

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

public or private accusations. It is, therefore, on the goodness of criminal laws that the liberty of the subject principally depends.

Criminal laws did not receive their full perfection all at once. Even in places where liberty has been most sought after, it has not been always found. Aristotle *a* informs us that at Cumæ the parents of the accuser might be witnesses. So imperfect was the law under the kings of Rome, that Servius Tullius pronounced sentence against the children of Ancus Martius, who were charged with having assassinated the king, his father-in-law.^b Under the first kings of France, Clotarius made a law,^c that nobody should be condemned without being heard; which shows that a contrary custom had prevailed in some particular case or among some barbarous people. It was Charondas that first established penalties against false witnesses.^d When the subject has no fence to secure his innocence, he has none for his liberty.

The knowledge already acquired in some countries, or that may be hereafter attained in others, concerning the surest rules to be observed in criminal judgments, is more interesting to mankind than any other thing in the world.

Liberty can be founded on the practice of this knowledge only; and supposing a state to have the best laws imaginable in this respect, a person tried under that state, and condemned to be hanged the next day, would have much more liberty than a pasha enjoys in Turkey.

3.—*The same Subject continued*

Those laws which condemn a man to death on the deposition of a single witness are fatal to liberty. In reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must decline the scale.

The Greeks *e* and Romans *f* required one voice more to condemn: but our French laws insist upon two. The Greeks pre-

a "Polit." book II. He gave his laws at Thurium in the
b Tarquinius Priscus. See Dionys. 84th Olympiad.
Halicarn. book IV. *c* See Aristid. Orat. "in Minervam."
e As early as the year 560. *f* Dionys. Halicarn. on the Judgment
d Aristot. "Polit." book II. chap. xii. of Coriolanus, book VII.

tend that their custom was established by the gods;^g but this more justly may be said of ours.^h

4.—*That Liberty is favored by the Nature and Proportion of Punishments*

Liberty is in perfection when criminal laws derive each punishment from the particular nature of the crime. There are then no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.

There are four sorts of crimes. Those of the first species are prejudicial to religion, the second to morals, the third to the public tranquillity, and the fourth to the security of the subject. The punishments inflicted for these crimes ought to proceed from the nature of each of these species.

In the class of crimes that concern religion, I rank only those which attack it directly, such as all simple sacrileges. For as to crimes that disturb the exercise of it, they are of the nature of those which prejudice the tranquillity or security of the subject, and ought to be referred to those classes.

In order to derive the punishment of simple sacrileges from the nature of the thing,ⁱ it should consist in depriving people of the advantages conferred by religion in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their presence, in execrations, comminations, and conjurations.

In things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those which offend the Deity, where there is no public act, there can be no criminal matter, the whole passes between man and God, who knows the measure and time of His vengeance. Now if magistrates confounding things should inquire also into hidden sacrileges, this inquisition would be directed to a kind of action that does not at all require it: the liberty of the subject would be subverted by arming the zeal of timorous as well as of presumptuous consciences against him.

g Minerva calculus. *i* St. Louis made such severe laws
h Voltaire declares that it is England, against those who swore, that the Pope
and not France, that is deserving of thought himself obliged to admonish
this high praise; for it is in the former him for it. This prince moderated his
that the juries must agree in order to zeal, and softened his laws.—See his
condemn a man.—Ed. "Ordinances."

The mischief arises from a notion which some people have entertained of revenging the cause of the Deity. But we must honor the Deity and leave him to avenge his own cause. And, indeed, were we to be directed by such a notion, where would be the end of punishments? If human laws are to avenge the cause of an infinite Being, they will be directed by his infinity, and not by the weakness, ignorance, and caprice of man.

An historian *j* of Provence relates a fact which furnishes us with an excellent description of the consequences that may arise in weak capacities from the notion of avenging the Deity's cause. A Jew was accused of having blasphemed against the Virgin Mary; and upon conviction was condemned to be flayed alive. A strange spectacle was then exhibited: gentlemen masked, with knives in their hands, mounted the scaffold, and drove away the executioner, in order to be the avengers themselves of the honor of the blessed Virgin. I do not here choose to anticipate the reflections of the reader.

The second class consists of those crimes which are prejudicial to morals. Such is the violation of public or private continence, that is, of the police directing the manner in which the pleasure annexed to the conjunction of the sexes is to be enjoyed. The punishment of those crimes ought to be also derived from the nature of the thing; the privation of such advantages as society has attached to the purity of morals, fines, shame, necessity of concealment, public infamy, expulsion from home and society, and, in fine, all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect these things are less founded on malice than on carelessness and self-neglect.

We speak here of none but crimes which relate merely to morals, for as to those that are also prejudicial to the public security, such as rapes, they belong to the fourth species.

The crimes of the third class are those which disturb the public tranquillity. The punishments ought therefore to be derived from the nature of the thing, and to be in relation to this tranquillity; such as imprisonment, exile, and other like chastisements, proper for reclaiming turbulent spirits, and obliging them to conform to the established order.

I confine those crimes that injure the public tranquillity to

j Father Bougerel.

things which imply a bare offence against the police; for as to those which by disturbing the public peace attack at the same time the security of the subject, they ought to be ranked in the fourth class.

The punishments inflicted upon the latter crimes are such as are properly distinguished by that name. They are a kind of retaliation, by which the society refuses security to a member, who has actually or intentionally deprived another of his security. These punishments are derived from the nature of the thing, founded on reason, and drawn from the very source of good and evil. A man deserves death when he has violated the security of the subject so far as to deprive, or attempt to deprive, another man of his life. This punishment of death is the remedy, as it were, of a sick society. When there is a breach of security with regard to property, there may be some reasons for inflicting a capital punishment: but it would be much better, and perhaps more natural, that crimes committed against the security of property should be punished with the loss of property; and this ought, indeed, to be the case if men's fortunes were common or equal. But as those who have no property of their own are generally the readiest to attack that of others, it has been found necessary, instead of a pecuniary, to substitute a corporal, punishment.

All that I have here advanced is founded in nature, and extremely favorable to the liberty of the subject.

5.—Of certain Accusations that require particular Moderation and Prudence

It is an important maxim, that we ought to be very circumspect in the prosecution of witchcraft and heresy. The accusation of these two crimes may be vastly injurious to liberty, and productive of infinite oppression, if the legislator knows not how to set bounds to it. For as it does not directly point at a person's actions, but at his character, it grows dangerous in proportion to the ignorance of the people; and then a man is sure to be always in danger, because the most exceptional conduct, the purest morals, and the constant practice of every duty in life are not a sufficient security against the suspicion of his being guilty of the like crimes.

Under Manuel Comnenus, the Protestator *k* was accused of having conspired against the emperor, and of having employed for that purpose some secrets that render men invisible. It is mentioned in the life of this emperor *l* that Aaron was detected, as he was poring over a book of Solomon's, the reading of which was sufficient to conjure up whole legions of devils. Now by supposing a power in witchcraft to rouse the infernal spirits to arms, people look upon a man whom they call a sorcerer as the person in the world most likely to disturb and subvert society; and, of course, they are disposed to punish him with the utmost severity.

But their indignation increases when witchcraft is supposed to have the power of subverting religion. The history of Constantinople *m* informs us that in consequence of a revelation made to a bishop of a miracle having ceased because of the magic practices of a certain person, both that person and his son were put to death. On how many surprising things did not this single crime depend? That revelations should not be uncommon, that the bishop should be favored with one, that it was real, that there had been a miracle in the case, that this miracle had ceased, that there was an art magic, that magic could subvert religion, that this particular person was a magician, and, in fine, that he had committed that magic act.

The Emperor Theodorus Lascarus attributed his illness to witchcraft. Those who were accused of this crime had no other resource left than to handle a red-hot iron without being hurt. Thus among the Greeks a person ought to have been a sorcerer to be able to clear himself of the imputation of witchcraft. Such was the excess of their stupidity that to the most dubious crime in the world they joined the most dubious proofs of innocence.

Under the reign of Philip the Long, the Jews were expelled from France, being accused of having poisoned the springs with their lepers. So absurd an accusation ought to make us doubt all those that are founded on public hatred.

I have not here asserted that heresy ought not to be punished; I said only that we ought to be extremely circumspect in punishing it.

k Nicetas, "Life of Manuel Comnenus," book IV.
l Ibid.

m "History of the Emperor Maurice," by Theophylactus, chap. II.

6.—Of the Crime against Nature

God forbid that I should have the least inclination to diminish the public horror against a crime which religion, morality, and civil government equally condemn. It ought to be proscribed, were it only for its communicating to one sex the weaknesses of the other, and for leading people by a scandalous prostitution of their youth to an ignominious old age. What I shall say concerning it will in no way diminish its infamy, being levelled only against the tyranny that may abuse the very horror we ought to have against the vice.

As a natural circumstance of this crime is secrecy, there are frequent instances of its having been punished by legislators upon the deposition of a child. This was opening a very wide door to calumny. "Justinian," says Procopius, *a* "published a law against this crime; he ordered an inquiry to be made not only against those who were guilty of it, after the enacting of that law, but even before. The deposition of a single witness, sometimes of a child, sometimes of a slave, was sufficient, especially against such as were rich, and against those of the green faction."

It is very odd that these three crimes, witchcraft, heresy, and that against nature, of which the first might easily be proved not to exist; the second to be susceptible of an infinite number of distinctions, interpretations, and limitations; the third to be often obscure and uncertain—it is very odd, I say, that these three crimes should amongst us be punished with fire.

I may venture to affirm that the crime against nature will never make any great progress in society unless people are prompted to it by some particular custom, as among the Greeks, where the youths of that country performed all their exercises naked; as amongst us, where domestic education is disused; as amongst the Asiatics, where particular persons have a great number of women whom they despise, while others can have none at all. Let there be no customs preparatory to this crime; let it, like every other violation of morals, be severely proscribed by the civil magistrate; and nature will soon defend or resume her rights. Nature, that fond, that indulgent parent, has strewed her pleasures with a bounteous

a "Secret History."

hand, and while she fills us with delights she prepares us, by means of our issue, in whom we see ourselves, as it were, reproduced—she prepares us, I say, for future satisfactions of a more exquisite kind than those very delights.

7.—Of the Crime of High Treason

It is determined by the laws of China that whosoever shows any disrespect to the emperor is to be punished with death. As they do not mention in what this disrespect consists, everything may furnish a pretext to take away a man's life, and to exterminate any family whatsoever.

Two persons of that country who were employed to write the Court gazette, having inserted some circumstances relating to a certain fact that was not true, it was pretended that to tell a lie in the Court gazette was a disrespect shown to the Court, in consequence of which they were put to death.^b A prince of the blood having inadvertently made some mark on a memorial signed with the red pencil by the emperor, it was determined that he had behaved disrespectfully to the sovereign; which occasioned one of the most terrible persecutions against that family that ever was recorded in history.^c

If the crime of high treason be indeterminate, this alone is sufficient to make the government degenerate into arbitrary power. I shall descant more largely on this subject when I come to treat^d of the composition of laws.

8.—Of the Misapplication of the Terms Sacrilege and High Treason

It is likewise a shocking abuse to give the appellation of high treason to an action that does not deserve it. By an imperial law^e it was decreed that those who called in question the prince's judgment, or doubted the merit of such as he had chosen for a public office, should be prosecuted as guilty of sacrilege.^f Surely it was the cabinet council and the prince's favorites who invented that crime. By another law, it was de-

^b Father Du Halde, tom. i. p. 43.
^c Father Parennin in the "Edifying Letters."
^d Book XXIX.
^e Gratian, Valentinian, and Theodosius. This is the second in the Code "de Crimin. Sacril."

^f "Sacrilegii instar est dubitare an is dignus sit quem elegerit imperator."
—Code "de Crimin. Sacril." This law has served as a model to that of Roger in the "Constitution of Naples," tit. 4.

termined that whosoever made any attempt to injure the ministers and officers belonging to the sovereign should be deemed guilty of high treason, as if he had attempted to injure the sovereign himself.^g This law is owing to two princes^h remarkable for their weakness—princes who were led by their ministers as flocks by shepherds; princes who were slaves in the palace, children in the council, strangers to the army; princes, in fine, who preserved their authority only by giving it away every day. Some of those favorites conspired against their sovereigns. Nay, they did more, they conspired against the empire—they called in barbarous nations; and when the emperors wanted to stop their progress the state was so enfeebled as to be under a necessity of infringing the law, and of exposing itself to the crime of high treason in order to punish those favorites.

And yet this is the very law which the judge of Monsieur de Cinq-Mars built uponⁱ when endeavoring to prove that the latter was guilty of the crime of high treason for attempting to remove Cardinal Richelieu from the ministry. He says: "Crimes that aim at the persons of ministers are deemed by the imperial constitutions of equal consequence with those which are levelled against the emperor's own person. A minister discharges his duty to his prince and to his country: to attempt, therefore, to remove him, is endeavoring to deprive the former one of his arms,^j and the latter of part of its power." It is impossible for the meanest tools of power to express themselves in more servile language.

By another law of Valentinian, Theodosius, and Arcadius,^k false coiners are declared guilty of high treason. But is not this confounding the ideas of things? Is not the very horror of high treason diminished by giving that name to another crime?

9.—The same Subject continued

Paulinus having written to the Emperor Alexander, that "he was preparing to prosecute for high treason a judge who had decided contrary to his edict," the emperor answered, "that

^g The 5th law, "ad leg. Jul. Maj."

^h Arcadius and Honorius.

ⁱ "Memoirs of Montresor," tom. i.

^j "Nam ipsi pars corporis nostri

sunt."—The same law of the Code "ad leg. Jul. Maj."

^k It is the 9th of the Code Theod. "de

falsa moneta."

under his reign there was no such thing as indirect high treason."^l

Faustinian wrote to the same emperor, that as he had sworn by the prince's life never to pardon his slave, he found himself thereby obliged to perpetuate his wrath, lest he should incur the guilt of *læsa majestas*. Upon which the emperor made answer, "Your fears are groundless,^m and you are a stranger to my principles."

It was determined by a *senatus-consultum*ⁿ that whosoever melted down any of the emperor's statues which happened to be rejected should not be deemed guilty of high treason. The Emperors Severus and Antoninus wrote to Pontius,^o that those who sold unconsecrated statues of the emperor should not be charged with high treason. The same princes wrote to Julius Cassianus, that if a person in flinging a stone should by chance strike one of the emperor's statues he should not be liable to a prosecution for high treason.^p The Julian law requires this sort of limitations; for in virtue of this law the crime of high treason was charged not only upon those who melted down the emperor's statues, but likewise on those who committed any such like action,^q which made it an arbitrary crime. When a number of crimes of *læsa majestas* had been established, they were obliged to distinguish the several sorts. Hence Ulpian, the civilian, after saying that the accusation of *læsa majestas* did not die with the criminal, adds that this does not relate to all the treasonable acts established by the Julian law,^a but only to that which implies an attempt against the empire, or against the emperor's life.

10.—The same Subject continued

There was a law passed in England under Henry VIII, by which whoever predicted the king's death was declared guilty of high treason. This law was extremely vague; the terror of despotic power is so great that it recoils upon those who

^l "Etiam ex aliis causis majestatis crimina cessant meo sæculo."—Leg. 1 "eod. ad leg. Jul. Maj."
^m "Alienam sectæ meæ sollicitudinem concepisti."—Leg. 2 "eod. ad leg. Jul. Maj."
ⁿ See the 4th law in ff. "ad leg. Jul. Maj."

^o See the 5th law *ibid.*
^p *Ibid.*
^q "Aliudve quid simile admiserint."—Leg. 6 ff. "ad leg. Jul. Maj."
^a In the last law in ff. "ad leg. Jul. de Adulteris."

exercise it. In the king's last illness, the physicians would not venture to say he was in danger; and surely they acted very right.^b

11.—Of Thoughts

Marsyas dreamed that he had cut Dionysius's throat.^c Dionysius put him to death, pretending that he would never have dreamed of such a thing by night if he had not thought of it by day. This was a most tyrannical action: for though it had been the subject of his thoughts, yet he had made no attempt^d towards it. The laws do not take upon them to punish any other than overt acts.

12.—Of indiscreet Speeches

Nothing renders the crime of high treason more arbitrary than declaring people guilty of it for indiscreet speeches. Speech is so subject to interpretation; there is so great a difference between indiscretion and malice; and frequently so little is there of the latter in the freedom of expression, that the law can hardly subject people to a capital punishment for words unless it expressly declares what words they are.^e

Words do not constitute an overt act; they remain only in idea. When considered by themselves, they have generally no determinate signification; for this depends on the tone in which they are uttered. It often happens that in repeating the same words they have not the same meaning; this depends on their connection with other things, and sometimes more is signified by silence than by any expression whatever. Since there can be nothing so equivocal and ambiguous as all this, how is it possible to convert it into a crime of high treason? Wherever this law is established, there is an end not only of liberty, but even of its very shadow.

In the manifesto of the late Czarina against the family of the D'Olgoruckys,^f one of those princes is condemned to death for having uttered some indecent words concerning her person: another, for having maliciously interpreted her imperial laws,

^b See Burnet's "History of the Reformation."
^c Plutarch's "Life of Dionysius."
^d The thought must be joined with some sort of action.
^e "Si non tale sit delictum in quod

vel scriptura legis descendit vel ad exemplum legis vindicandum est," says Modestinus in the seventh law, in ff. "ad leg. Jul. Maj."
^f In 1740.

and for having offended her sacred person by disrespectful expressions.

Not that I pretend to diminish the just indignation of the public against those who presume to stain the glory of their sovereign; what I mean is, that if despotic princes are willing to moderate their power, a milder chastisement would be more proper on those occasions than the charge of high treason—a thing always terrible even to innocence itself.^g

Overt acts do not happen every day; they are exposed to the eye of the public; and a false charge with regard to matters of fact may be easily detected. Words carried into action assume the nature of that action. Thus a man who goes into a public market-place to incite the subject to revolt incurs the guilt of high treason, because the words are joined to the action, and partake of its nature. It is not the words that are punished, but an action in which words are employed. They do not become criminal, but when they are annexed to a criminal action: everything is confounded if words are construed into a capital crime, instead of considering them only as a mark of that crime.

The Emperors Theodosius, Arcadius, and Honorius wrote thus to Rufinus, who was *præfectus prætorio*: "Though a man should happen to speak amiss of our person or government, we do not intend to punish him:^h if he has spoken through levity, we must despise him; if through folly, we must pity him; and if he wrongs us, we must forgive him. Therefore, leaving things as they are, you are to inform us accordingly, that we may be able to judge of words by persons, and that we may duly consider whether we ought to punish or overlook them."

13.—Of Writings

In writings there is something more permanent than in words, but when they are in no way preparative to high treason they cannot amount to that charge.

And yet Augustus and Tiberius subjected satirical writers to the same punishment as for having violated the law of majesty.

^g "Nec lubricum linguæ ad poenam facile trahendum est."—Modestin. in the seventh law in ff. "ad leg. Jul. Maj."

^h "Si id ex levitate processerit, contemnendum est; si ex insaniam, miseratione dignissimum; si ab injuria, remittendum."—Leg. unica Cod. "Si quis Imperat. maled."

Augustus,ⁱ because of some libels that had been written against persons of the first quality; Tiberius, because of those which he suspected to have been written against himself. Nothing was more fatal to Roman liberty. Cremutius Cordus was accused of having called Cassius in his annals the last of the Romans.^j

Satirical writings are hardly known in despotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. In democracies they are not hindered, for the very same reason which causes them to be prohibited in monarchies; being generally levelled against men of power and authority, they flatter the malignancy of the people, who are the governing party. In monarchies they are forbidden, but rather as a subject of civil animadversion than as a capital crime. They may amuse the general malevolence, please the malcontents, diminish the envy against public employments, give the people patience to suffer, and make them laugh at their sufferings.

But no government is so averse to satirical writings as the aristocratic. There the magistrates are petty sovereigns, but not great enough to despise affronts. If in a monarchy a satirical stroke is designed against the prince, he is placed on such an eminence that it does not reach him; but an aristocratic lord is pierced to the very heart. Hence the decemvirs, who formed an aristocracy, punished satirical writings with death.^k

14.—Breach of Modesty in punishing Crimes

There are rules of modesty observed by almost every nation in the world; now it would be very absurd to infringe these rules in the punishment of crimes, the principal view of which ought always to be the establishment of order.

Was it the intent of those Oriental nations who exposed women to elephants trained up for an abominable kind of punishment—was it, I say, their intent to establish one law by the breach of another?

By an ancient custom of the Romans it was not permitted to put girls to death till they were ripe for marriage. Tiberius

ⁱ Tacit. "Annal." book I. This continued under the following reigns. See the first law in the Code "de famosis libellis."

^j Tacit. "Annal." book IV.
^k The law of the Twelve Tables.

found an expedient of having them debauched by the executioner before they were brought to the place of punishment:^l that bloody and subtle tyrant destroyed the morals of the people to preserve their customs.

When the magistrates of Japan caused women to be exposed naked in the market-places, and obliged them to go upon all fours like beasts, modesty was shocked:^m but when they wanted to compel a mother—when they wanted to force a son—I cannot proceed; even Nature herself is struck with horror.

15.—*Of the Enfranchisement of Slaves in order to accuse their Master*

Augustus made a law that the slaves of those who conspired against his person should be sold to the public, that they might depose against their master.ⁿ Nothing ought to be neglected which may contribute to the discovery of a heinous crime; it is natural, therefore, that in a government where there are slaves they should be allowed to inform; but they ought not to be admitted as witnesses.

Vindex discovered the conspiracy that had been formed in favor of Tarquin; but he was not admitted a witness against the children of Brutus. It was right to give liberty to a person who had rendered so great a service to his country; but it was not given him with a view of enabling him to render this service.

Hence the Emperor Tacitus ordained that slaves should not be admitted as witnesses against their masters, even in the case of high treason:^o a law which was not inserted in Justinian's compilation.

16.—*Of Calumny with regard to the Crime of High Treason*

To do justice to the Cæsars, they were not the first devisers of the horrid laws which they enacted. It was Sylla^p that taught them that calumniators ought not to be punished; but the abuse was soon carried to such excess as to reward them.^q

^l Suetonius, in "Tiberio."
^m "Collection of Voyages that Contributed to the Establishment of the East India Company," tom. v. part II.
ⁿ Dio, in "Xiphilinus." Tacitus attributes this law, not to Augustus, but to Tiberius.—P.
^o Flavius Vopiscus in his life.
^p Sylla made a law of majesty, which is mentioned in Cicero's Orations, "pro

Cluentio," art. 3, "in Pisonem," art. 21, 2d against "Verres," art. 5. "Familiar Epistles," book III. letter 11. Cæsar and Augustus inserted them in the Julian laws; others made additions to them.
^q "Et quò quis distinctior accusator, eò magis honores assequatur, ac veluti sacrosanctus erat."—Tacit.

17.—*Of the revealing of Conspiracies*

"If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, 'Let us go and serve other gods,' thou shalt surely kill him, thou shalt stone him."^r This law of Deuteronomy cannot be a civil law among most of the nations known to us, because it would pave the way for all manner of wickedness.

No less severe is the law of several countries which commands the subjects, on pain of death, to disclose conspiracies in which they are not even so much as concerned. When such a law is established in a monarchical government, it is very proper it should be under some restrictions.

It ought not to be applied in its full severity save to the strongest cases of high treason. In those countries it is of the utmost importance not to confound the different degrees of this crime. In Japan, where the laws subvert every idea of human reason, the crime of concealment is applied even to the most ordinary cases.

A certain relations^s makes mention of two young ladies who were shut up for life in a box thick set with pointed nails, one for having had a love intrigue, and the other for not disclosing it.

18.—*How dangerous it is in Republics to be too severe in punishing the Crime of High Treason*

As soon as a republic has compassed the destruction of those who wanted to subvert it, there should be an end of terrors, punishments, and even of rewards.

Great punishments, and consequently great changes, cannot take place without investing some citizens with an exorbitant power. It is, therefore, more advisable in this case to exceed in lenity than in severity; to banish but few, rather than many; and to leave them their estates, instead of making a vast number of confiscations. Under pretence of avenging the republic's cause, the avengers would establish tyranny. The

^r Deut. xiii. 6.
^s "Collection of Voyages that Contributed to the Establishment of the

East India Company," p. 423, book V. part II.

business is not to destroy the rebel, but the rebellion. They ought to return as quickly as possible into the usual track of government, in which every one is protected by the laws, and no one injured.

The Greeks set no bounds to the vengeance they took upon tyrants, or of those they suspected of tyranny; they put their children to death,^f nay, sometimes five of their nearest relatives;^g and they proscribed an infinite number of families. By such means their republics suffered the most violent shocks: exiles, or the return of the exiled, were always epochs that indicated a change of the constitution.

The Romans had more sense. When Cassius was put to death for having aimed at tyranny, the question was proposed whether his children should undergo the same fate: but they were preserved. "They," says Dionysius Halicarnassus,^b "who wanted to change this law at the end of the Marsian and civil wars, and to exclude from public offices the children of those who had been proscribed by Sylla, are very much to blame."

We find in the wars of Marius and Sylla to what excess the Romans had gradually carried their barbarity. Such scenes of cruelty it was hoped would never be revived. But under the triumvirs, they committed greater acts of oppression, though with some appearance of lenity; and it is provoking to see what sophisms they make use of to cover their inhumanity. Appian has given us^c the formula of the proscriptions. One would imagine they had no other aim than the good of the republic, with such calmness do they express themselves; such advantages do they point out to the state; such expediency do they show in the means they adopt; such security do they promise to the opulent; such tranquillity to the poor; so apprehensive do they seem of endangering the lives of the citizens; so desirous of appeasing the soldiers; such felicity, in fine, do they presage to the commonwealth.^d

Rome was drenched in blood when Lepidus triumphed over Spain: yet, by an unparalleled absurdity, he ordered public rejoicing in that city, upon pain of proscription.^e

^f Dionys. Halicarn., "Roman Antiquities," book VIII.

^g "Tyranno occiso quinque ejus proximis cognatione magistratus necato."—Cic. "de invent." lib. II.

^b Book VIII. p. 547.

^c Of the civil wars, book IV.

^d "Quod felix faustumque sit."

^e "Sacris et epulis dent hunc diem; qui secus faxit, inter proscriptos esto."

19.—*In what Manner the Use of Liberty is suspended in a Republic*

In countries where liberty is most esteemed, there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are in England what they call Bills of Attainder.^f These are in relation to those Athenian laws by which a private person was condemned,^g provided they were made by the unanimous suffrage of six thousand citizens. They are in relation also to those laws which were made at Rome against private citizens, and were called privileges.^h These were never passed except in the great meetings of the people. But in what manner soever they were enacted, Cicero was for having them abolished, because the force of a law consists in its being made for the whole community.ⁱ I must own, notwithstanding, that the practice of the freest nation that ever existed induces me to think that there are cases in which a veil should be drawn for a while over liberty, as it was customary to cover the statues of the gods.

20.—*Of Laws favorable to the Liberty of the Subject in a Republic*

In popular governments it often happens that accusations are carried on in public, and every man is allowed to accuse whomsoever he pleases. This rendered it necessary to establish proper laws, in order to protect the innocence of the subject. At Athens, if an accuser had not the fifth part of the votes on his side, he was obliged to pay a fine of a thousand drachms. Æschines, who accused Ctesiphon, was condemned to pay this fine.^j At Rome, a false accuser was branded with

^f It is not sufficient in the courts of justice of that kingdom that the evidence be of such a nature as to satisfy the judges; there must be a legal proof; and the law requires the deposition of two witnesses against the accused. No other proof will do. Now, if a person who is presumed guilty of high treason should contrive to secrete the witnesses, so as to render it impossible for him to be legally condemned, the government then may bring a bill of attainder against him; that is, they may enact a particular law for that single fact. They proceed then in the same manner as in all other bills brought into parliament; it must pass

the two houses, and have the King's consent, otherwise it is not a bill: that is, a sentence of the Legislature. The person accused may plead against the bill by counsel, and the members of the house may speak in defence of the bill.
^g "Legem de singulari aliquo ne rogato, nisi sex millibus ita visum."
^h "Ex Andocide de Mysteriis." This is what they called Ostracism.
ⁱ "De privis hominibus late."—Cicero, "de Leg." lib. III.
^j "Scitum est jussum in omnes."—Ibid.

^k See Philostratus, book I: "Lives of the Sophists," "Life of Æschines." See likewise Plutarch and Phocius.