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[1] 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.[2] Under the first kings of France, Clotarius made a law[3] 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.[4] 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 incline the scale.

The Greeks[5] and Romans[6] required one voice more to condemn: but our French laws insist upon two. The Greeks pretend that their custom was

established by the gods;[7] but this more justly may be said of ours.

4. That Liberty is favoured 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,[8] 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.

The mischief arises from a notion which some people have entertained of revenging the cause of the Deity. But we must honour 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[9] 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 honour 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 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 favourable 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[10] 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[11] 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[12] 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 favoured with one, that it was real, that there had been a miracle in the case, that this miracle had ceased, that there was a magic art, 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 Lascaris 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.

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,[13] "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 strewn her pleasures with a bounteous 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.[14] 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.[15]

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[16] 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[17] 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.[18] Surely it was the cabinet council and the prince's favourites who invented that crime. By another law, it was determined 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.[19] This law is owing to two princes[20] 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 favourites 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 favourites.

And yet this is the very law which the judge of Monsieur de Cinq-Mars built upon[21] when endeavouring 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 endeavouring to deprive the former one of his arms,[22] 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,[23] 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 under his reign there was no such thing as indirect high treason."[24]

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,[25] and you are a stranger to my principles."

It was determined by a senatus-consultum[26] 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[27] 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.[28] 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,[29] 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,[30] 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 exercise it. In this king's last illness, the physicians would not venture to say he was in danger; and surely they acted very right.[31]

11. Of Thoughts. Marsyas dreamed that he had cut Dionysius's throat.[32] 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[33] 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.[34]

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,[35] one of these princes is condemned to death for having uttered some indecent words concerning her person: another, for having maliciously interpreted her imperial laws, 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.[36]

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:[37] 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 maiestas. Augustus,[38] 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.[39]

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.[40]

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 found an expedient of having them debauched by the executioner before they were brought to the place of punishment:[41] 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:[42] 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.[43]

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.[44] 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 favour 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:[45] 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 Sulla[46] that taught them that calumniators ought not to be punished; but the abuse was soon carried to such excess as to reward them.[47]

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."[48] 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 relation[49] 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 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,[50] nay, sometimes five of their nearest relatives;[51] 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,[52] "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 Sulla, are very much to blame."

We find in the wars of Marius and Sulla 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 made use of to cover their inhumanity. Appian has given us[53] 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.

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

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.[54]

These are in relation to those Athenian laws by which a private person was condemned,[55] 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.[56] 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.[57] 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 favourable 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.[58] At Rome, a false accuser was branded with infamy[59] by marking the letter K on his forehead. Guards were also appointed to watch the accuser, in order to prevent his corrupting either the judges or the witnesses.[60]

I have already taken notice of that Athenian and Roman law by which the party accused was allowed to withdraw before judgment was pronounced.

21. Of the Cruelty of Laws in respect to Debtors in a Republic. Great is the superiority which one fellow-subject has already over another, by lending him money, which the latter borrows in order to spend, and, of course, has no longer in his possession. What must be the consequence if the laws of a republic make a further addition to this servitude and subjection?

At Athens and Rome[61] it was at first permitted to sell such debtors as were insolvent. Solon redressed this abuse at Athens[62] by ordaining that no man's body should answer for his civil debts. But the decemvirs[63] did not reform the same custom at Rome; and though they had Solon's regulation before their eyes, yet they did not choose to follow it. This is not the only passage of the law of the Twelve Tables in which the decemvirs show their design of checking the spirit of

democracy.

Often did those cruel laws against debtors throw the Roman republic into danger. A man covered with wounds made his escape from his creditor's house and appeared in the forum.[64] The people were moved with this spectacle, and other citizens whom their creditors durst no longer confine broke loose from their dungeons. They had promises made them, which were all broken. The people upon this, having withdrawn to the Sacred Mount, obtained, not an abrogation of those laws, but a magistrate to defend them. Thus they quitted a state of anarchy, but were soon in danger of falling into tyranny. Manlius, to render himself popular, was going to set those citizens at liberty who by their inhuman creditors[65] had been reduced to slavery. Manlius's designs were prevented, but without remedying the evil. Particular laws facilitated to debtors the means of paying;[66] and in the year of Rome 428 the consuls proposed a law[67] which deprived creditors of the power of confining their debtors in their own houses.[68] A usurer, by name Papirius, attempted to corrupt the chastity of a young man named Publius, whom he kept in irons. Sextus's crime gave to Rome its political liberty; that of Papirius gave it also the civil.

Such was the fate of this city, that new crimes confirmed the liberty which those of a more ancient date had procured it. Appius's attempt upon Virginia flung the people again into that horror against tyrants with which the misfortune of Lucretia had first inspired them. Thirty-seven years after[69] the crime of the infamous Papirius, an action of the like criminal nature[70] was the cause of the people's retiring to the Janiculum,[71] and of giving new vigour to the law made for the safety of debtors.

Since that time creditors were oftener prosecuted by debtors for having violated the laws against usury than the latter were sued for refusing to pay them.

22. Of Things that strike at Liberty in Monarchies. Liberty often has been weakened in monarchies by a thing of the least use in the world to the prince: this is the naming of commissioners to try a private person.

The prince himself derives so very little advantage from those commissioners that it is not worth while to change for their sake the common course of things. He is morally sure that he has more of the spirit of probity and justice than his commissioners, who think themselves sufficiently justified by his nomination and orders, by a vague interest of state, and even by their very apprehensions.

Upon the arraigning of a peer under Henry VIII it was customary to try him by a committee of the House of Lords: by which means he put to death as many peers as he pleased.

23. Of Spies in Monarchies. Should I be asked whether there is any necessity for spies in monarchies, my answer would be that the usual practice of good princes is not to employ them. When a man obeys the laws, he has discharged his duty to his prince. He ought at least to have his own house for an asylum, and the rest of his conduct should be exempt from inquiry. The trade of a spy might perhaps be tolerable, were it practised by honest men; but the necessary infamy of the person is sufficient to make us judge of the infamy of the thing. A prince ought to act towards his subjects with candour, frankness, and confidence.

He that has so much disquiet, suspicion, and fear is an actor embarrassed in playing his part. When he finds that the laws are generally observed and respected, he may judge himself safe. The behaviour of the public answers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how should they do otherwise than love him, since he is the source of almost all bounties and favours; punishments being generally charged to the account of the laws? He never shows himself to his people but with a serene countenance; they have even a share of his

glory, and they are protected by his power. A proof of his being beloved is that his subjects have confidence in him: what the minister refuses, they imagine the prince would have granted. Even under public calamities they do not accuse his person; they are apt to complain of his being misinformed, or beset by corrupt men. "Did the prince but know," say the people; these words are a kind of invocation, and a proof of the confidence they have in his person.

24. Of Anonymous Letters. The Tartars are obliged to put their names to their arrows, that the arm may be known which shoots them. When Philip of Macedon was wounded at the siege of a certain town, these words were found on the javelin, "Aster has given this mortal wound to Philip."[72] If they who accuse a person did it merely to serve the public, they would not carry their complaint to the prince, who may be easily prejudiced, but to the magistrates, who have rules that are formidable only to calumniators. But if they are unwilling to leave the laws open between them and the accused, it is a presumption they have reason to be afraid of them; and the least punishment they ought to suffer is not to be credited. No notice, therefore, should ever be taken of those letters, except in cases that admit not of the delays of the ordinary course of justice, and in which the prince's welfare is concerned. Then it may be imagined that the accuser has made an effort, which has untied his tongue. But in other cases one ought to say, with the Emperor Constantius: "We cannot suspect a person who has wanted an accuser, whilst he did not want an enemy."[73]

25. Of the Manner of governing in Monarchies. The royal authority is a spring that ought to move with the greatest freedom and ease. The Chinese boast of one of their emperors who governed, they say, like the heavens, that is, by his example.

There are some cases in which a sovereign ought to exert the full extent of his power; and others in which he should reduce it within narrower limits. The sublimity of administration consists in knowing the proper

degree of power which should be exerted on different occasions.

The whole felicity of monarchies consists in the opinion which the subjects entertain of the lenity of the government. A weak minister is ever ready to remind us of our slavery. But granting, even, that we are slaves, he should endeavour to conceal our misery from us. All he can say or write is that the prince is uneasy, that he is surprised, and that he will redress all grievances. There is a certain ease in commanding; the prince ought only to encourage, and let the laws menace.[74]

26. That in a Monarchy the Prince ought to be of easy Access. The utility of this maxim will appear from the inconvenience attending the contrary practice. "The Czar Peter I," says the Sieur Perry,[75] "has published a new edict, by which he forbids any of his subjects to offer him a petition till after having presented it to two of his officers. In case of refusal of justice they may present him a third, but upon pain of death if they are in the wrong. After this no one ever presumed to offer a petition to the Czar."

27. Of the Manners of a Monarch. The manners of a prince contribute as much as the laws themselves to liberty; like these he may transform men into brutes, and brutes into men. If he prefers free and generous spirits, he will have subjects; if he likes base, dastardly souls, he will have slaves. Would he know the great art of ruling, let him call honour and virtue to attend his person; and let him encourage personal merit. He may even sometimes cast an eye on talents and abilities. Let him not be afraid of those rivals who are called men of merit; he is their equal when once he loves them. Let him gain the hearts of his people, without subduing their spirits. Let him render himself popular; he ought to be pleased with the affections of the lowest of his subjects, for they too are men. The common people require so very little condescension, that it is fit they should be humoured; the infinite distance between the sovereign and them will surely prevent them from

giving him any uneasiness. Let him be exorable to supplication, and resolute against demands; let him be sensible, in fine, that his people have his refusals, while his courtiers enjoy his favours.

28. Of the Regard which Monarchs owe to their Subjects. Princes ought to be extremely circumspect with regard to raillery. It pleases with moderation, because it is an introduction to familiarity; but a satirical raillery is less excusable in them than in the meanest of their subjects, for it is they alone that give a mortal wound.

Much less should they offer a public affront to any of their subjects; kings were instituted to pardon and to punish, but never to insult.

When they affront their subjects, their treatment is more cruel than that of the Turk or the Muscovite. The insults of these are a humiliation, not a disgrace; but both must follow from the insolent behaviour of monarchs.

Such is the prejudice of the eastern nations that they look upon an affront from the prince as the effect of paternal goodness; and such, on the contrary, is our way of thinking that besides the cruel vexation of being affronted, we despair of ever being able to wipe off the disgrace.

Princes ought to be overjoyed to have subjects to whom honour is dearer than life, an incitement to fidelity as well as to courage.

They should remember the misfortunes that have happened to sovereigns for insulting their subjects: the revenge of Chærea, of the eunuch Narses, of Count Julian, and, in fine, of the Duchess of Montpensier, who, being enraged against Henry III for having published some of her private failings, tormented him during her whole life.

29. Of the civil Laws proper for mixing some portion of Liberty in a despotic Government. Though despotic governments are of their own nature

everywhere the same, yet from circumstances -- from a religious opinion, from prejudice, from received examples, from a particular turn of mind, from manners or morals -- it is possible they may admit of a considerable difference.

It is useful that some particular notions should be established in those governments. Thus in China the prince is considered as the father of his people; and at the commencement of the empire of the Arabs, the prince was their preacher.[76]

It is proper there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, the Veda among the Indians, and the classic books among the Chinese. The religious code supplies the civil and fixes the extent of arbitrary sway.

It is not at all amiss that in dubious cases the judges should consult the ministers of religion.[77] Thus, in Turkey, the Cadis consult the Mollahs. But if it is a capital crime, it may be proper for the particular judge, if such there be, to take the governor's advice, to the end that the civil and ecclesiastical power may be tempered also by the political authority.

30. The same Subject continued. Nothing but the very excess and rage of despotic power ordained that the father's disgrace should drag after it that of his wife and children. They are wretched enough already without being criminals: besides, the prince ought to leave suppliants or mediators between himself and the accused, to assuage his wrath or to inform his justice.

It is an excellent custom of the Maldivians[78] that when a lord is disgraced he goes every day to pay his court to the king till he is taken again into favour: his presence disarms the prince's indignation.

In some despotic governments[79] they have a notion that it is trespassing against the respect due to their prince to speak to him in favour of a person in disgrace. These princes seem to use all their endeavours to deprive themselves of the virtue of clemency.

Arcadius and Honorius, by a law[80] on which we have already descanted,[81] positively declare that they will show no favour to those who shall presume to petition them in behalf of the guilty.[82] This was a very bad law indeed, since it is bad even under a despotic government.

The custom of Persia, which permits every man that pleases to leave the kingdom, is excellent; and though the contrary practice derives its origin from despotic power, which has ever considered the subjects as slaves[83] and those who quit the country as fugitives, yet the Persian practice is useful even to a despotic government, because the apprehension of people's withdrawing for debt restrains or moderates the oppressions of pashas and extortioners.

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1. Politics, ii. 8.

2. Tarquinius Priscus. See Dionysius Halicarnassus, iv.

3. As early as the year 560.

4. Aristotle, Politics, ii. 12. He gave his laws at Thurium in the 84th Olympiad.

5. See Aristides, Orat. in Minervam.

6. Dionysius Halicarnassus on the judgment of Coriolanus, vii.

7. Minervæ calculus.

8. St. Louis made such severe laws against those who swore that the pope thought himself obliged to admonish him for it. This prince moderated his zeal, and softened his laws. See his Ordinances.

9. Father Rougerel.

10. Nicetas, Life of Manuel Comnenus, iv.

11. Ibid.

12. Theophylactus, History of the Emperor Maurice, 11.

13. Secret History.

14. Father Du Halde, i, p. 43.

15. Father Parennin in the Edifying Letters.

16. Book xxix.

17. Gratian, Valentinian, and Theodosius. This is the second in the Cod. de crimin. sacril.

18. Sacrilegii instar est dubitare an is dignus sit quem elegerit imperator. -- Cod. de crimin. sacril. This law has served as a model to that of Roger in the constitution of Naples, tit. 4.

19. Leg. 5, ad leg. Jul. Majest.

20. Arcadius and Honorius.

21. Memoirs of Montresor, i, p. 238, Cologne, 1723.

22. Nam ipsi pars corporis nostri sunt -- The same law of the Cod., ad

leg. Jul. Majest.

23. It is the 9th of the Cod. Theod. de falsa moneta.

24. Etiam ex aliis causis majestatis crimina cessant meo sæculo -- Leg. 1. Cod., ix, tit. 8, ad leg. Jul. Majest.

25. Alienam sectæ meæ solicitudinem concepisti. -- Leg. 2, Cod., iii, tit. 4, ad leg. Jul. Majest.

26. Leg. 4, § 1, ff. ad leg., Jul. Majest., xlviii, tit. 4.

27. See Leg. 5, § 2, ff. ibid.

28. Ibid., § 1.

29. Aliudve quid simile admiserint -- Leg. 6, ff. ad leg. Jul. Majest.

30. In the last law, ff. ad leg. Jul. de adulteriis.

31. See Burnet, History of the Reformation.

32. Plutarch, Dionysius.

33. The thought must be joined with some sort of action.

34. Si non tale sit delictum in quod vel scriptura legis descendit vel ad exemplum legis vindicandum est, says Modestinus in Leg. 7, § 3, ff. ad leg. Jul. Majest.

35. In 1740.

36. Nec lubricum linguæ ad poenam facile trahendum est. -- Modestinus, in Leg. 7, § 3, ff. ad leg. Jul. Majest.

37. Si id ex levitate processerit, contemnendum est; si ex insania, miseratione dignissimum; si ab injuria, remittendum. -- Leg. unica. Cod. si quis Imperat. maled.

38. Tacitus, Annals, i. 72. This continued under the following reigns. See the first law in the Cod. de famosis libellis.

39. Tacitus, Annals, iv. 34.

40. The law of the Twelve Tables.

41. Suetonius, Life of Tiberius, 61.

42. Collection of Voyages that Contributed to the Establishment of the East India Company, v, part II.

43. Ibid., p. 496.

44. Dio, in Xiphilin., lv. 5. Tacitus, Annals, ii. 30, iii. 67, attributes this law, not to Augustus, but to Tiberius.

45. Flavius Vopiscus in his Life, 9.

46. Sulla made a law of majesty, which is mentioned in Cicero's Orations, Pro Cluentio, art. 3; In Pisonem, art. 21; and against Verres, art. 5. Familiar Epistles, iii, 11. Cæsar and Augustus inserted them in the Julian Laws; others made additions to them.

47. Et quo quis distinctior accusator, eo magis honores assequebatur, ac veluti sacrosanctus erat. -- Tacitus,Annals, iv. 36.

48. Deut., 13. 6-9.

49. Collection of Voyages that Contributed to the Establishment of the

East India Company, v, part II, p. 423.

50. Dionysius Halicarnassus, Roman Antiquities, viii.

51. Tyranno occiso quinque ejus proximos cognatione magistratus necato. -- Cicero, De Invent. ii. 29.

52. Cook viii, p. 547.

53. Of the Civil Wars, iv.

54. 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 hill 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 hill by counsel, and the members of the house may speak in defence of the bill.

55. Legem de singulari aliquo rogato, nisi sex millibus ita visum. -- From Andocidis,De Mysteriis. This is what they call Ostracism.

56. De privis hominibus latæ. -- Cicero,De Leg., iii. 19.

57. Scitum est jussum in omnes. -- Ibid.

58. See Philostratus, i: Lives of the Sophists: Æschines. See likewise Plutarch and Phocius.

59. By the Remnian law.

60. Plutarch, in a treatise entitled. How a Person May Reap Advantage from his Enemies.

61. "A great many sold their children to pay their debts." -- Plutarch, Solon.

62. Ibid.

63. It appears from history that this custom was established among the Romans before the Law of the Twelve Tables. -- Livy, dec. 1, ii. 23, 24.

64. Dionysius Halicarnassus. Roman Antiquities, vi.

65. Plutarch, Furius Camillas.

66. See below, xxii. 22.

67. One hundred and twenty years after the law of the Twelve Tables: Eo anno plebi Romanæ, velut aliud initium libertatis factum est, quod necti desierunt. -- Livy, viii. 38.

68. Bona debitoris, non corpus obnoxium esset. -- Ibid.

69. The year of Rome 465.

70. That of Plautius who made an attempt upon the body of Veturius. -- Valerius Maximus, vi, 1, art. 9. These two events ought not to be confounded; they are neither the same persons nor the same times.

71. See a fragment of Dionysius Halicarnassus in the extract of Virtues and Vices [Historica]; Livy's Epitome, ii., and Freinshemius, ii.

72. Plutarch, Comparison of some Roman and Greek Histories, ii, p. 487.

73. Leg. 6, Cod. Theod. de famosis libellis.

74. "Nerva," says Tacitus, "increased the ease of government."

75. State of Russia, p. 173, Paris, 1717.

76. The Caliphs.

77. History of the Tartars, part III, p. 277, in the remarks.

78. See Francis Pirard.

79. As at present in Persia, according to Sir John Chardin, this custom is very ancient. "They put Cavades," says Procopius, "into the castle of oblivion; there is a law which forbids any one to speak of those who are shut up, or even to mention their name."

80. The fifth law in the Cod. ad leg. Jul. Majest.

81. In the 8th chapter of this book.

82. Frederick copied this law in the Constitutions of Naples, i.

83. In monarchies there is generally a law which forbids those who are invested with public employments to go out of the kingdom without the prince's leave. This law ought to be established also in republics. But in those that have particular institutions the prohibition ought to be general, in order to prevent the introduction of foreign manners.