans paid no taxes.
^f Speech taken from Trogius Pompeius, and related by Justin, book XXXVIII.

^g See the orations against Verres.
^h It is well known what sort of a tribunal was that of Varus, which provoked the Germans to revolt.

20.—*The End of this Book*

I should be glad to inquire into the distribution of the three powers, in all the moderate governments we are acquainted with, in order to calculate the degrees of liberty which each may enjoy. But we must not always exhaust a subject, so as to leave no work at all for the reader. My business is not to make people read, but to make them think.

BOOK XII

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

1.—*Idea of this Book*

IT is not sufficient to have treated of political liberty in relation to the constitution; we must examine it likewise in the relation it bears to the subject.

We have observed that in the former case it arises from a certain distribution of the three powers; but in the latter, we must consider it in another light. It consists in security, or in the opinion people have of their security.

The constitution may happen to be free, and the subject not. The subject may be free, and not the constitution. In those cases, the constitution will be free by right, and not in fact; the subject will be free in fact, and not by right.

It is the disposition only of the laws, and even of the fundamental laws, that constitutes liberty in relation to the constitution. But as it regards the subject: manners, customs, or received examples may give rise to it, and particular civil laws may encourage it, as we shall presently observe.

Further, as in most states liberty is more checked or depressed than their constitution requires, it is proper to treat of the particular laws that in each constitution are apt to assist or check the principle of liberty which each state is capable of receiving.

2.—*Of the Liberty of the Subject*

Philosophic liberty consists in the free exercise of the will; or at least, if we must speak agreeably to all systems, in an opinion that we have the free exercise of our will. Political liberty consists in security, or, at least, in the opinion that we enjoy security.

This security is never more dangerously attacked than in