

time when the laws of the Twelve Tables were made, the manners of the Romans were most admirable. The guardianship was given to the nearest relative of the infant, from a consideration that he ought to have the trouble of the tutelage who might enjoy the advantage of possessing the inheritance. They did not imagine the life of the heir in danger though it was put into a person's hands who would reap a benefit by his death. But when the manners of Rome were changed, her legislators altered their conduct. "If, in the pupillary substitution," say Gaius *j* and Justinian,<sup>k</sup> "the testator is afraid that the substitute will lay any snares for the pupil, he may leave the vulgar substitution open,<sup>l</sup> and put the pupillary into a part of the testament, which cannot be opened till after a certain time." These fears and precautions were unknown to the primitive Romans.

25.—*The same Subject continued*

The Roman law gave the liberty of making presents before marriage; after the marriage they were not allowed. This was founded on the manners of the Romans, who were led to marriage only by frugality, simplicity, and modesty; but might suffer themselves to be seduced by domestic cares, by complacency, and the constant tenor of conjugal felicity.

A law of the Visigoths *m* forbade the man giving more to the woman he was to marry than the tenth part of his substance, and his giving her anything during the first year of their marriage. This also took its rise from the manners of the country. The legislators were willing to put a stop to that Spanish ostentation which only led them to display an excessive liberality in acts of magnificence.

The Romans by their laws put a stop to some of the inconveniences which arose from the most durable empire in the world—that of virtue; the Spaniards, by theirs, would prevent the bad effects of a tyranny the most frail and transitory—that of beauty.

<sup>j</sup> "Institut." lib. tit. 2, 6, sec. 2. Ozel's compilation at Leyden, in 1658.

<sup>k</sup> "Institut." lib. II., "de pupil. substit." sec. 3.

<sup>l</sup> The form of the vulgar substitution ran thus: "If such a one is unwilling

to take the inheritance, I substitute in his stead," etc., the pupillary substitution, "If such a one dies before he arrives at the age of puberty, I substitute," etc.

<sup>m</sup> Lib. III. tit. 5, sec. 5.

26.—*The same Subject continued*

The law of Theodosius and Valentinian *n* drew the causes of repudiation from the ancient manners and customs of the Romans.<sup>o</sup> It placed in the number of these causes the behavior of the husband who beat his wife *p* in a manner that disgraced the character of a free-born woman. This cause was omitted in the following laws: *q* for their manners, in this respect, had undergone a change, the Eastern customs having banished those of Europe. The first eunuch of the empress, wife to Justinian II, threatened her, says the historian, to chastise her in the same manner as children are punished at school. Nothing but established manners, or those which they were seeking to establish, could raise even an idea of this kind.

We have seen how the laws follow the manners of a people; let us now observe how the manners follow the laws.

27.—*How the Laws contribute to form the Manners, Customs, and Character of a Nation*

The customs of an enslaved people are a part of their servitude, those of a free people are a part of their liberty.

I have spoken in the eleventh book *r* of a free people, and have given the principles of their constitution: let us now see the effects which follow from this liberty, the character it is capable of forming, and the customs which naturally result from it.

I do not deny that the climate may have produced a great part of the laws, manners, and customs of this nation; but I maintain that its manners and customs have a close connection with its laws.

As there are in this state two visible powers—the legislative and executive—and as every citizen has a will of his own, and may at pleasure assert his independence, most men have a greater fondness for one of these powers than for the other, and the multitude have commonly neither equity nor sense enough to show an equal affection to both.

And as the executive power, by disposing of all employ-

<sup>n</sup> Leg. 8 cod. "de Repudiis."  
<sup>o</sup> And the law of the Twelve Tables. See Cicero's 2d "Philippic."

<sup>p</sup> "Si verberibus quæ ingenuis alieni sunt, afficientem probaverit."  
<sup>q</sup> In Nov. 117, cap. xiv.  
<sup>r</sup> Chap. vi.

ments, may give great hopes, and no fears, every man who obtains any favor from it is ready to espouse its cause; while it is liable to be attacked by those who have nothing to hope from it.

All the passions being unrestrained, hatred, envy, jealousy, and an ambitious desire of riches and honors, appear in their extent; were it otherwise, the state would be in the condition of a man weakened by sickness, who is without passions because he is without strength.

The hatred which arises between the two parties will always subsist, because it will always be impotent.

These parties being composed of freemen, if the one becomes too powerful for the other, as a consequence of liberty this other is depressed; while the citizens take the weaker side, with the same readiness as the hands lend their assistance to remove the infirmities and disorders of the body.

Every individual is independent, and being commonly led by caprice and humor, frequently changes parties; he abandons one where he left all his friends, to unite himself to another in which he finds all his enemies: so that in this nation it frequently happens that the people forget the laws of friendship, as well as those of hatred.

The sovereign is here in the same case with a private person; and against the ordinary maxims of prudence is frequently obliged to give his confidence to those who have most offended him, and to disgrace the men who have best served him: he does that by necessity which other princes do by choice.

As we are afraid of being deprived of the blessing we already enjoy, and which may be disguised and misrepresented to us; and as fear always enlarges objects, the people are uneasy under such a situation, and believe themselves in danger, even in those moments when they are most secure.

As those who with the greatest warmth oppose the executive power dare not avow the self-interested motives of their opposition, so much the more do they increase the terrors of the people, who can never be certain whether they are in danger or not. But even this contributes to make them avoid the real dangers, to which they may, in the end, be exposed.

But the legislative body having the confidence of the people,

and being more enlightened than they, may calm their uneasiness, and make them recover from the bad impressions they have entertained.

This is the great advantage which this government has over the ancient democracies, in which the people had an immediate power; for when they were moved and agitated by the orators, these agitations always produced their effect.

But when an impression of terror has no certain object, it produces only clamor and abuse; it has, however, this good effect, that it puts all the springs of government into motion, and fixes the attention of every citizen. But if it arises from a violation of the fundamental laws, it is sullen, cruel, and produces the most dreadful catastrophes.

Soon we should see a frightful calm, during which everyone would unite against that power which had violated the laws.

If, when the uneasiness proceeds from no certain object, some foreign power should threaten the state, or put its prosperity or its glory in danger, the little interests of party would then yield to the more strong and binding, and there would be a perfect coalition in favor of the executive power.

But if the disputes were occasioned by a violation of the fundamental laws, and a foreign power should appear, there would be a revolution that would neither alter the constitution nor the form of government. For a revolution formed by liberty becomes a confirmation of liberty.

A free nation may have a deliverer: a nation enslaved can have only another oppressor.

For whoever is able to dethrone an absolute prince has a power sufficient to become absolute himself.

As the enjoyment of liberty, and even its support and preservation consist in every man's being allowed to speak his thoughts, and to lay open his sentiments, a citizen in this state will say or write whatever the laws do not expressly forbid to be said or written.

A people like this, being always in a ferment, are more easily conducted by their passions than by reason, which never produces any great effect in the mind of man; it is therefore easy for those who govern to make them undertake enterprises contrary to their true interest.

This nation is passionately fond of liberty, because this lib-

erty is real; and it is possible for it, in its defence, to sacrifice its wealth, its ease, its interest, and to support the burden of the heaviest taxes, even such as a despotic prince durst not lay upon his subjects.

But as the people have a certain knowledge of the necessity of submitting to those taxes, they pay them from the well-founded hope of their discontinuance; their burdens are heavy, but they do not feel their weight: while in other states the uneasiness is infinitely greater than the evil.

This nation must therefore have a fixed and certain credit, because it borrows of itself and pays itself. It is possible for it to undertake things above its natural strength, and employ against its enemies immense sums of fictitious riches, which the credit and nature of the government may render real.

To preserve its liberty, it borrows of its subjects: and the subjects, seeing that its credit would be lost if ever it were conquered, have a new motive to make fresh efforts in defence of its liberty.

This nation, inhabiting an island, is not fond of conquering, because it would be weakened by distant conquests—especially as the soil of the island is good, for it has then no need of enriching itself by war: and as no citizen is subject to another, each sets a greater value on his own liberty than on the glory of one or any number of citizens.

Military men are there regarded as belonging to a profession which may be useful but is often dangerous, and as men whose very services are burdensome to the nation: civil qualifications are therefore more esteemed than the military.

This nation, which liberty and the laws render easy, on being freed from pernicious prejudices, has become a trading people; and as it has some of those primitive materials of trade out of which are manufactured such things as from the artist's hand receive a considerable value, it has made settlements proper to procure the enjoyment of this gift of heaven in its fullest extent.

As this nation is situated towards the north, and has many superfluous commodities, it must want also a great number of merchandise which its climate will not produce: it has therefore entered into a great and necessary intercourse with the southern nations; and making choice of those states whom it

is willing to favor with an advantageous commerce, it enters into such treaties with the nation it has chosen as are reciprocally useful to both.

In a state where, on the one hand, the opulence is extreme, and on the other the taxes are excessive, they are hardly able to live on a small fortune without industry. Many, therefore, under a pretence of travelling, or of health, retire from amongst them, and go in search of plenty, even to the countries of slavery.

A trading nation has a prodigious number of little particular interests; it may then injure or be injured in an infinite number of ways. Thus it becomes immoderately jealous, and is more afflicted at the prosperity of others than it rejoices at its own.

And its laws, otherwise mild and easy, may be so rigid with respect to the trade and navigation carried on with it, that it may seem to trade only with enemies.

If this nation sends colonies abroad, it must rather be to extend its commerce than its dominion.

As men are fond of introducing into other places what they have established amongst themselves, they have given the people of the colonies their own form of government; and this government carrying prosperity along with it, they have raised great nations in the forests they were sent to inhabit.

Having formerly subdued a neighboring nation, which by its situation, the goodness of its ports, and the nature of its products, inspires it with jealousy, though it has given this nation its own laws, yet it holds it in great dependence: the subjects there are free and the state itself in slavery.

The conquered state has an excellent civil government, but is oppressed by the law of nations. Laws are imposed by one country on the other, and these are such as render its prosperity precarious, and dependent on the will of a master.

The ruling nation inhabiting a large island, and being in possession of a great trade, has with extraordinary ease grown powerful at sea; and as the preservation of its liberties requires that it should have neither strongholds nor fortresses nor land forces, it has occasion for a formidable navy to defend it against invasions; a navy which must be superior to that of all other

powers, who, employing their treasures in wars on land, have not sufficient for those at sea.

The empire of the sea has always given those who have enjoyed it a natural pride; because, thinking themselves capable of extending their insults wherever they please, they imagine that their power is as boundless as the ocean.

This nation has a great influence in the affairs of its neighbors; for as its power is not employed in conquests, its friendship it more courted, and its resentment more dreaded, than could naturally be expected from the inconstancy of its government, and its domestic divisions.

Thus it is the fate of the executive power to be almost always disturbed at home and respected abroad.

Should this nation on some occasions become the centre of the negotiations of Europe, probity and good faith would be carried to a greater height than in other places; because the ministers being frequently obliged to justify their conduct before a popular council, their negotiations could not be secret; and they would be forced to be, in this respect, a little more honest.

Besides, as they would in some sort be answerable for the events which an irregular conduct might produce, the surest, the safest way for them would be to take the straightest path.

If the nobles were formerly possessed of an immoderate power, and the monarch had found the means of abasing them by raising the people, the point of extreme servitude must have been that between humbling the nobility and that in which the people began to feel their power.

Thus this nation, having been formerly subject to an arbitrary power, on many occasions preserves the style of it, in such a manner as to let us frequently see upon the foundation of a free government the form of an absolute monarchy.

With regard to religion, as in this state every subject has a free will, and must consequently be either conducted by the light of his own mind or by the caprice of fancy, it necessarily follows that everyone must either look upon all religion with indifference, by which means they are led to embrace the established religion, or they must be zealous for religion in general, by which means the number of sects is increased.

It is not impossible but that in this nation there may be men

of no religion, who would not, however, bear to be obliged to change that which they would choose, if they cared to choose any; for they would immediately perceive that their lives and fortunes are not more peculiarly theirs than their manner of thinking, and that whoever would deprive them of the one might even with better reason take away the other.

If, amongst the different religions, there is one that has been attempted to be established by methods of slavery, it must there be odious; because as we judge of things by the appendages we join with them, it could never present itself to the mind in conjunction with the idea of liberty.

The laws against those who profess this religion could not, however, be of the sanguinary kind; for liberty can never inflict such punishments; but they may be so rigorous as to do all the mischief that can be done in cold blood.

It is possible that a thousand circumstances might concur to give the clergy so little credit, that other citizens may have more. Therefore, instead of a separation, they have chosen rather to support the same burdens as the laity, and in this respect to make only one body with them; but as they always seek to conciliate the respect of the people, they distinguish themselves by a more retired life, a conduct more reserved, and a greater purity of manners.

The clergy not being able to protect religion, nor to be protected by it, only seek to persuade; their pens therefore furnish us with excellent works in proof of a revelation and of the providence of the Supreme Being.

Yet the state prevents the sitting of their assemblies, and does not suffer them to correct their own abuses; it chooses thus, through a caprice of liberty, rather to leave their reformation imperfect than to suffer the clergy to be the reformers.

Those dignities which make a fundamental part of the constitution are more fixed than elsewhere; but, on the other hand, the great in this country of liberty are nearer upon a level with the people; their ranks are more separated, and their persons more confounded.

As those who govern have a power which, in some measure, has need of fresh vigor every day, they have a greater regard for such as are useful to them than for those who only contribute to their amusement: we see, therefore, fewer courtiers,

flatterers, and parasites; in short, fewer of all those who make their own advantage of the folly of the great.

Men are less esteemed for frivolous talents and attainments than for essential qualities; and of this kind there are but two, riches and personal merit.

They enjoy a solid luxury, founded, not on the refinements of vanity, but on that of real wants; they ask nothing of nature but what nature can bestow.

The rich enjoy a great superfluity of fortune, and yet have no relish for frivolous amusements; thus, many having more wealth than opportunities of expense, employ it in a fantastic manner: in this nation they have more judgment than taste.

As they are always employed about their own interest, they have not that politeness which is founded on indolence; and they really have not leisure to attain it.

The era of Roman politeness is the same as that of the establishment of arbitrary power. An absolute government produces indolence, and this gives birth to politeness.

The more people there are in a nation who require circumspect behavior, and care not to displease, the more there is of politeness. But it is rather the politeness of morals than that of manners which ought to distinguish us from barbarous nations.

In a country where every man has, in some sort, a share in the administration of the government, the women ought scarcely to live with the men. They are therefore modest, that is, timid; and this timidity constitutes their virtue: whilst the men without a taste for gallantry plunge themselves into a debauchery, which leaves them at leisure, and in the enjoyment of their full liberty.

Their laws not being made for one individual more than another, each considers himself a monarch; and, indeed, the men of this nation are rather confederates than fellow-subjects.

As the climate has given many persons a restless spirit and extended views, in a country where the constitution gives every man a share in its government and political interests, conversation generally turns upon politics: and we see men spend their lives in the calculation of events which, considering the nature of things and caprices of fortune, or rather of men, can scarcely be thought subject to the rules of calculation.

In a free nation it is very often a matter of indifference whether individuals reason well or ill; it is sufficient that they do reason: hence springs that liberty which is a security from the effects of these reasonings.

But in a despotic government, it is equally pernicious whether they reason well or ill; their reasoning is alone sufficient to shock the principle of that government.

Many people who have no desire of pleasing abandon themselves to their own particular humor; and most of those who have wit and ingenuity are ingenious in tormenting themselves: filled with contempt or disgust for all things, they are unhappy amidst all the blessings that can possibly contribute to promote their felicity.

As no subject fears another, the whole nation is proud: for the pride of kings is founded only on their independence.

Free nations are haughty; others may more properly be called vain.

But as these men who are naturally so proud live much by themselves, they are commonly bashful when they appear among strangers; and we frequently see them behave for a considerable time with an odd mixture of pride and ill-placed shame.

The character of the nation is more particularly discovered in their literary performances, in which we find the men of thought and deep meditation.

As society gives us a sense of the ridicule of mankind, retirement renders us more fit to reflect on the folly of vice. Their satirical writings are sharp and severe, and we find amongst them many Juvenals, without discovering one Horace.

In monarchies extremely absolute, historians betray the truth, because they are not at liberty to speak it; in states remarkably free, they betray the truth, because of their liberty itself; which always produces divisions, everyone becoming as great a slave to the prejudices of his faction as he could be in a despotic state.

Their poets have more frequently an original rudeness of invention than that particular kind of delicacy which springs from taste; we there find something which approaches nearer to the bold strength of a Michael Angelo than to the softer graces of a Raphael.