

This famous law of Volero completed the change in the constitution of the Roman Republic. The supreme authority from this time may be considered as having passed from the higher orders into the hands of the people. The consuls continued to preside in the comitia held by centuries; but the tribunes presided in those assemblies in which the most important business of the commonwealth was now transacted. The senate retained, however, a considerable degree of power. They had the disposal of the public money; they sent and received ambassadors,—made treaties—and their decrees had the force of a law while not annulled by a decree of the people. In a word, this body continued to have respect, and at least the appearance of authority, which we shall observe to have yet its effect in frequently restraining the violence of the popular measures. The consuls too, though in most points of effective power and authority subordinate to the tribunes, had yet in some particulars a vestige of supremacy. They were absolute at the head of the army, and first in command in the civil authority within the city. Their office still carried with it that external show of dignity which commands respect and submission, and which, over the minds of the vulgar, is frequently attended with the same influence as substantial power.

CHAPTER V.

An Agrarian Law never seriously projected — Decemviri proposed to digest a Code of Laws — Cincinnatus — Appointment of Decemvirs — Laws of the Twelve Tables — Tyranny of the Decemvirs — Infamous conduct of Appius Claudius — Death of Virginia — Abolition of the Decemvirate.

THE People having now attained so very considerable an increase of authority, might certainly have prevailed in obtaining the favorite measure of an agrarian law. But the truth is, this measure was nothing more than a political engine, occasionally employed by the popular magistrates for exciting commotions, and weakening the power of the patricians. It was a measure attended necessarily with so much difficulty in the execution, that few even of the people themselves had a sincere desire of seeing it accomplished. The extensive disorder it must have introduced in the territorial possessions of the citizens, by a new distribution of all the lands acquired by conquest to the republic since the time of Romulus—

the affection which even the poorest feel for a small patrimonial inheritance, the place of their nativity, and the repository of the bones of their forefathers—and that most admirable and most salutary persuasion that it is an act of impiety to alter or remove ancient landmarks—* all these were such strong obstacles to the accomplishment of that design, that it could never be seriously expected that the measure would meet with that effectual support which was necessary to carry it into execution.

The tribunes, well aware of those difficulties, and fearing that from too frequent repetition the proposal would become at length so stale as to produce no useful effect, bethought themselves of a new topic to keep alive the spirits of the people, and to foment those dissensions which increased their own power and diminished that of the patricians.

The Romans had at this time no body of civil laws. Those few which they had, were only known to the senate and patricians, who interpreted them according to their pleasure, and as best suited their purposes. Under the regal government, the kings alone administered justice: the consuls succeeded to this part of the royal prerogative, so that they had, in fact, the disposal of the fortunes of all the citizens. Terentius, or Terentillus, one of the tribunes, in an assembly of the people, after a violent declamation on public grievances of all kinds, and particularly on that dreadful circumstance of the lot of the plebeians, that in all contests with patricians they were sure to suffer, as the latter were both judges and parties, proposed that, in order to remedy this great evil, ten commissioners, or *decemviri*, should be appointed to frame and digest a new body of laws, for defining and securing the rights of all the different orders,—a system of jurisprudence binding alike on consuls, senators, patricians, and plebeians.

This proposition, having essential justice and good policy for its foundation, was received by the people with loud applause. It had been prudent in the higher orders to have given it no opposition, as in reality no solid objection could be made to it. But there was always a party in the senate who made it a settled principle to oppose every thing which was either beneficial or grateful to the people; as in most factions, the conduct of the different partisans is influenced less by considerations either of political expediency or moral rectitude, than by an uniform purpose of abasing and mortifying their antagonists.

The proposal, therefore, met with opposition; and the conse-

* The ingenious fable related by Ovid, *Fast.* lib. ii. v. 667, is a proof of this prevalent belief. The purport is, that when the capitol was founded in honor of Jupiter, all the other gods consenting to retire and abandon their right in the place, the god *Terminus* alone refused and kept his post. The moral drawn is, that what Jupiter himself could not remove, should yield to no human will or power.

quence was, that the people, regardless of the previous formality of a decree of the senate, passed the law of Terentius in an assembly of the tribes. The senators protested against this as a most presumptuous and unconstitutional innovation. The law of Volero, it is true, which allowed all questions regarding the popular interest to be deliberated on in the *comitia tributa*, seemed in effect to confer on the assembly of the people so held, the right of legislation; but the exercise of such a right, immediately and originally in the people, had been hitherto without example. The patricians, too, might have urged with justice, that if they were not allowed to have the right of making laws to bind the plebeians without their consent, neither could the plebeians possess a similar right to bind the patricians. Influenced by such considerations, some young men of the patrician order, headed by Cæso Quintius, the son of L. Quintius Cincinnatus, burst in arms into the midst of the comitia, and beating down all before them, dispersed the assembly. For this offence Cæso was banished by a decree of the people.

These intestine disorders, which persuaded the enemies of Rome of her general weakness, induced the Sabines to form a design of surprising and taking possession of the city. A body of 4000 men entered Rome during the night, seized upon the capitol, and invited all such citizens as were oppressed by the tyranny of their superiors to join them and vindicate their freedom. A great proportion of the people actually deliberated on this proposal: so true it is that the factions of a state never fail to extinguish the patriotic spirit; thus developing the true spring of most popular convulsions, a selfish thirst of plunder to be gratified in the overthrow of all legal authority. The senate ordered the people to arms; and the tribunes countermanded that order, declaring that, unless the consuls should immediately agree to the nomination of commissioners for the laws, they were determined to submit without resistance to the dominion of the Sabines. Publius Valerius, one of the consuls, pledged himself to the people for the performance of this condition; and the people, now taking arms, attacked and cut to pieces the Sabine army. But Valerius unfortunately fell in the engagement, and his colleague, having come under no obligation, refused to comply with the popular desire. A successor was chosen to Valerius in the consulate, L. Quintius Cincinnatus, a man of great resolution and intrepidity, who, though himself so indigent as to cultivate with his own hands his paternal fields, and to be called from the plough to put on the robe of the consul, had yet the high spirit of an ancient patrician, which was ill disposed to brook the insolence of the popular magistrates, or acquiesce in the daily increasing pretensions of the inferior order.

Cincinnatus took a new method to bring the people to submission. He declared to the soldiers—who were yet bound by their *sacramentum*, or oath of enrolment—that he intended to carry on

the war against the Æqui and Volsci, and that, for that purpose, they should winter under their tents; that he was determined not to return to Rome till the expiration of his consulate, at which time he would nominate a dictator, to secure the continuance of good order and tranquillity.

The people, who, in all their military expeditions, had never been above a few weeks at a time under arms, were thunderstruck when they heard of a winter campaign. The relinquishment of their families, and the neglect of their lands, which must necessarily be followed by a famine, were considerations most seriously alarming. They now inveighed bitterly against their tribunes who had brought matters to this extremity, and even made a proposal to the senate, agreeing to drop the Terentian law altogether, provided that body should prevail on the consul to depart from his purpose. On that condition, Cincinnatus consented to postpone the war, and the consequence was, that during his consulate every thing was tranquil, and the equity of his administration made the want of laws be for a time entirely forgotten.

Two years afterwards, the republic owed her preservation to the same Cincinnatus. The Æqui had surrounded a consular army, and reduced it to extremity. Cincinnatus was chosen dictator: he defeated the enemy, and compelling them to lay down their arms, made their whole army pass naked under the yoke. In reward of this signal service he was honored with a triumph; his son Cæso was recalled from banishment, and he abdicated his dictatorship within seventeen days.

But this opposition to the strong will of the people produced only a temporary obstruction to the force of a stream whose current was irresistible. It was the care of the tribunes perpetually to present to the minds of the populace some new object to be attained; and they now proposed that such part of the *Aventine Mount* as remained unoccupied by individual proprietors should be distributed among the poorer citizens. The consuls having delayed to propose this matter in the senate, Icilius, one of the tribunes, sent his apparitor to summon the consuls to convoke that assembly for the purpose in view. The consuls might have contemned this presumptuous summons, and so made the tribune sink under the consequence of an abortive stretch of authority, which had no support in established right or usage; but they were imprudent enough to cause their lictors to strike the apparitor with his fasces. This was a violation of the sacred character and office of the tribunes. The lictor was arrested—the senate met to allay the disturbance. It was a small matter that the people obtained their request of the *Aventine Mount*; but the serious and deepfelt consequence of this affair was, that from that moment the tribunes—they who were wont to sit at the door of the senate-house till called in by the consuls—now claimed and acquired a right of convoking that assembly at their pleasure.

The tribunes had this advantage over all the other magistrates, that they could be continued in office as long as the people chose. Icilius had now been tribune for six successive years; when, emboldened by repeated experiments of his power, he attempted to subject the consuls to the tribunal of the people. A tumult having arisen on account of the levies, Icilius ordered the consuls to be carried to prison, for having seized some of the plebeians whom he wished to protect from enrolment. The patricians flew among the crowd, and drove back the tribunes and their attendants. Icilius hereupon accused the consuls of having committed sacrilege against the tribunes, and insisted that the senate should oblige them to appear before the people in the *Comitia*, and submit to whatever penalty the latter should deem proper to inflict. This bold enterprise might have succeeded, had it been possible to keep alive the same ardor with which the people seemed at first to be animated; but reflection having time to operate, the people still felt a degree of reverence for the first magistrates of the state, which made them look upon this as a species of rebellion. Icilius very soon perceived this change in their disposition, and was prudent enough to make a merit of sacrificing his resentment to the public tranquillity. To support his power, which might have suffered from the defeat of this bold attempt, he resumed the subject of the Terentian law, and insisted for an immediate nomination of decemvirs. After some fruitless essays of opposition by the patricians, which, as usual, ended to their disadvantage, the senate was at length forced to acquiesce in the measure. Deputies are said to have been sent into Greece to obtain accurate information as to the constitutions of the several republics, and particularly to form a collection of the laws of Solon. These, it is said, returned after a year's absence; and it was then agreed to create *decemviri*, to frame and digest such ordinances as they should judge most proper for the Roman commonwealth.* It was thought necessary that these magistrates should, for one year, be invested with sovereign power; during which time, all other magistracies, even the tribunate, which used to subsist during the dictatorship, should cease; and that they alone should have the power of making peace and war. They were to be restrained only in one article—that they should not abolish the *sacred laws*; that is, those which had been made in favor of the plebeians.

Menenius, the consul, in order to create some obstacle to the conclusion of this important measure, proposed that the decemvirs should be named by the consuls of the succeeding year, and this

*The testimonies for this embassy into Greece are Livy and Dionysius of Halicarnassus; but the silence of all the Greek writers with regard to this remarkable deputation creates a suspicion of the fact being void of foundation; nor is there any such resemblance between the laws of Solon and those of the XII Tables as to countenance this popular story.

being agreed to, the patricians took care that the consuls should be such as were believed to have no favorable disposition towards the popular cause. Appius Claudius and Titus Genucius, were elected consuls. But Appius disappointed the expectations of his party; for, instead of opposing the creation of decemvirs, he solicited that office. He offered, for himself and his colleague, to renounce the consulship, and proposed, in order to remove all grievances, that the same laws should be enacted for patricians and plebeians. The people now applauded Appius to the skies. The *comitia* were called by centuries, a circumstance which confined the office to the order of the patricians. Appius Claudius and his colleague were first nominated, and the remaining eight were, like them, senators and consular persons. The people expected a great deal from the professions of Appius; and the senate was pleased in thinking that his ambition would find a strong restraint from the opposition of his colleagues.

Thus, the earnest desire of the people was, at length, gratified by the creation of the *decemviri*. But ever impatient of their present situation, and prone to imagine advantages in every change, the populace seldom looks forward to the natural consequences of the innovations which they long for. We shall see how soon they began to reap the bitter fruits of obtaining their desire. It is somewhat difficult to account for the active part taken by the tribunes in the creation of this new magistracy; a dignity and power which was to supersede and extinguish their own. It is not improbable, that the part which they took in this matter proceeded from no other motive than the general policy of fomenting animosities between the orders, which they found most frequently gave occasion to an extension of their own power and influence; that they never seriously expected to obtain their demand; and were, indeed, mortified at their own success. But what is most surprising is the cordial concurrence latterly shown, by both the orders, in vesting those new magistrates with such plenitude of power, as furnished them with the means they actually made use of, to annihilate all authority but their own, and render their office perpetual.

The *decemvirs*, in the first year of their magistracy, labored with much assiduity in the compilation of the laws. And when their work was completed, they divided these, at first into *ten*, and afterwards into *twelve* tables. Of these Laws of the Twelve Tables, of which the name is illustrious, it is necessary to give some account, and of the sources from which it is probable they were compiled.

During the time of the regal government at Rome, we know very little of what was the state of the laws. In all probability, these were nothing else than a few regulations, called forth by the exigence of circumstances, and suggested by the particular cases which came before the judicial tribunals. A large mass of