

numerous offspring was the first who received the fasces; *v* he had his choice of the provinces: *w* the Senator who had most children had his name written first in the catalogue of Senators, and was the first in giving his opinion in the Senate. *x* They might even stand sooner than ordinary for an office, because every child gave a dispensation of a year. *y* If an inhabitant of Rome had three children, he was exempted from all troublesome offices. *z* The free-born women who had three children, and the freed-women who had four, passed out of that perpetual tutelage *a* in which they had been held by the ancient laws of Rome. *b*

As they had rewards, they had also penalties. *c* Those who were not married could receive no advantage from the will of any person that was not a relative; *d* and those who, being married, had no children, could receive only half. *e* The Romans, says Plutarch, marry only to be heirs, and not to have them. *f*

The advantages which a man and his wife might receive from each other by will were limited by law. *g* If they had children of each other, they might receive the whole; if not, they could receive only a tenth part of the succession on the account of marriage; and if they had any children by a former venter, as many tenths as they had children.

If a husband absented himself from his wife on any other cause than the affairs of the republic, he could not inherit from her. *h*

The law gave to a surviving husband or wife two years to marry again, *i* and a year and a half in case of a divorce. The fathers who would not suffer their children to marry, or refused to give their daughters a portion, were obliged to do it by the magistrates. *j*

They were not allowed to betroth, when the marriage was to

v Aulus Gellius, lib. II. cap. xv.
w Tacitus, "Annal." lib. XV.
x See Law 6, sec. 5, "de Decurion."
y See Law 2 ff. "de minorib."
z Law 1st and 2d ff. "de vacatione et excusat. munerum."

a "Frag. of Ulpian," tit. 29, sec. 3.
b Plutarch, "Life of Numa."
c See the "Fragments of Ulpian," tit. 14, 15, 16, 17, and 18, which compose one of the most valuable pieces of the ancient civil law of the Romans.

d Sozom. lib. I. cap. ix. They could receive from their relatives.—"Frag. of Ulpian," tit. 16, sec. 1.

e Ibid.; and leg. unic. cod. Theod. "de Infirm. pœnis cœlib. et orbit."

f "Moral Works," "Of the love of Fathers towards their Children."

g See a more particular account of this in the "Frag. of Ulpian," tit. 15 and 16.

h Ibid. tit. 16, sec. 1.

i Ibid. tit. 14. It seems the first Julian laws allowed three years.—"Speech of Augustus," in Dio, lib. LVI.; Suetonius, "Life of Augustus," cap. xxxiv. Other Julian laws granted but one year: the Papian law gave two.—"Frag. of Ulpian," tit. 14. These laws were not agreeable to the people; Augustus, therefore, softened or strengthened them as they were more or less disposed to comply with them.

j This was the 35th head of the Papian law.—Leg. 19 ff. "de ritu nuptiarum."

be deferred for more than two years: *k* and as they could not marry a girl till she was twelve years old, they could not be betrothed to her till she was ten. The law would not suffer them to trifle to no purpose; *l* and under a pretence of being betrothed, to enjoy the privileges of married men.

It was contrary to law for a man of sixty to marry a woman of fifty. *m* As they had given great privileges to married men, the law would not suffer them to enter into useless marriages. For the same reason, the Calvisian *senatus-consultum* declared the marriage of a woman above fifty with a man less than sixty to be unequal: *n* so that a woman of fifty years of age could not marry without incurring the penalties of these laws. Tiberius added to the rigor of the Papian law, *o* and prohibited men of sixty from marrying women under fifty; so that a man of sixty could not marry in any case whatsoever, without incurring the penalty. But Claudius abrogated this law made under Tiberius. *p*

All these regulations were more conformable to the climate of Italy than to that of the North, where a man of sixty years of age has still a considerable degree of strength, and where women of fifty are not always past child-bearing.

That they might not be unnecessarily limited in the choice they were to make, Augustus permitted all the free-born citizens who were not senators *q* to marry freed-women. *r* The Papian law forbade the Senators marrying freed-women, *s* or those who had been brought up to the stage; and from the time of Ulpian, *t* free-born persons were forbidden to marry women who had led a disorderly life, who had played in the theatre, or who had been condemned by a public sentence. This must have been established by a decree of the Senate. During the time of the republic they had never made laws like these, because the Censors corrected this kind of disorders as soon as they arose, or else prevented their rising.

Constantine made a law *u* in which he comprehended, in the prohibition of the Papian law, not only the Senators, but even

k See Dio, lib. LIV., anno 736; Suetonius, in "Octavio," cap. xxxiv.

l Dio, lib. LIV.; and in the same Dio, the "Speech of Augustus," lib. LVI.

m "Frag. of Ulpian," tit. 16, and the 27th law. cod. "de nuptiis."

n Ibid. tit. 16, sec. 3.

o See Suetonius in "Claudio," cap. xxiii.

p Ibid. "Life of Claudius," cap. xxiii., and the "Frag. of Ulpian," tit. 16, sec. 3.

q Dio, lib. LIV.; "Frag. of Ulpian," tit. 13.

r "Augustus's speech," in Dio, lib. LVI.

s "Frag. of Ulpian," cap. xiii., and the 44th law ff. "de ritu nuptiarum."

t Ibid. tit. 13 and 16.

u See Law 1, in cod. "de natur. lib."

such as had a considerable rank in the state, without mentioning persons in an inferior station: this constituted the law of those times. These marriages were therefore no longer forbidden, except to the free-born comprehended in the law of Constantine. Justinian, however, abrogated the law of Constantine,^v and permitted all sorts of persons to contract these marriages; and thus we have acquired so fatal a liberty.

It is evident that the penalties inflicted on such as married contrary to the prohibition of the law were the same as those inflicted on persons who did not marry. These marriages did not give them any civil advantage; ^w for the dowry ^x was confiscated after the death of the wife.^y

Augustus having adjudged the succession and legacies of those whom these laws had declared incapable to the public treasury,^z they had the appearance rather of fiscal than of political and civil laws. The disgust they had already conceived at a burden which appeared too heavy was increased by their seeing themselves a continual prey to the avidity of the treasury. On this account, it became necessary, under Tiberius, that these laws should be softened; ^a that Nero should lessen the rewards given out of the treasury to the informers; ^b that Trajan should put a stop to their plundering; ^c that Severus should also moderate these laws; ^d and that the civilians should consider them as odious, and in all their decisions deviate from the literal rigor.

Besides, the emperors enervated these laws ^e by the privileges they granted of the rights of husbands, of children, and of three children. More than this, they gave particular persons a dispensation from the penalties of these laws.^f But the regulations established for the public utility seemed incapable of admitting an alleviation.

It was highly reasonable that they should grant the rights of

^v "Novell." 177.
^w Law 27 ff. "de operib. libertorum," sec. 7; "Frag. of Ulpian," tit. 16. sec. 2.
^x "Frag. of Ulpian," tit. 16, sec. 2.
^y See book XXVI, chap. xiii.
^z Except in certain cases. See the "Frag. of Ulpian," tit. 18, and the only law in cod. "de Caduc. tollend."
^a "Relatum de moderanda Papiâ Pop. præ."—Tacit. "Annal." lib. III. p. 117.
^b He reduced them to the fourth part.—Suetonius, in "Nerone," cap. x.
^c See Pliny's "Panegyric."
^d Severus extended even to twenty-

five years for the males, and to twenty for the females, the time fixed by the Papian law, as we see by comparing the "Frag. of Ulpian," tit. 16, with what Tertullian says, "Apol." cap. iv.
^e P. Scipio, the Censor, complains, in his speech to the people, of the abuses which were already introduced, that they received the same privileges for adopted as for natural children.—Aulus Gellius, lib. V. cap. xix.
^f See the 31st law ff. "de ritu nuptiarum."

children to the vestals,^g whom religion retained in a necessary virginity; they gave, in the same manner, the privilege of married men to soldiers,^h because they could not marry. It was customary to exempt the emperors from the constraint of certain civil laws. Thus Augustus was freed from the constraint of the law which limited the power of enfranchising,ⁱ and of that which set bounds to the right of bequeathing by testament.^j These were only particular cases; but, at last, dispensations were given without discretion, and the rule itself became no more than an exception.

The sects of philosophers had already introduced in the empire a disposition that estranged them from business—a disposition which could not gain ground in the time of the republic,^k when everybody was employed in the arts of war and peace. Hence arose an idea of perfection, as connected with a life of speculation; hence an estrangement from the cares and embarrassments of a family. The Christian religion coming after this philosophy fixed, if I may make use of the expression, the ideas which that had only prepared.

Christianity stamped its character on jurisprudence; for empire has ever a connection with the priesthood. This is visible from the Theodosian code, which is only a collection of the decrees of the Christian emperors.

A panegyrist of Constantine^l said to that emperor, "Your laws were made only to correct vice and to regulate manners: you have stripped the ancient laws of that artifice which seemed to have no other aim than to lay snares for simplicity."

It is certain that the alterations made by Constantine took their rise either from sentiments relating to the establishment of Christianity, or from ideas conceived of its perfection. From the first proceeded those laws which gave such authority to bishops, and which have been the foundation of the ecclesiastical jurisdiction; hence those laws which weakened paternal authority,^m by depriving the father of his property in the possessions of his children.

^g Augustus in the Papian law gave them the privilege of mothers. See Dio, lib. LXVI. Numa had granted them the ancient privilege of women who had three children; that is, of having no guardian.—Plutarch, "Life of Numa."
^h This was granted them by Claudius.—Dio, lib. LX.
ⁱ Leg. apud eum, ff. "de manumissionib." sec. 1.

^j Dio, lib. LV.
^k See, in Cicero's "Offices," his sentiments on the spirit of speculation.
^l Nazarius, "in panegyrico Constantini," anno 321.
^m See Laws 1, 2, 3, in the Theodosian code "de bonis maternis," "maternique generis," etc., and the only law in the same code, "de bonis quæ filiis famil. acquiruntur."

To extend a new religion, they were obliged to take away the dependence of children, who are always least attached to what is already established.

The laws made with a view to Christian perfection were more particularly those by which the penalties of the Papian laws were abolished; ⁿ the unmarried were equally exempted from them, with those who, being married, had no children.

"These laws were established," says an ecclesiastical historian, ^o "as if the multiplication of the human species was an effect of our care; instead of being sensible that the number is increased or diminished, according to the order of Providence."

Principles of religion have had an extraordinary influence on the propagation of the human species. Sometimes they have promoted it, as among the Jews, the Mahomedans, the Gaur, and the Chinese; at others they have put a damp to it, as was the case of the Romans upon their conversion to Christianity.

They everywhere incessantly preached continency; a virtue the more perfect because in its own nature it can be practised but by very few.

Constantine had not taken away the decimal laws which granted a greater extent to the donations between man and wife, in proportion to the number of their children. Theodosius, the younger, abrogated even these laws. ^p

Justinian declared all those marriages valid which had been prohibited by the Papian laws. ^q These laws require people to marry again: Justinian granted privileges to those who did not marry again. ^r

By the ancient institutions, the natural right which everyone had to marry and beget children could not be taken away. Thus when they received a legacy, ^s on condition of not marrying, or when a patron made his freed-man swear ^t that he would neither marry nor beget children, the Papian law annulled both the condition and the oath. ^u The clauses on continuing in widowhood established among us contradict the ancient law, and descend from the constitutions of the emperors, founded on ideas of perfection.

ⁿ Leg. unic. cod. Theod. "de Infirm. pœn. cœlib. et orbit."

^o Sozomenus, p. 27.

^p Leg. 2 and 3, cod. Theod. "de jur. liber."

^q Leg. Sancimus, cod. "de nuptiis."

^r "Novell." 127, cap. iii.; "Novell." 118, cap. v.

^s Leg. 54 ff. "de condit. et demonstr."

^t Leg. 5, sec. 4, "de jure patronatus."

^u Paul, in his "Sentences," lib. III. tit. 4, sec. 15.

There is no law that contains an express abrogation of the privileges and honors which the Romans had granted to marriages, and to a number of children. But where celibacy had the pre-eminence, marriage could not be held in honor; and since they could oblige the officers of the public revenue to renounce so many advantages by the abolition of the penalties, it is easy to perceive that with yet greater ease they might put a stop to the rewards.

The same spiritual reason which had permitted celibacy soon imposed it even as necessary. God forbid that I should here speak against celibacy as adopted by religion; but who can be silent, when it is built on libertinism: when the two sexes, corrupting each other even by the natural sensations themselves, fly from a union which ought to make them better, to live in that which always renders them worse?

It is a rule drawn from nature, that the more the number of marriages is diminished, the more corrupt are those who have entered into that state; the fewer married men, the less fidelity is there in marriage; as when there are more thieves, more thefts are committed.

22.—Of the Exposing of Children

The Roman policy was very good in respect to the exposing of children. Romulus, says Dionysius Halicarnassus, ^v laid the citizens under an obligation to educate all their male children, and the eldest of their daughters. If the infants were deformed and monstrous, he permitted the exposing them, after having shown them to five of their nearest neighbors.

Romulus did not suffer them to kill any infants under three years old: ^w by which means he reconciled the law that gave to fathers the right over their children of life and death with that which prohibited their being exposed.

We find also in Dionysius Halicarnassus ^x that the law which obliged the citizens to marry, and to educate all their children, was in force in the 277th year of Rome; we see that custom had restrained the law of Romulus which permitted them to expose their younger daughters.

We have no knowledge of what the law of the Twelve Tables (made in the year of Rome 301) appointed with respect to the ex-

^v "Antiquities of Rome," lib. II. ^w Ibid. ^x Lib. IX.

posing of children, except from a passage of Cicero,^y who, speaking of the office of tribune of the people, says that soon after its birth, like the monstrous infant of the law of the Twelve Tables, it was stifled; the infant that was not monstrous was therefore preserved, and the law of the Twelve Tables made no alteration in the preceding institutions.

"The Germans," says Tacitus,^z "never expose their children; among them the best manners have more force than in other places the best laws." The Romans had therefore laws against this custom, and yet they did not follow them. We find no Roman law that permitted the exposing of children;^a this was, without doubt, an abuse introduced towards the decline of the republic, when luxury robbed them of their freedom, when wealth divided was called poverty, when the father believed that all was lost which he gave to his family, and when this family was distinct from his property.

23.—*Of the State of the World after the Destruction of the Romans*

The regulations made by the Romans to increase the number of their citizens had their effect while the republic in the full vigor of her constitution had nothing to repair but the losses she sustained by her courage, by her intrepidity, by her firmness, her love of glory and of virtue. But soon the wisest laws could not re-establish what a dying republic, what a general anarchy, what a military government, what a rigid empire, what a proud despotic power, what a feeble monarchy, what a stupid, weak, and superstitious court had successively pulled down. It might, indeed, be said that they conquered the world only to weaken it, and to deliver it up defenceless to barbarians. The Gothic nations, the Getes, the Saracens and Tartars by turns harassed them; and soon the barbarians had none to destroy but barbarians. Thus, in fabulous times, after the inundations and the deluge, there arose out of the earth armed men, who exterminated one another.

^y Lib. III. "de legib."

^z "De Moribus Germanorum."

^a There is no title on this subject in

the Digest; the title of the Code says nothing of it, any more than the "Novels."

24.—*The Changes which happened in Europe with regard to the Number of the Inhabitants*

In the state Europe was in one would not imagine it possible for it to be retrieved, especially when under Charlemagne it formed only one vast empire. But by the nature of government at that time it became divided into an infinite number of petty sovereignties, and as the lord or sovereign, who resided in his village or city, was neither great, rich, powerful, nor even safe but by the number of his subjects, everyone employed himself with a singular attention to make his little country flourish. This succeeded in such a manner that notwithstanding the irregularities of government, the want of that knowledge which has since been acquired in commerce, and the numerous wars and disorders incessantly arising, most countries of Europe were better peopled in those days than they are even at present.

I have not time to treat fully of this subject, but I shall cite the prodigious armies engaged in the crusades, composed of men of all countries. Puffendorf says that in the reign of Charles IX there were in France twenty millions of men.^b

It is the perpetual reunion of many little states that has produced this diminution. Formerly, every village of France was a capital; there is at present only one large one. Every part of the state was a centre of power; at present all has a relation to one centre, and this centre is in some measure the state itself.

25.—*The same Subject continued*

Europe, it is true, has for these two ages past greatly increased its navigation; this has both procured and deprived it of inhabitants. Holland sends every year a great number of mariners to the Indies, of whom not above two-thirds return; the rest either perish or settle in the Indies. The same thing must happen to every other nation concerned in that trade.

We must not judge of Europe as of a particular state engaged alone in an extensive navigation. This state would increase in people, because all the neighboring nations would endeavor to have a share in this commerce, and mariners would arrive from

^b "Introduction to the History of Europe," chap. v. of France. This is obviously a numerical blunder, since, according to the Census of 1751, and

France was never so populous as at that time, she did not possess twenty millions.—Voltaire.

all parts. Europe, separated from the rest of the world by religion,^c by vast seas and deserts, cannot be repaired in this manner.

26.—*Consequences*

From all this we may conclude that Europe is at present in a condition to require laws to be made in favor of the propagation of the human species. The politics of the ancient Greeks incessantly complain of the inconveniences attending a republic, from the excessive number of citizens; but the politics of this age call upon us to take proper means to increase ours.

27.—*Of the Law made in France to encourage the Propagation of the Species*

Louis XIV appointed particular pensions to those who had ten children, and much larger to such as had twelve.^d But it is not sufficient to reward prodigies. In order to communicate a general spirit, which leads to the propagation of the species, it is necessary for us to establish, like the Romans, general rewards, or general penalties.

28.—*By what Means we may remedy a Depopulation*

When a state is depopulated by particular accidents, by wars, pestilence, or famine, there are still resources left. The men who remain may preserve the spirit of industry; they may seek to repair their misfortunes, and calamity itself may make them become more industrious. This evil is almost incurable when the depopulation is prepared beforehand by interior vice and a bad government. When this is the case, men perish with an insensible and habitual disease; born in misery and weakness, in violence or under the influence of a wicked administration, they see themselves destroyed, and frequently without perceiving the cause of their destruction. Of this we have a melancholy proof in the countries desolated by despotic power, or by the excessive advantages of the clergy over the laity.

In vain shall we wait for the succor of children yet unborn to re-establish a state thus depopulated. There is not time for this; men in their solitude are without courage or industry. With land sufficient to nourish a nation, they have scarcely enough to

^c Mahomedan countries surround it almost on every side.

^d The edict of 1666 in favor of marriages.

nourish a family. The common people have not even a property in the miseries of the country, that is, in the fallows with which it abounds. The clergy, the prince, the cities, the great men, and some of the principal citizens insensibly become proprietors of all the land which lies uncultivated; the families who are ruined have left their fields, and the laboring man is destitute.

In this situation they should take the same measures throughout the whole extent of the empire which the Romans took in a part of theirs; they should practise in their distress what these observed in the midst of plenty; that is, they should distribute land to all the families who are in want, and procure them materials for clearing and cultivating it. This distribution ought to be continued so long as there is a man to receive it, and in such a manner as not to lose a moment that can be industriously employed.

29.—*Of Hospitals*

A man is not poor because he has nothing, but because he does not work. The man who without any degree of wealth has an employment is as much at his ease as he who without labor has an income of a hundred crowns a year. He who has no substance, and yet has a trade, is not poorer than he who, possessing ten acres of land, is obliged to cultivate it for his subsistence. The mechanic who gives his art as an inheritance to his children has left them a fortune, which is multiplied in proportion to their number. It is not so with him who, having ten acres of land, divides it among his children.

In trading countries, where many men have no other subsistence but from the arts, the state is frequently obliged to supply the necessities of the aged, the sick, and the orphan. A well-regulated government draws this support from the arts themselves. It gives to some such employment as they are capable of performing; others are taught to work, and this teaching of itself becomes an employment.

The alms given to a naked man in the street do not fulfil the obligations of the state, which owes to every citizen a certain subsistence, a proper nourishment, convenient clothing, and a kind of life not incompatible with health.

Aurengzebe, being asked why he did not build hospitals, said, "I will make my empire so rich that there shall be no need of

hospitals." ^e He ought to have said, I will begin by rendering my empire rich, and then I will build hospitals.

The riches of the state suppose great industry. Amidst the numerous branches of trade it is impossible but that some must suffer, and consequently the mechanics must be in a momentary necessity.

Whenever this happens, the state is obliged to lend them a ready assistance, whether it be to prevent the sufferings of the people, or to avoid a rebellion. In this case hospitals, or some equivalent regulations, are necessary to prevent this misery.

But when the nation is poor, private poverty springs from the general calamity, and is, if I may so express myself, the general calamity itself. All the hospitals in the world cannot cure this private poverty; on the contrary, the spirit of indolence, which it constantly inspires, increases the general and consequently the private misery.

Henry VIII,^f resolving to reform the Church of England, ruined the monks, of themselves a lazy set of people, that encouraged laziness in others, because, as they practised hospitality, an infinite number of idle persons, gentlemen and citizens, spent their lives in running from convent to convent. He demolished even the hospitals, in which the lower people found subsistence, as the gentlemen did theirs in the monasteries. Since these changes, the spirit of trade and industry has been established in England.

At Rome, the hospitals place everyone at his ease except those who labor, except those who are industrious, except those who have land, except those who are engaged in trade.

I have observed that wealthy nations have need of hospitals, because fortune subjects them to a thousand accidents; but it is plain that transient assistances are much better than perpetual foundations. The evil is momentary; it is necessary, therefore, that the succor should be of the same nature, and that it be applied to particular accidents.

^e See Sir John Chardin's "Travels through Persia," vol. viii.

^f See Burnet's "History of the Reformation."

BOOK XXIV

OF LAWS IN RELATION TO RELIGION CONSIDERED IN ITSELF, AND IN ITS DOCTRINES

1.—Of Religion in General

AS amidst several degrees of darkness we may form a judgment of those which are the least thick, and among precipices which are the least deep, so we may search among false religions for those that are most conformable to the welfare of society; for those which, though they have not the effect of leading men to the felicity of another life, may contribute most to their happiness in this.

I shall examine, therefore, the several religions of the world, in relation only to the good they produce in civil society, whether I speak of that which has its root in heaven, or of those which spring from the earth.

As in this work I am not a divine but a political writer, I may here advance things which are not otherwise true, than as they correspond with a worldly manner of thinking, not as considered in their relation to truths of a more sublime nature.

With regard to the true religion, a person of the least degree of impartiality must see that I have never pretended to make its interests submit to those of a political nature, but rather to unite them; now, in order to unite, it is necessary that we should know them.

The Christian religion, which ordains that men should love each other, would, without doubt, have every nation blest with the best civil, the best political laws; because these, next to this religion, are the greatest good that men can give and receive.

2.—A Paradox of Mr. Bayle's

Mr. Bayle has pretended to prove ^a that it is better to be an atheist than an idolater; that is, in other words, that it is less

^a "Thoughts on the Comet."