in a certain country they are found to be in the same circumstances as those forbidden by the law of nature; and they permit them when this is not the case. The prohibitions of the laws of nature are invariable, because the thing on which they depend is invariable; the father, the mother, and the children necessarily dwell in the same house. But the prohibitions of the civil laws are accidental, because they depend on an accidental circumstance, cousins-german and others dwelling in the house by accident.

This explains why the laws of Moses, those of the Egyptians,[p] and of many other nations permitted the marriage of the brother-in-law with the sister-in-law; whilst these very marriages were disallowed by other nations.

In the Indies they have a very natural reason for admitting this sort of marriages. The uncle is there considered as the father and is obliged to maintain and educate his nephew as if he were his own child; this proceeds from the disposition of this people, which is good-natured and full of humanity. This law or this custom has produced another; if a husband has lost his wife, he does not fail to marry her sister:[q] which is extremely natural, for his new consort becomes the mother of her sister's children, and not a cruel step-mother.

15.—*That we should not regulate by the Principles of political Laws those Things which depend on the Principles of civil Law*

As men have given up their natural independence to live under political laws, they have given up the natural community of goods to live under civil laws.

By the first, they acquired liberty; by the second, property. We should not decide by the laws of liberty, which, as we have already said, is only the government of the community, what ought to be decided by the laws concerning property. It is a paralogism to say, that the good of the individual should give way to that of the public; this can never take place, except when the government of the community, or, in other words, the liberty of the subject is concerned; this does not affect such cases as relate to private property, because the public good consists in every-

[p] See Law 8, of the Code "de incestis et inutilibus nuptiis."

[q] "Edifying Letters," 4th, 403.

one's having his property, which was given him by the civil laws, invariably preserved.

Cicero maintains, that the Agrarian laws were unjust; because the community was established with no other view than that everyone might be able to preserve his property.

Let us, therefore, lay down a certain maxim, that whenever the public good happens to be the matter in question, it is not for the advantage of the public to deprive an individual of his property, or even to retrench the least part of it by a law, or a political regulation. In this case we should follow the rigor of the civil law, which is the palladium of property.

Thus when the public has occasion for the estate of an individual, it ought never to act by the rigor of political law; it is here that the civil law ought to triumph, which, with the eyes of a mother, regards every individual as the whole community.

If the political magistrate would erect a public edifice, or make a new road, he must indemnify those who are injured by it; the public is in this respect like an individual who treats with an individual. It is fully enough that it can oblige a citizen to sell his inheritance, and that it can strip him of the great privilege, which he holds from the civil law, of not being forced to alienate his possessions.

After the nations which subverted the Roman Empire had abused their very conquests, the spirit of liberty called them back to that of equity. They exercised the most barbarous laws with moderation: and if any one should doubt the truth of this, they need only read Beaumanoir's admirable work on jurisprudence, written in the twelfth century.

They mended the highways in his time as we do at present. He says, that when a highway could not be repaired, they made a new one as near the old as possible; but indemnified the proprietors at the expense of those who reaped any advantage from the road.[r] They determined at that time by the civil law; in our days, we determine by the law of politics.

[r] "The lord appointed collectors to receive the toll from the peasant, the gentlemen were obliged to contribute by the count, and the clergy to the bishop."—Beaumanoir, chap. xxii.

16.—*That we ought not to decide by the Rules of the civil Law when it is proper to decide by those of the political Law*

Most difficulties on this subject may be easily solved by not confounding the rules derived from property with those which spring from liberty.

Is the demesne of a state or government alienable, or is it not? This question ought to be decided by the political law, and not by the civil. It ought not to be decided by the civil law, because it is as necessary that there should be demesnes for the subsistence of a state, as that the state should have civil laws to regulate the disposal of property.

If then they alienate the demesne, the state will be forced to make a new fund for another. But this expedient overturns the political government, because, by the nature of the thing, for every demesne that shall be established, the subject will always be obliged to pay more, and the sovereign to receive less; in a word, the demesne is necessary, and the alienation is not.

The order of succession is, in monarchies, founded on the welfare of the state; this makes it necessary that such an order should be fixed to avoid the misfortunes, which I have said must arise in a despotic kingdom, where all is uncertain, because all is arbitrary.

The order of succession is not fixed for the sake of the reigning family; but because it is the interest of the state that it should have a reigning family. The law which regulates the succession of individuals is a civil law, whose view is the interest of individuals; that which regulates the succession to monarchy is a political law, which has in view the welfare and preservation of the kingdom.

It follows hence, that when the political law has established an order of succession in government, and this order is at an end, it is absurd to reclaim the succession in virtue of the civil law of any nation whatsoever. One particular society does not make laws for another society. The civil laws of the Romans are no more applicable than any other civil laws. They themselves did not make use of them when they proceeded against kings; and the maxims by which they judged kings are so abominable, that they ought never to be revived.

It follows also hence, that when the political law has obliged

a family to renounce the succession, it is absurd to insist upon the restitutions drawn from the civil law. Restitutions are in the law, and may be good against those who live in the law: but they are not proper for such as have been raised up for the law, and who live for the law.

It is ridiculous to pretend to decide the rights of kingdoms, of nations, and of the whole globe by the same maxims on which (to make use of an expression of Cicero) [s] we should determine the right of a gutter between individuals.

17.—*The same Subject continued*

Ostracism ought to be examined by the rules of politics, and not by those of the civil law; and so far is this custom from rendering a popular government odious, that it is, on the contrary, extremely well adapted to prove its lenity. We should be sensible of this ourselves, if, while banishment is always considered among us as a penalty, we are able to separate the idea of ostracism from that of punishment.

Aristotle [t] tells us, it is universally allowed, that this practice has something in it both humane and popular. If in those times and places where this sentence was executed they found nothing in it that appeared odious; is it for us who see things at such a distance to think otherwise than the accuser, the judges and the accused themselves?

And if we consider that this judgment of the people loaded the person with glory on whom it was passed; that when at Athens it fell upon a man without merit,[u] from that very moment they ceased to use it; [v] we shall find that numbers of people have obtained a false idea of it; for it was an admirable law that could prevent the ill consequences which the glory of a citizen might produce by loading him with new glory.

18.—*That it is necessary to inquire whether the Laws which seem contradictory are of the same Class*

At Rome the husband was permitted to lend his wife to another. Plutarch tells us this in express terms.[w] We know that

[s] Lib. I. "of Laws."
[t] "Repub." lib. III. cap. xiii.
[u] Hyperbolus. See Plutarch, "Life of Aristides."
[v] It was found opposite to the spirit of the legislator.
[w] Plutarch in his "comparison between Lycurgus and Numa."

Cato lent his wife to Hortensius,[x] and Cato was not a man to violate the laws of his country.

On the other hand, a husband who suffered his wife to be debauched, who did not bring her to justice, or who took her again after her condemnation was punished.[y] These laws seem to contradict each other, and yet are not contradictory. The law which permitted a Roman to lend his wife was visibly a Lacedæmonian institution, established with a view of giving the republic children of a good species, if I may be allowed the term; the other had in view the preservation of morals. The first was a law of politics, the second a civil law.

19.—*That we should not decide those Things by the civil Law which ought to be decided by domestic Laws*

The law of the Visigoths enjoins that the slaves of the house shall be obliged to bind the man and woman they surprise in adultery, and to present them to the husband and to the judge;[z] a terrible law, which puts into the hands of such mean persons, the care of public, domestic, and private vengeance!

This law can be nowhere proper but in the seraglios of the East, where the slave who has the charge of the inclosure is deemed an accomplice upon the discovery of the least infidelity. He seizes the criminals, not so much with a view to bring them to justice, as to do justice to himself, and to obtain a scrutiny into the circumstances of the action, in order to remove the suspicion of his negligence.

But, in countries where women are not guarded, it is ridiculous to subject those who govern the family to the inquisition of their slaves.

The inquisition may, in certain cases, be at the most a particular domestic regulation, but never a civil law.

20.—*That we ought not to decide by the Principles of the civil Laws those Things which belong to the Law of Nations*

Liberty consists principally in not being forced to do a thing, where the laws do not oblige: people are in this state only as they are governed by civil laws; and because they live under those civil laws, they are free.

x Plutarch, "Life of Cato."

y Leg. 11, sec. ult. ff. "ad leg. Jul. de adulteriis."

z Law of the Visigoths, lib. III. tit 4, sec. 6.

It follows hence, that princes who live not among themselves under civil laws are not free; they are governed by force; they may continually force, or be forced. Hence it follows, that treaties made by force are as obligatory as those made by free consent. When we, who live under civil laws, are, contrary to law, constrained to enter into a contract we may, by the assistance of the law, recover from the effects of violence: but a prince, who is always in that state in which he forces, or is forced, cannot complain of a treaty which he has been compelled to sign. This would be to complain of his natural state; it would seem as if he would be a prince with respect to other princes, and as if other princes should be subjects with respect to him; that is, it would be contrary to the nature of things.

21.—*That we should not decide by political Laws Things which belong to the Law of Nations*

Political laws demand that every man be subject to the natural and civil courts of the country where he resides, and to the censure of the sovereign.

The law of nations requires that princes shall send ambassadors; and a reason drawn from the nature of things does not permit these ambassadors to depend either on the sovereign to whom they are sent, or on his tribunals. They are the voice of the prince who sends them, and this voice ought to be free; no obstacle should hinder the execution of their office: they may frequently offend, because they speak for a man entirely independent; they might be wrongfully accused, if they were liable to be punished for crimes; if they could be arrested arrested for debts, these might be forged. Thus a prince, who has naturally a bold and enterprising spirit, would speak by the mouth of a man who had everything to fear. We must then be guided, with respect to ambassadors, by reasons drawn from the law of nations, and not by those derived from political law. But if they make an ill use of their representative character, a stop may be put to it by sending them back. They may even be accused before their master, who becomes either their judge or their accomplice.

22.—*The unhappy state of the Ynca Athualpa*

The principles we have just been establishing were cruelly violated by the Spaniards. The Ynca Athualpa[a] could not be tried by the law of nations: they tried him by political and civil laws; they accused him for putting to death some of his own subjects, for having many wives, etc., and to fill up the measure of their stupidity, they condemned him, not by the political and civil laws of his own country, but by the political and civil laws of theirs.

23.—*That when, by some Circumstance, the political Law becomes destructive to the State, we ought to decide on such a political Law as will preserve it, which sometimes becomes a Law of Nations*

When that political law which has established in the kingdom a certain order of succession becomes destructive to the body politic for whose sake it was established, there is not the least room to doubt but another political law may be made to change this order; and so far would this law be from opposing the first that it would in the main be entirely conformable to it, since both would depend on this principle, that *the safety of the people is the supreme law.*

I have said,[b] that a great state becoming accessory to another is itself weakened, and even weakens the principal. We know that it is for the interest of the state to have the supreme magistrate within itself, that the public revenues be well administered, and that its specie be not sent abroad to enrich another country. It is of importance that he who is to govern has not imbibed foreign maxims; these are less agreeable than those already established. Besides, men have an extravagant fondness for their own laws and customs: these constitute the happiness of every community; and, as we learn from the histories of all nations, are rarely changed without violent commotions and a great effusion of blood.

It follows hence, that if a great state has for its heir the possessor of a great state, the former may reasonably exclude him, because a change in the order of succession must be of service to

a See Garcilaso de la Vega, p. 108.
b See book V. chap. xiv.; book VIII. chap. xvi.; 17, 18, 19, and 20, book IX. chap. iv., v. vi., and vii.; and book X. chap. ix. and x.

both countries. Thus a law of Russia, made in the beginning of the reign of Elizabeth, most wisely excluded from the possession of the crown every heir who possessed another monarchy; thus the law of Portugal disqualifies every stranger who lays claim to the crown by right of blood.

But if a nation may exclude, it may with greater reason be allowed a right to oblige a prince to renounce. If the people fear that a certain marriage will be attended with such consequences as shall rob the nation of its independence, or dismember some of its provinces, it may very justly oblige the contractors and their descendants to renounce all right over them; while he who renounces, and those to whose prejudice he renounces, have the less reason to complain, as the state might originally have made a law to exclude them.

24.—*That the Regulations of the Police are of a different Class from other civil Laws*

There are criminals whom the magistrate punishes, there are others whom he reproves. The former are subject to the power of the law, the latter to his authority: those are cut off from society; these they oblige to live according to the rules of society.

In the exercise of the police, it is rather the magistarte who punishes, than the law; in the sentence passed on crimes, it is rather the law which punishes, than the magistrate. The business of the police consists in affairs which arise every instant, and are commonly of a trifling nature: there is then but litttle need of formalties. The actions of the police are quick; they are exercised over things which return every day: it would be therefore improper for it to inflict severe punishments. It is continually employed about minute particulars; great examples are therefore not designed for its purpose. It is governed rather by regulations than laws; those who are subject to its jurisdiction are incessantly under the eye of the magistrate: it is therefore his fault if they fall into excess. Thus we ought not to confound a flagrant violation of the laws, with a simple breach of the police; these things are of a different order.

Hence it follows, that the laws of an Italian republic,[c] where bearing fire-arms is punished as a capital crime and where it is

c Venice.

not more fatal to make an ill use of them than to carry them, is not agreeable to the nature of things.

It follows, moreover, that the applauded action of that emperor, who caused a baker to be impaled whom he found guilty of a fraud, was the action of a ruler who knew not how to be just without committing an outrage on justice.

25.—*That we should not follow the general Disposition of the civil Law, in things which ought to be subject to particular Rules drawn from their own Nature*

Is it a good law that all civil obligations passed between sailors in a ship in the course of a voyage should be null? Francis Pirard tells us [d] that, in his time, it was not observed by the Portuguese, though it was by the French. Men who are together only for a short time, who have no wants, since they are provided for by the prince, who have only one object in view, that of their voyage, who are no longer in society, but are only the inhabitants of a ship, ought not to contract obligations that were never introduced but to support the burden of civil society.

In the same spirit was the law of the Rhodians made at a time when they always followed the coasts; it ordained that those who during a tempest stayed in a vessel should have ship and cargo, and those who quitted it should have nothing.

d Chap. xiv. p. 12.

THE LAOCOÖN.

Photo-engraving from the original marble group in the Vatican, at Rome.

Agesander, Athénodorus and Polydorus, a group of Rhodian masters, produced the Laocoön, which is said to express physical pain and passion better than any other existing group of statuary. Laocoön was a Trojan priest of the Thymbræan Apollo. According to classic legend he was preparing to sacrifice a bull to Poseidon, when two enormous serpents swam out of the sea, coiled round Laocoön and his two sons, and destroyed them. The Laocoön group was discovered in 1506, near the baths of Titus, probably in the ruins of the palace of the Emperor Titus.