

THE

MISCELLANEOUS

WORKS

OF

J. J. ROUSSEAU.

Translated from the FRENCH.

IN FOUR VOLUMES.

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M. DCC. LXXIV.

This V O L U M E contains,

A Treatise on the Social Compact; or the Principles of Politic Law.

A Project for Perpetual Peace.

An Expostulatory Letter from J. J. Rousseau to Christopher de Beaumont archbishop of Paris. To which is prefixed the Mandate of the said prelate, and also the proceedings of the parliament of Paris, relative to the new treatise on education entitled EMILIUS.

Anecdotes relative to the persecution of Mr J. J. Rousseau; contained in a letter from a gentleman at Neufchatel to his friend.

A
T R E A T I S E
O N T H E
S O C I A L C O M P A C T;
O R,
The P R I N C I P L E S of
P O L I T I C A L L A W.

———*Fœder is æquas*
Dicamus leges. *Æneid. xi.*

B O O K I.

I N T R O D U C T I O N.

MY design, in the present Treatise, is to inquire, Whether the nature of society admits of any fixed and equitable rules of government, supposing mankind to be such as they are, and their laws such as they might be made. In this investigation I shall endeavour constantly to join the considerations of natural right and public interest, so that justice and utility may never be disunited.

This being premised, I shall enter on my subject, without expatiating on its importance. If it be asked, Whether I am a prince or legislator, that I thus take upon me to write on politics?

itics? I answer, I am neither; and that it is for this reason I write. Were I a prince or legislator, I would not throw away my time in pointing out what ought to be done; I would myself put it in practice, or be silent.

As the citizen of a free state, and a member of the supreme power by birth, however weak may be the influence of my single vote in public affairs, the right of giving that vote is sufficient to impose on me the duty of making those affairs my study; thinking myself happy, in discussing the various forms of government, to find every day new reasons for admiring that of my own country *!

CHAP. I. *The subject of the first Book.*

MAN is born free, and yet is universally enslaved. At the same time an individual frequently conceives himself to be the lord and master over others, though only more eminently deprived of liberty. Whence can this change arise? Are there any means by which it may be rendered lawful? The former question I cannot answer, tho' I imagine myself capable of resolving the latter.

If I took into consideration only the existence and effects of power, I should say, So long as a people are compelled to obey, they do well to be obedient; but, as soon as they are in a capacity to resist, they do better to throw off the yoke of restraint: for, in recovering their liberty on the same plea by which they lost it, either they have a just right to reassume it, or those could have none who deprived them of it. But
there

* Geneva.

there is an inviolable right founded on the very nature of society, which serves as the basis of all others. Man doth not derive this right, however, immediately from nature ; it is founded on mutual convention. We must proceed, then, to inquire, of what kind such convention must have been. But, before we come to argue this point, I should establish what I have already advanced.

CHAP. II. *On the primitive state of society.*

THE most ancient of all societies, and the only natural one, is that of a family. And even in this, children are no longer connected with their father than while they stand in need of his assistance. When this becomes needless, the natural tie is of course dissolved ; the children are exempted from the obedience they owe their father, and the father is equally so from the solicitude due from him to his children ; both assume a state of independence respecting each other. They may continue, indeed, to live together afterwards ; but their connection, in such a case, is no longer natural, but voluntary ; and even the family union is then maintained by mutual convention.

This liberty, which is common to all mankind, is the necessary consequence of our very nature ; whose first law being that of self-preservation, our principal concerns are those which relate to ourselves : no sooner, therefore, doth man arrive at years of discretion, than he becomes the only proper judge of the means of that preservation, and of course his own master.

In a family, then, we may see the first model

of political societies : their chief is represented by the father, and the people by his children, while all of them being free, and equal by birth, they cannot alienate their liberty, but for their common interest. All the difference between a family and a state lies in this, That, in the former, the love which a father naturally bears to his children is a compensation for his sollicitude concerning them ; and, in the latter, it is the pleasure of command that supplies the place of this love, which a chief doth not entertain for his people.

Grotius denies that government is invested with power solely for the benefit of those who are governed, and cites the case of slaves as an example. It is, indeed, his constant practice to establish the matter of right on the matter of fact *. He might have employed a more conclusive method, though not a more favourable one for tyrannical governments.

It is then doubtful, according to Grotius, whether the whole race of mankind, except about an hundred individuals, belong to those individuals, or whether the latter belong to the whole race of mankind ; and he appears, throughout his whole work, to lean to the former opinion. This is also the opinion of Hobbes. Thus they divide the human species into herds of cattle ; each of which hath its keeper, who protects it from others only that he may make a property of it himself.

As

* “ The learned researches into the laws of nature and nations are of nothing more than the history of ancient abuses ; so that it is a ridiculous infatuation to be too fond of studying them.” *Manuscript Treatise on the Interests of France, by the Marquis d’A.* This was exactly the case with Grotius.

As a shepherd is of a superior nature to his flock; so the herd-keepers of men, or their chiefs, are of a superior nature to the herd over which they preside. Such was the reasoning, according to Philo, of the Emperor Caligula; who concluded logically enough from this analogy, that either kings were gods, or their subjects no better than brutes.

This argument of Caligula bears much resemblance to those of Hobbes and Grotius. Aristotle had said, indeed, before either of them, that men were not naturally equal; but that some of them were born to slavery, and others to dominion.

Aristotle was right as to the fact, but mistook the effect for the cause. Nothing is more certain, than that every man born in slavery is born to be a slave. In such a state, men lose even the desire of freedom; and prefer subjection, as the companions of Ulysses did their brutality*. If there are any slaves, therefore, by nature, it is because they are slaves contrary to nature. Power first made slaves, and cowardice hath perpetuated them.

I have said nothing of king Adam, or the emperor Noah, father of three monarchs, who, like the children of Saturn, as some have imagined them to be, divided the world among them. I hope my moderation also in this respect will be esteemed some merit; for, as I am descended in a right line from one of these princes, and probably from the eldest branch of the family, how do I know, that, by a regular deduction of my descent, I might not find myself the legiti-

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mate

* See a little tract written by Plutarch, on the rationality of brutes.

mate heir to universal monarchy? Be this, however, as it may, it cannot be denied, that Adam had as good a title to the sovereignty of the world when he was the only person in it, as Robinson Crusoe had to that of his island under the same circumstances. A very great conveniency also attended their government, in that the monarch might rest securely on his throne, without fear of wars, conspiracies, or rebellion.

CHAP. III. *On the right of the strongest.*

THE strongest is not strong enough to continue always master, unless he transforms his power into a right of command, and obedience into a duty. Hence is deduced the right of the strongest; a right taken ironically in appearance, and laid down as an established principle in reality. But will this term never be rightly explained? Force, in the simplest sense, is a physical power; nor can I see what morality can result from its effects. To yield to superior force is an act of necessity, not of the will; at most it is but an act of prudence. And in what sense can this be called a duty?

Let us suppose, however, for a moment, this pretended right established, and we shall see it attended with inexplicable absurdities: for, if it be admitted that power constitutes right, the effect changes with the cause, and every succeeding power, if greater than the former, succeeds also to the right; so that men may lawfully disobey, as soon as they can do it with impunity; and, as right is always on the strongest side, they have nothing more to do, than to acquire
supe-

superior force. Now what kind of right can that be, which vanishes with the power of enforcing it? If obedience be only exacted by compulsion, there is no need to make such obedience a duty; as when we are no longer compelled to obey, we are no longer obliged to it. It appears, therefore, that the word *right* adds nothing in this case to that of force, and in fact is a term of no signification.

Be obedient to the higher powers. If by this precept is meant, *subject to a superior force*, the advice is good, though superfluous; I will answer for it, such a rule will never be broken. All power, I own, is derived from God; but every corporeal malady is derived also from the same source. But are we therefore forbid to call in the physician? If a robber should stop me on the highway, am I not only obliged, on compulsion, to give him my purse, but am I also obliged to it in point of conscience, tho' I might possibly conceal it from him? This will hardly be averred; and yet the pistol he holds to my breast is in effect a superior force.

On the whole, we must conclude, then, that mere power doth not constitute right, and that men are obliged only to pay obedience to lawful authority. Thus we are constantly recurring to my first question.

CHAP. IV. *On slavery.*

AS no man hath any natural authority over the rest of his species, and as power doth not confer right, the basis of all lawful authority is laid in mutual convention.

If an individual, says Grotius, can alienate
his

his liberty, and become the slave of a master, why may not a whole people collectively alienate theirs, and become subject to a king? This proposition, however, contains some equivocal terms, which require explanation; but I shall confine myself to that of *alienate*. Whatever is alienated must be disposed of, either by gift or sale. Now a man who becomes the slave of another, doth not give himself away; but sells himself, at least for his subsistence. But why should a whole people sell themselves? So far is a king from furnishing his subjects subsistence, that they maintain him; and, as our friend Rabelais says, a king doth not live on a little. Can subjects be supposed to give away their liberty, on condition that the receiver shall take their property along with it? After this, I really cannot see any thing they have left.

It may be said, a monarch maintains among his subjects the public tranquillity. Be it so; I would be glad to know of what they are gainers, if the wars in which his ambition engages them, if his insatiable avarice, or the oppressions of his ministers, are more destructive than civil dissensions? Of what are they gainers, if even this tranquillity be one cause of their misery? A prisoner may live tranquil enough in his dungeon; but will this be sufficient to make him contented there? When the Greeks were shut up in the cave of the Cyclops, they lived there unmolested, in expectation of their turn to be devoured.

To say that a man can give himself away, is to talk unintelligibly and absurdly; such an act must necessarily be illegal and void, were it for no other reason than that it argues insanity

of mind in the agent. To say the same thing of a whole people therefore, is to suppose a whole nation can be at once out of their senses ; but were it so, such madness could not confer right.

Were it possible also for a man to alienate himself, he could not in the same manner dispose of his children, who, as human beings, are born free ; their freedom is their own, and nobody hath any right to dispose of it but themselves. Before they arrive at years of discretion, indeed, their father may, for their security, and in their name, stipulate the conditions of their preservation ; but he cannot unconditionally and irrevocably dispose of their persons ; such a gift being contrary to the intention of nature, and exceeding the bounds of paternal authority. It is requisite, therefore, in order to render an arbitrary government lawful, that every new generation should be at liberty to admit or reject its authority, in which case it would be no longer an arbitrary government.

To renounce one's natural liberty, is to renounce one's very being as a man ; it is to renounce not only the rights, but even the duties, of humanity. And what possible indemnification can be made the man who thus gives up his all? Such a renunciation is incompatible with our very nature ; for to deprive us of the liberty of the will, is to take away all morality from our actions. In a word, a convention, which stipulates on the one part absolute authority, and on the other implicit obedience, is in itself futile and contradictory. Is it not evident, that we can lie under no reciprocal obligation whatever to a person of whom we have a right to demand every thing? and doth not this circumstance, a-
gainst

gainst which he has no equivalent, necessarily infer such act of convention to be void? For what claim can my slave have upon me, when he himself, and all that belongs to him, are mine? His claims are of course my own; and to say those can be set up against me, is to talk absurdly.

Again, Grotius and others have deduced the origin of this pretended right from the superiority obtained in war. The conqueror, say they, having a right to put the vanquished to death, the latter may equitably purchase his life at the expence of his liberty; such an agreement being the more lawful, as it conduces to the mutual advantage of both parties.

It is clear and certain, however, that this pretended right of the victor over the lives of the vanquished is not, in any shape, the natural result of a state of war. This is plain, were it for no other reason than that the reciprocal relations of mankind, while living together in their primitive independence, were not sufficiently durable to constitute a state either of peace or war; so that men cannot be naturally enemies. It is the relation subsisting between things, and not between men, that gives rise to war; which arising thus, not from personal, but real, relations, cannot subsist between man and man, either in a state of nature, in which there is no settled property, or in a state of society, in which every thing is secured by the laws.

The quarrels, encounters, and duels of individuals, are not sufficient to constitute such a state of war; and, with regard to the particular combats authorized by the institutions of Lewis XI. king of France; they were only some of the abuses of the feudal government; a system truly
absurd

absurd, as contrary to the principles of natural justice as of good policy.

War is not, therefore, any relation between man and man, but a relation between state and state; in which individuals are enemies only accidentally, not as men, or even as citizens, but as soldiers; not as members of their particular community, but as its defenders. In short, a state can have for its enemy nothing but a state, not men; as between things essentially different there can be no common relation.

This principle is, indeed, conformable to the established maxims of all ages, and the constant practice of every civilized people. Declarations of war are made less to give notice to sovereigns, than to their subjects.

The foreigner, whether a sovereign, an individual, or a people, who plunders, kills, or takes prisoner a subject, without declaring war against his prince, is not an enemy, but a robber. Even in a time of war, a just prince may make himself master, in an enemy's country, of whatever belongs to the public; but he will respect the persons and private properties of individuals, he will respect those rights on which his own are founded. The design of war being the destruction of an hostile state, we have a right to kill its defenders while they are in arms; but as, in laying down their arms, they cease to be enemies, or instruments of hostility, they become in that case mere men, and we have not the least right to murder them. It is sometimes possible effectually to destroy a state, without killing even one of its members; now, war cannot confer any right or privilege, which is not necessary to accomplish its end and design. It is true,

true, these are not the principles of Grotius, nor are they founded on the authority of the poets; but they are such as are deduced from the nature of things, and are founded on reason.

With regard to the right of conquest, it has no other foundation than that of force, the law of the strongest. But, if war doth not give the victor a right to massacre the vanquished, this pretended right, which does not exist, cannot be the foundation of a right to enslave them. If we have no right to kill an enemy unless we cannot by force reduce him to slavery, our right to make him a slave never can be founded on our right to kill him. It is, therefore, an iniquitous bargain, to make him purchase, at the expence of liberty, a life, which we have no right to take away. In establishing thus a right of life and death over others, on that of enslaving them; and, on the other hand, a right of enslaving them on that of life and death; we certainly fall into the absurdity of reasoning in a circle.

Let us suppose, however, that this shocking right of general massacre existed, I still affirm, that a slave, made so by the fortune of war, or a conquered people, so reduced to slavery, lie under no other obligations to their master, than to obey him so long as he hath the power to compel them to it. In accepting of an equivalent for their lives, the victor confers on them no favour; instead of killing them uselessly, he hath only varied the mode of their destruction to his own advantage. So far, therefore, from his having acquired over them any additional authority, the state of war subsists between them as before; their relation to each other is the evident effect of it, and his exertion of the rights

as

of war is a proof, that no treaty of peace hath succeeded. Will it be said, they have made a convention? Be it so: this convention is a mere truce; and is so far from putting an end to the state of war, that it necessarily implies its continuation.

Thus, in whatever light we consider this affair, the right of making men slaves is null and void, not only because it is unjust, but because it is absurd and insignificant. The terms *slavery* and *justice* are contradictory, and reciprocally exclusive of each other. Hence the following proposal would be equally ridiculous, whether made by one individual to another, or by a private man to a whole people. *I enter into an agreement with you, altogether at your own charge, and solely for my profit, which I will observe as long as I please, and which you are to observe also as long as I think proper.*

CHAP. V. *On the necessity of recurring always to the primitive convention.*

ON the supposition that I should grant to be true what I have hitherto disproved, the advocate for despotism would, however, profit but little. There will be always a great difference between subjecting a multitude, and governing a society. Let individuals, in any number whatever, become severally and successively subject to one man, they are all, in that case, nothing more than master and slaves; they are not a people governed by their chiefs; they are an aggregate if you will, but do not form an association; there subsists among them neither commonwealth nor body-politic. Such a superior,

though he should become the master of half the world, would be still a private person, and his interest, separate and distinct from that of his people, would be still no more than a private interest. When such a person dies, also, the empire over which he presided is dissolved, and its component parts remain totally unconnected, just as an oak falls into a heap of ashes when it is consumed by the fire.

A person, says Grotius, may voluntarily bestow themselves on a king: according to Grotius, therefore, a people are a people before they thus give themselves up to regal authority. Even this gift, however, is an act of society, and presupposes a public deliberation on the matter. Hence, before we examine into the act by which a people make choice of a king, it is proper to examine into that by which a people became a people; for on this, which is necessarily prior to the other, rests the true foundation of society.

For, if in fact there be no prior convention, whence arises (unless indeed the election was unanimous) the obligation of the smaller number to submit to the choice of the greater? and whence comes it, that an hundred persons, for instance, who might desire to have a master, had a right to vote for ten others who might desire to have none? The choice by a plurality of votes is itself an establishment of convention, and supposes that unanimity must at least for once have subsisted among them.

CHAP. VI. *On the social pact or covenant.*

I Suppose mankind arrived at that term when the obstacles to their preservation, in a state
of

of nature, prevail over the endeavours of individuals to maintain themselves in such a state. At such a crisis this primitive state therefore could no longer subsist, and the human race must have perished if they had not changed their manner of living.

Now as men cannot create new powers, but only compound and direct those which really exist, they have no other means of preservation, than that of forming, by their union, an accumulation of forces sufficient to oppose the obstacles to their security, and of putting these in action by a first mover capable of making them act in concert with each other.

This general accumulation of power cannot arise but from the concurrence of many particular forces; but the force and liberty of each individual being the principal instruments of his own preservation, how is he to engage them in the common interest, without hurting his own, and neglecting the obligations he lies under to himself? This difficulty, being applied to my present subject, may be expressed in the following terms:

“To find that form of association which shall protect and defend, with the whole force of the community, the person and property of each individual; and in which each person, by uniting himself to the rest, shall nevertheless be obedient only to himself, and remain as fully at liberty as before.” Such is the fundamental problem, of which the Social Compact gives the solution.

The clauses of this compact are so precisely determined by the nature of the act, that the least restriction or modification renders them void

and of no effect; in so much, that although they may perhaps never have been formally promulgated, they are yet universally the same, and are every where tacitly acknowledged and received. When the social pact, however, is violated, individuals recover their natural liberty, and are re-invested with their original rights, by losing that conventional liberty for the sake of which they had renounced them.

Again; these clauses, well understood, are all reducible to one, *viz.* the total alienation of every individual, with all his rights and privileges, to the whole community. For, in the first place, as every one gives himself up entirely and without reserve, all are in the same circumstances, so that no one can be interested in making their common connection burdensome to others.

Besides, as the alienation is made without reserve, the union is as perfect as possible, nor hath any particular associate any thing to reclaim; whereas, if they should severally retain any peculiar privileges, there being no common umpire to determine between them and the public, each being his own judge in some cases, would in time pretend to be so in all, the state of nature would still subsist, and their association would necessarily become tyrannical or void.

In fine, the individual, by giving himself up to all, gives himself to none; and, as he acquires the same right over every other person in the community, as he gives them over himself, he gains an equivalent for what he bestows, and still a greater power to preserve what he retains.

If therefore we take from the Social Compact every thing that is not essential to it, we shall find it reduced to the following terms:

“ We,

“ We, the contracting parties, do jointly and severally submit our persons and abilities to the supreme direction of the general will of all; and in a collective body, receive each member into that body as an indivisible part of the whole.”

This act of association accordingly converts the several individual contracting parties into one moral collective body, composed of as many members as there are votes in the assembly, which receives also from the same act its unity and existence. This public personage, which is thus formed by the union of all its members, used formerly to be denominated a CITY *, and at present takes the name of a *republic* or *body-politic*. It is also called, by its several members, a *state*, when it is passive; the *sovereign*, when it is active; and simply a *power*, when it is

com-

* The true sense of this word is almost entirely perverted among the moderns; most people take a town for a city, and an house-keeper for a citizen. Such are ignorant, however, that though houses may form a town, it is the citizens only that constitute a city. This same error formerly cost the Carthaginians very dear. I do not remember, in the course of my reading, to have ever found the title of *Cives* given to the subjects of a prince, not even formerly to the Macedonians, nor, in our times, to the English, though more nearly bordering on liberty than any other nation. The French are the only people who familiarly take on themselves the name of *citizens*, because they have no just idea of its meaning, as may be seen in their dictionaries; for, were it otherwise, indeed, they would be guilty of high treason in assuming it. This term is with them rather expressive of a virtue than a privilege. Hence, when Bodin spoke of the citizens and inhabitants of Geneva, he committed a wretched blunder in mistaking one for the other. Mr d’Alembert indeed has avoided this mistake in the Encyclopædia, where he has properly distinguished the four orders of people (and even five, reckoning mere strangers) that are found in our city, and of which two only compose the republic: No other French author that I know of hath ever comprehended the meaning of the word *citizen*.

compared with other bodies of the same nature. With regard to the associates themselves, they take collectively the name of the *people*; and are separately called *citizens*, as partaking of the sovereign authority; and *subjects*, as subjected to the laws of the state. These terms, indeed, are frequently confounded, and mistaken one for the other; it is sufficient, however, to be able to distinguish them when they are to be used with precision.

CHAP. VII. *Of the sovereign.*

IT is plain from the above formula, that the act of association includes a reciprocal engagement between particulars and the public; and that each individual, in contracting, if I may so say, with himself, is laid under a twofold engagement, *viz.* as a member of the sovereignty towards particular persons, and as a member of the state toward the sovereign. That maxim of the civil law, however, is inapplicable here, which says, that no one is bound by the engagements he enters into with himself; for there is a wide difference between entering into a personal obligation with one's self, and with a whole, of which one may constitute a part.

It is farther to be observed, that the public determination, which is obligatory on the subject with regard to the sovereign, on account of the twofold relation by which each stands contracted, is not, for the contrary reason, obligatory on the supreme power towards itself; and that it is consequently inconsistent with the nature of the body-politic, that such supreme power should impose a law, which it cannot break.

For,

For, as the sovereign stands only in a single relation, it is in the same case as that of an individual contracting with himself; whence it is plain, that there neither is, nor can be, any fundamental law obligatory on the whole body of a people, even the Social Compact itself not being such. By this, however, it is not meant, that such a body cannot enter into engagements with others, in matters that do not derogate from this contract; for, with respect to foreign objects, it is a simple and individual person.

But as the body-politic, or the sovereign, derives its very existence from this inviolable contract, it can enter into no lawful engagement, even with any similar body, derogatory from the tenor of this primitive act; such as that of alienating any part of itself, or of submitting itself entirely to a foreign sovereign. To violate the act whereby it exists, would be to annihilate itself; and from nothing can arise nothing.

No sooner are a multitude of individuals thus united in a body, than it becomes impossible to act offensively against any of the members without attacking the whole, and still less to offend the whole body, without injuring the members. Hence both duty and interest equally oblige the two contracting parties to assist each other; and the same persons ought to endeavour to include, within this twofold relation, all the advantages which depend on it.

Now the sovereign, being formed only by the several individuals of which the state is composed, can have no interest contrary to theirs: of course the supreme power stands in no need of any guarantee toward the subjects, because it is impossible that the body should be capable of
hurt-

hurting all its members; and we shall see hereafter, that it can as little tend to injure any of them in particular. Hence the sovereign is necessarily, and for the same reason that it exists, always such as it ought to be.

The case is different, however, as to the relation in which the subjects stand to the sovereign; as, notwithstanding their common interest, the latter can have no security that the former will discharge their engagements, unless means be found to engage their fidelity.

In fact, every individual may, as a man, entertain a particular will, either contradictory or dissimilar to his general will as a citizen. His private interest may influence him in a manner diametrically opposite to the common interest of the society. Reflecting on his own existence as positive and naturally independent, he may conceive what he owes to the common cause to be a free and gratuitous contribution, the want of which will be less hurtful to others than the discharge of it will be burdensome to himself; and, regarding the moral person of the state as an imaginary being, because it is not a man, he may be desirous of enjoying all the privileges of a citizen, without fulfilling his engagement as a subject; an injustice, that, in its progress, must necessarily be the ruin of the body-politic.

To the end, therefore, that the social compact should not prove an empty form, it tacitly includes this engagement, which only can enforce the rest, *viz.* that whosoever refuses to pay obedience to the general will, shall be liable to be compelled to it by the force of the whole body. And this is in effect nothing more than that they may be compelled to be free; for such

is the condition which, in uniting every citizen to the state, secured him from all personal dependence; a condition, which forms the whole artifice and play of the political machine: it is this alone that renders all social engagements just and equitable, which, without it, would be absurd, tyrannical, and subject to the most enormous abuses.

CHAP. VIII. *Of civil society in general.*

THE transition of man from a state of nature to a state of society is productive of a very remarkable change in his being, by substituting justice instead of instinct as the rule of his conduct, and attaching that morality to his actions of which they were before destitute. It is in immediate consequence of this change, when the voice of duty succeeds to physical impulse and the law of appetite, that man, who hitherto regarded only his own gratification, finds himself obliged to act on other principles, and to consult his reason before he follows the dictates of his passions. Although, by entering into a state of society, he is deprived also of many advantages which depend on that of nature, he gains by it others so very considerable: his faculties exert and expand themselves; his ideas are enlarged; his sentiments ennobled; and his whole soul is elevated to so great a degree, that, if the abuses of this new state do not degrade him below the former, he ought incessantly to bless that happy moment in which he was rescued from it, and converted from a stupid and ignorant animal into an intelligent and wise being.

To state the balance of what is lost and gain-
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ed by this change, we shall reduce it to comparative terms. By entering into the social compact, man gives up his natural liberty or unlimited right to every thing which he is desirous of and can attain. In return for this, he gains social liberty, and an exclusive property in all those things of which he is possessed. To avoid any mistake, however, in the nature of these compensations, it is necessary to make a just distinction between natural liberty, which is limited by nothing but the inabilities of the individual, and social liberty, which is limited by the general will of the community; and also, between that possession which is only effected by force, or follows the right of prior occupancy, and that property which is founded only on a positive title.

To the preceding also may be added, as the acquisition of a social state, moral liberty, which only renders a man truly master of himself: for to be under the direction of appetite alone is to be in a state of slavery; while to pay obedience only to those laws which we prescribe to ourselves, is liberty. But I have said too much already on this subject, the philosophical meaning of the word Liberty being in this place out of the question.

CHAP. IX. *Of real demesnes.*

EACH member of the community, in becoming such, devotes himself to the public from that moment, in such a state as he then is, with all his power and abilities, of which abilities his possessions make a part. Not that in consequence of this act the possession changes its nature by changing hands, and becomes actual pro-

property in those of the sovereignty ; but as the power of the community is incomparably greater than that of an individual, the public possession is in fact more fixed and irrevocable, without being more lawful, at least with regard to foreigners. For every state is, with respect to its members, master of all their possessions, by virtue of the social compact, which, in a state, serves as the basis of all other rights ; but, with regard to other powers or states, it is master of them only by the right of prior occupancy, which it derives from individuals.

The right of prior occupancy, although more real than that of the strongest, becomes not an equitable right, till after the establishment of property. Every man hath naturally a right to every thing which is necessary for his subsistence ; but the positive act by which he is made the proprietor of a certain possession excludes him from the property of any other. His portion being assigned him, he ought to confine himself to that, and hath no longer any right to a community of possessions. Hence it is that the right of prior occupancy, though but of little force in a state of nature, is so respectable in that of society. The point to which we are chiefly directed in the consideration of this right, is rather what belongs to another, than what does not belong to us.

To define the right of prior occupancy in general terms, it is founded on the following conditions. It is requisite, in the first place, that the lands in question should be unoccupied ; secondly, that no greater quantity of it should be occupied than is necessary for the subsistence of the occupiers ; and, in the third place, that possession

A TREATISE ON THE

possession should be taken of it, not by a vain ceremony, but by actual cultivation, the only mark of property which, in defect of juridical titles, should be at all respected.

To allow the first occupier a right to as much territory as he may cultivate and is necessary to his subsistence, is certainly carrying the matter as far as is reasonable. Otherwise we know not how to set bounds to this right. Is it sufficient for a man to set foot on an uninhabited territory, to pretend immediately an exclusive right to it? Is it sufficient for him to have power enough at one time to drive others from the spot, to deprive them for ever afterwards of the right of returning to it? How can a man, or even a whole people, possess themselves of an immense territory, and exclude from it the rest of mankind, without being guilty of an illegal usurpation; since, by so doing, they deprive the rest of mankind of an habitation, and those means of subsistence which nature hath given in common to them all? When Nunez Balbao stood on the sea-shore, and in the name of the crown of Castile took possession of the Pacific Ocean and of all South America, was this sufficient to dispossess all the inhabitants of that vast country, and exclude all the other sovereigns in the world? On such a supposition, the like idle ceremonies might have been ridiculously multiplied, and his Catholic Majesty would have had no more to do than to have taken possession in his closet of all the countries in the world, and to have afterwards only deducted from his empire such as were before possessed by other princes.

It is easy to conceive, how the united and contiguous estates of individuals become the ter-
ritory

territory of the public, and in what manner the right of sovereignty, extending itself from the subjects to the lands they occupy, becomes at once both real and personal; a circumstance which lays the possessors under a state of the greatest dependence, and makes even their own abilities a security for their fidelity. This is an advantage which does not appear to have been duly attended to by sovereigns among the ancients, who, by styling themselves only kings of the Persians, the Scythians, the Macedonians, seemed to look on themselves only as chiefs of men, rather than as masters of a country. Modern princes more artfully style themselves the kings of England, France, Spain, &c. and thus, by claiming the territory itself, are secure of the inhabitants.

What is very singular in this alienation is, that the community, in accepting the possessions of individuals, so far from despoiling them thereof, that, on the contrary, it only confirms them in such possessions, by converting an usurpation into an actual right, and a bare possession into a real property. The possessors also being considered as the depositaries of the public wealth, while their rights are respected by all the members of the state, and maintained by all its force against any foreign power, they acquire, if I may so say, by a cession advantageous to the public, and still more so to themselves, every thing they ceded by it: a paradox which is easily explained by the distinction to be made between the rights which the sovereign and the proprietor have in the same fund, as will be seen hereafter.

It may also happen, that men may form themselves into a society, before they have any pos-

possessions; and that, acquiring a territory sufficient for all, they may possess it in common, or divide it among them, either equally, or in such different proportions as may be determined by the sovereign. Now, in whatsoever manner such acquisition may be made, the right which each individual has to his own estate, must be always subordinate to the right which the community hath over the possessions of all; for, without this, there would be nothing binding in the social tie, nor any real force in the exercise of the supreme power.

I shall end this book with a remark that ought to serve as the basis of the whole social system: and this is, that, instead of annihilating the natural equality among mankind, the fundamental compact substitutes, on the contrary, a moral and legal equality, to make up for that natural and physical difference which prevails among individuals, who, though unequal in personal strength and mental abilities, become thus all equal by convention and right *.

B O O K II.

CHAP. I. *That the sovereignty is unalienable.*

THE first and most important consequence to be

* This equality, indeed, is under some governments merely apparent and delusive, serving only to keep the poor still in misery, and favour the oppression of the rich. And, in fact, the laws are always useful to persons of fortune, and hurtful to those who are destitute: whence it follows, that a state of society is advantageous to mankind in general, only when they all possess something, and none of them have any thing too much.

be drawn from the principles already established, is, that the general *will* only can direct the forces of the state agreeable to the end of its original institution, which is the common good; for, though the opposition of private interests might make the establishment of societies necessary, it must have been through the coalition of those interests that such establishment became possible. The bonds of society must have been formed out of something common to those several interests; for, if there had been no point to which they could have been reconciled, no society could possibly have subsisted. Now it is only on these points that the government of society should be founded.

I say, therefore, that the sovereignty, being only the exertion of the general will, cannot be alienated; and that the sovereign, which is only a collective being, cannot be represented but by itself: the power of a people may be transmitted or delegated, but not their will.

It may not be absolutely impossible, that the will of an individual should agree, in some particular point, with the general will of a whole people: it is, however, impossible, that such agreement should be constant and durable; for the will of particulars always tends to make distinctions of preference, and the general will to a perfect equality. It is further still more impossible, supposing such agreement might always subsist, to have any security that it would do so, as it could never be the effect of art, but of chance. The sovereign may say, My will is now agreeable to the will of such an individual, or at least to what he pretends to be his will: but it cannot pretend to say, I agree to whatever may be the will

of such an individual to morrow; as it is absurd for the will to lay itself under any restraint regarding the future, and as it is impossible for the will to consent to any thing contrary to the interest of the being whose will it is. Should a people therefore enter into the engagement of simply promising obedience, they would lose their quality as a people, and be virtually dissolved by that very act. The moment there exists a master, there can be no longer a sovereign, the body politic being thereby destroyed.

I would not be understood to mean, that the orders of a chief may not pass for the dictates of the general will, when the sovereign, though at liberty to contradict, does not oppose it. In such a case, it is to be presumed, from the universal silence of the people, that they give their consent. This will be farther explained in the end.

CHAP. II. *That the sovereignty is indivisible.*

FOR the same reason that the sovereignty is unalienable, it is also indivisible: for the will is general *, or it is not; it is that of the body of the people, or only that of a part. In the first case, this will, when declared, is an act of sovereignty, and becomes a law: in the second, it is only a particular will, or an act of the magistracy, and is at most a decree.

But our politicians, incapable of dividing the sovereignty in its first principles, divide it in its object: they distinguish it into power and will;
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* In order that this will should be general, it is not always necessary it should be unanimous: it is necessary, however, that every individual should be permitted to vote; every formal exclusion infringing the generality.

into a legislative and executive power ; into the prerogatives of taxation, of executing justice, and of making war ; into departments of domestic and foreign administration. Sometimes they blend all these confusedly together ; and, at others, consider them as distinct and separate, making out the sovereign to be a fantastic compound, just as if they should compose a man out of several bodies, of which one should have only eyes, another arms, a third feet, and nothing more. It is said of the jugglers in Japan, that they will take a child, and cut it into pieces in the presence of the spectators ; then, throwing up its dismembered limbs one after another into the air, they are united, and the child descends alive and well as before. The legerdemain of our modern politicians greatly resembles this trick of the Japanese ; for they, after having dismembered the body-politic with equal dexterity, bring all its parts together by *hocus pocus* again, and represent it the same as before.

This error arises from their not having formed precise ideas of the sovereign authority, and from their mistaking the simple emanations of this authority for parts of its essence. Thus, for instance, the acts of declaring war and making peace are usually regarded as acts of sovereignty, which they are not ; for neither of these acts are laws, but consist only of the application of the law. Each is a particular act, determinate only of the meaning of the law in such case, as will be seen more clearly when the idea attached to the word *law* shall be precisely settled.

By tracing, in like manner, their other divisions, we shall find, that we are constantly mis-

taken whenever we think the sovereignty divided; and that the prerogatives, which are supposed to be parts of the sovereignty, are all subordinate to it, and always suppose the predetermination of a superior will, which those prerogatives only serve to put in execution.

It is impossible to say, in how much obscurity this want of precision hath involved the reasonings of authors on the subject of political law, when they came to examine into the respective rights of kings and people on the principles they had established. By turning to the third and fourth chapters of the first book of Grotius, the reader may see how that learned author, and his translator Barbeyrac, bewildered and entangled themselves in their own sophisms, thro' fear of saying too much or too little for their purpose, and of making those interests clash, which it was their business to reconcile. Grotius being dissatisfied with his own countrymen, a refugee in France, and willing to pay his court to Lewis XIII. to whom his book is dedicated, spared no art nor pains to strip the people of their privileges, and to invest kings with prerogative. Barbeyrac also wrote with a similar view, dedicating his translation to George I. of England. But, unluckily, the expulsion of James II. which he calls an abdication, obliged him to be much on the reserve, to turn and wind about, as he saw occasion, in order not to make William III. an usurper. Had these two writers adopted true principles, all these difficulties would have vanished, and they would have written consistently; in such a case, however, they could only, in sober sadness, have told the truth, and would have paid their court only

to the people. Now, to tell the truth is not the way to make a fortune; nor are ambassadors appointed, or places and pensions given away, by the populace.

CHAP. III. *Whether the general will can be in the wrong.*

IT follows, from what has been said, that the general will is always in the right, and constantly tends to the public good. It does not follow, however, that the deliberations of the people will always be attended with the same rectitude. We are ever desirous of our own good, but we do not always distinguish in what it consists. A whole people never can be corrupted; but they may be often mistaken, and it is in such a case only that they appear to seek their own disadvantage.

There is often a considerable difference between the will of all the members and the general will of the whole body: the latter regards only the common interest; the other respects the private interest of individuals, and is the aggregated sum of their particular wills: but, if we take from this sum those contradictory wills that mutually destroy each other *, the sum of the remaining difference is the general will.

If a people, sufficiently informed of the nature

* *Each interests, says the Marquis d'A. has different principles. A coalition between two particular interests may be formed, out of opposition to that of a third. He might have added, that a coalition of all is formed out of opposition to the interest of each. Were there no different and clashing interests, that of the whole would be hardly distinguishable, as it would meet with no obstacle. All things would go regularly on of their own accord, and civil policy would cease to be an art.*

ture of the subject under their consideration, should deliberate, without having any communication with each other, the general will would always result from the greater number of their little differences, and their deliberation would be such as it ought to be. But when they enter into cabals, and form partial associations at the expence of the general one, the will of each of these associations becomes general, with regard to the particular members of each; and in itself particular, with regard to the state. In such a case, therefore, it may be said, there is no longer as many voters as individuals, but only as many voices as there are associations. The differences then become less numerous, and give a less general result. Again, should one of these partial associations be so great as to influence all the rest, the result would no longer be the sum of many little differences, but that of one great one; in which case, a general will would no longer subsist.

It is requisite, therefore, in order that each resolution may be dictated by the general will, that no such partial societies should be formed in a state, and that each citizen should think for himself*. Such was the sublime institution of the great Lycurgus. But, if such partial societies must and will exist, it is then expedient to multiply their number, and prevent their inequality, as was done by Solon, Numa, and Ser-

* Vera cosa e, (says Machiavel,) che alcuni divisioni nucono alle repubbliche, alcune giovano: quelle nucono che sono dalle sette e da partigiani accompagnate: quelle giovano che senza sette, senza partigiani si mantengono. Non potendo adunque provvedere un fondatore d'una republica che non siano inimicizie in quella, ha da provveder almeno che non viliano sette. *Hist. Florent.* l. vii.

Servius. These are the only salutary precautions that can be taken, in order that the general will may be properly informed, and the people not be mistaken as to their true interest.

CHAP. IV. *Of the limits of the sovereign power.*

IF the state, or the city, be a mere moral person, whose life depends on the union of its members, and if the most important of its concerns be that of its own preservation, it should certainly be possessed of an universal compulsive force, to move and dispose each part in such a manner as is most conducive to the good of all. As nature hath given every man an absolute power over his limbs, to move and direct them at pleasure, so the Social Compact gives to the body-politic an absolute power over all its members; and it is this power which, directed by the general will, bears the name, as I have already observed, of the sovereignty.

But, besides this public person, we are to consider farther the private persons of which it is composed, and whose life and liberty are naturally independent of it. We come now, therefore, to make a proper distinction between the respective privileges of the citizens and the sovereign *, as well as between the obligations the former lie under as subjects, and the natural rights they claim as men.

It is agreed, that what an individual alienates of his power, his possession, or his liberty, by
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* Be not in haste, attentive reader, to accuse me here of contradiction. I cannot avoid the seeming contradiction in terms, from the native poverty of the language. But have a little patience.

the Social Compact, is only such parts of them whose use is of importance to the community; but it must be confessed also, that the sovereign is the only proper judge of this importance.

A citizen is bound to perform all the services he can possibly be of to a state, whenever the sovereign demands them; but the sovereign, on his part, cannot require any thing of the subject that is useless to the community: he cannot even be desirous of so doing; for, under the law of reason, nothing can be produced without a cause, any more than under the law of nature.

The engagements in which we are bound to the body of society are obligatory, only because they are mutual; and their nature is such, that we cannot, in discharging them, labour for the good of others, without at the same time labouring for that of ourselves. Wherefore, indeed, is it, that the general will is always in the right, and that all constantly desire the good of each, unless it be, because there is no one that does not appropriate the term *each* to himself, and who does not think of his own interest in voting for that of all? This serves to prove also, that an equality of privilege, and the notion of justice it produces, are derived from that preference which each naturally gives himself, and of course from the very nature of man; that the general will, in order to be truly such, ought to be so in its effect as well as in its essence; that it ought to flow from all, in order to be applicable to all; and that it must lose its natural rectitude, when it tends to any individual and determinate object; because judging, in such a case, of what is foreign to ourselves, we have no real principle of equity for our guide.

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In fact, no sooner do we come to treat of a particular fact or privilege, on a point which has not been settled by a general and prior convention, than the affair becomes litigious. It is a process, in which the particulars interested are one party, and the public the other; but in which I see no law to decide, nor judge to determine. It would be absurd, therefore, in such a case, to think of referring it to any express decision of the general will, which could be no other than the decision of one of the very parties; and therefore must be, with regard to the other, foreign and partial, leaning to injustice, and subject to error. In the same manner, also, that a partial and particular will cannot represent the general will; so the latter, in its turn, changes its nature, when employed on a particular object, and cannot, in its general capacity, pronounce concerning any particular man or fact. Thus when the people of Athens, for instance, took upon them to appoint or cashier their chiefs, to decree honours to one, and inflict pains and penalties on another, and thus by numerous decrees exercised indiscriminately all the acts of government, they had then, properly speaking, no general will at all: the Athenian people, in this case, did not act in the capacity of sovereign, but in that of magistrate. This may appear contradictory to the common notions of things, but I must be allowed time to explain mine.

We may learn hence, that the general will consists less in the number of votes, than in the common interest that unites them; for, in this institution, every one subjects himself necessarily to those conditions which he imposes on others

thers : hence the admirable conformity between interest and justice, which stamps on public declarations that characteristic of equity, which we see vanish in the discussion of particular subjects, for want of that common interest which unites and makes the criterion of the judge the same with that of the party.

In what manner soever we recur to the first principle, we always arrive at the same conclusion, *viz.* that the Social Compact establishes such an equality among the citizens, that all lay themselves under the same obligations, and ought all to enjoy the same privileges. Thus, from the very nature of this compact, every act of sovereignty, that is to say, every authentic act of the general will, is equally obligatory on, or favourable to, all the citizens, without distinction ; in so much that the sovereign knows only the whole body of the nation, but distinguishes none of the individuals who compose it. What then is properly an act of sovereignty ? It is not an agreement made between a superior and an inferior, but a convention between a whole body with each of its members : which convention is a lawful one, because founded on the social contract ; it is equitable, because it is common to all ; it is useful, because it can have no other object than the general good ; and it is solid and durable, because secured by the public strength and the supreme power.

When the submission of subjects is owing only to such conventions, they pay in fact obedience to none but their own will ; and to ask how far the respective privileges of the sovereign and citizens extend, is to ask merely how far the latter may enter into engagements with themselves,

selves, *viz.* each individual with all collectively, and all collectively with each individual.

Hence we see, that the sovereign power, absolute, inviolable, and sacred as it is, neither does nor can surpass the bounds of such general conventions; and that every man hath a right to dispose, as he pleases, of that liberty and property which the terms of such conventions have left to his own disposal: so that the sovereign hath not any right to lay a greater burden on one subject than on another, because, in such a case, it becomes a particular affair, in which the sovereign hath no power to act.

These distinctions being once admitted, it is so far from being true that there is any real renunciation on the part of individuals when they enter into the Social Compact, that their situation becomes, by means of that very compact, much better than before; as, instead of making any alienation, they only make an advantageous exchange of an uncertain and precarious mode of subsistence, for a more settled and determinate one: they exchange their natural independence, for social liberty; the power of injuring others, for that of securing themselves from injury; and their own natural strength, which might be overcome by that of others, for a civil power which the social union renders invincible. Their very lives, which they have by these means devoted to the state, are continually protected; and even when they are obliged to expose themselves to death in its defence, what do they more than render back to society what they have before received of it? What do they more, in risking their lives for their country, than they would have been obliged to do

more frequently, and with much greater danger, in a state of nature; when, subject to inevitable outrages, they would have been obliged to defend their means of subsistence at the hazard of their lives? That every one lies under the obligation of fighting in defence of his country, is true; but then he is relieved by the laws from the necessity of fighting to defend himself. And are not men gainers, on the whole, by running part of those risks for their common security, which they must severally run for themselves were they deprived of that security?

CHAP. V. *On capital punishments.*

IT hath been asked, how individuals, having no right to dispose of their own lives, can transmit that right to the sovereign? The difficulty of resolving this question, arises only from its being badly expressed. Every man hath an undoubted right to hazard his life for its preservation. Was a man ever charged with suicide, for throwing himself from the top of an house in flames, in order to avoid being burnt? Was it ever imputed as a crime to a man, who might be cast away at sea, that he knew the danger of the voyage when he embarked?

The end of the Social Compact, is the preservation of the contracting parties. Such, therefore, as would reap the benefit of the end, must assent to the means, which are inseparable from some dangers and losses. He that would preserve his life at the expence of others, ought to risk it for their safety when it is necessary. Now, the citizen is no longer a judge of the danger to which the law requires him to be exposed:

posed: but when the prince declares that the good of the state requires his life, he ought to resign it; since it is only on those conditions he hath hitherto lived in security, and his life is not solely the gift of nature, but a conditional gift of the state.

The punishment of death inflicted on malefactors may be considered also in the same point of view: it is to prevent our falling by the hands of an assassin, that we consent to die on becoming such ourselves. We are so far from giving away our lives by this treaty, that we enter into it only for our preservation; as it is not to be presumed that any one of the contracting parties formed therein a premeditated design to get himself hanged.

Add to this, that every malefactor, by breaking the laws of his country, becomes a rebel and traitor; ceasing, from that time, to be a member of the community, and even declaring war against it. In this case, the preservation of the state is incompatible with his; one of the two must perish: and thus, when a criminal is executed, he doth not suffer in the quality of a citizen, but in that of an enemy. His trial and sentence are the evidence and declaration of his having broken the Social Compact, and that of consequence he is no longer a member of the state. Now, as he had professed himself such, at least by his residence, it is right that he should be separated from the state, either by banishment as a violator of the Social Compact, or by death as a public enemy: for such an enemy is not a moral personage, he is a mere man; and it is in this case only that the right of war takes place of killing an enemy.

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But, it may be said, the condemnation of a criminal is a particular act. It is so ; and for that reason it does not belong to the sovereign : it is an act, for doing which the supreme power may confer the authority, though it cannot exercise such authority itself. My ideas on this subject are consistent, though I cannot explain them all at once.

It is to be observed, however, that the frequency of executions is always a sign of the weakness or indolence of government. There is no malefactor who might not be made good for something ; nor ought any person to be put to death, even by way of example, unless such as could not be preserved without endangering the community.

With regard to the prerogative of granting pardons to criminals, condemned by the laws of their country, and sentenced by the judges, it belongs only to that power which is superior both to the judges and the laws, *viz.* the sovereign authority. Not that it is very clear that even the supreme power is vested with such a right, or that the circumstances in which it might be exerted are frequent or determinate. In a well-governed State there are but few executions ; not because there are many pardoned, but because there are few criminals : Whereas when a state is on the decline, the multiplicity of crimes occasions their impunity. Under the Roman republic, neither the state nor the Consuls ever attempted to grant pardons ; even the people never did this, although they sometimes recalled their own sentence. The frequency of pardons indicates that in a short time crimes will not stand in need of them, and every one may see

see the consequence of such conduct. But my reluctant heart restrains my pen; let us leave the discussion of these questions to the just man who hath never been criminal, and who never stood in need of pardon.

CHAP. VI. *On the law.*

HAVING given existence and life to the body politic, by a Social Compact, we come now to give it action and will, by a legislature. For the primitive act, by which such body is formed, determines nothing as yet with respect to the means of its preservation.

Whatever is right and conformable to order, is such from the nature of things, independent of all human conventions. All justice comes from God, who is the fountain of it; but could we receive it immediately from so sublime a source, we should stand in no need of government or laws. There is indeed an universal justice springing from reason alone; but, in order to admit this to take place among mankind, it should be reciprocal. To consider things as they appear, we find the maxims of justice among mankind to be vain and fruitless, for want of a natural support: they tend only to the advantage of the wicked, and the disadvantage of the just; while the latter observes them in his behaviour to others, but nobody regards them in their conduct to him. Laws and conventions, therefore, are necessary in order to unite duties with privileges, and confine justice to its proper objects. In a state of nature, where every thing is common, I owe those nothing to whom I have promised nothing: I acknowledge nothing to be the

property of another but what is useless to myself. In a state of society the case is different, where the rights of each are fixed by law.

We come at length, therefore, to consider what is law. So long as we content ourselves with the metaphysical idea annexed to this term, we must talk unintelligibly; and though we should come to a definition of natural law, we should not know thence any thing more of political law. I have already said there can be no general will relative to a particular object. In fact, every particular object must be within or without the state. If without, a will that is foreign, cannot with regard to it be general; and if the object be within the state, it must make a part of it: in which case there arises between the whole and the part, a relation that constitutes two separate beings; one of which is the part, but the whole wanting such part is not the whole; and so long as that relation subsists, there is no whole, but only two unequal parts; whence it follows, that the will of the one is no longer general with regard to that of the other.

But when a whole people decree concerning a whole people, they consider only their whole body; and, if it then forms any relation, it must be between the entire object considered in one point of view, and the entire object considered in another point of view, without any division of the whole. In this case, the matter of the decree is general as the will that decrees. Such is the act which I call a law.

When I say that the object of the laws is always general, I mean that the laws considers the subjects in a collective body, and their actions abstractedly; but never concerns itself with

individual persons, nor particular actions. Thus the law may decree certain privileges, but it cannot bestow them on particular persons: the law may constitute several classes of citizens, and assign even the qualities which may entitle them to rank in these classes; but it cannot nominate such or such persons to be admitted therein: it may establish a legal government, and appoint an hereditary succession; but it cannot make choice of a king, nor appoint the royal family; in a word, every function that relates to an individual object, doth not belong to the legislative power.

Taking things in this light, it is immediately seen how absurd it is to ask in whose power it is to make laws? as they are acts of the general will; or whether the prince be above the laws? as he is but a member of the state. Hence also, it is plain, the law cannot be unjust, as nothing can be unjust to itself; as also what it is to be free, and at the same time subject to the laws, as the laws are only the records of our own will.

It is hence farther evident, the law re-uniting the universality of the will to that of its object, that whatever an individual, of what rank soever, may decree of his own head, cannot be a law: indeed, whatever the supreme power itself may ordain concerning a particular object is not a law, but a simple decree; it is not an act of the sovereignty, but of the magistracy.

I call every state, therefore, which is governed by laws, a Republic, whatever be the form of its administration; for in such a case only it is the public interest that governs, and whatever
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is public is something. Thus every lawful government is republican *. I shall explain hereafter what I mean by a government.

The laws are, strictly speaking, only the conditions of civil society. The people who submit to them should therefore be the authors of them; as it certainly belongs to the associating parties to settle the conditions on which they agree to form a society. But how are they to be settled? is it to be done by common consent, or by a sudden inspiration? hath the body politic an organ by which to make known its will? who shall furnish it with the necessary prudence, to form its determinations and to publish them before-hand, or how shall it divulge them in the time of need? how shall an ignorant multitude, who often know not what they chuse because they seldom know what is for their good, execute an enterprize so great and so difficult as that of a system of legislature? A people must necessarily be desirous of their owd good, but they do not always see in what it consists. The general will is always in the right, but the judgment by which it is directed is not always sufficiently informed. It is necessary it should see objects such as they are, and sometimes such as they ought to appear; it should be directed to the salutary end it would pursue, should be secured from the seduction of private interests, should have an insight into the circumstances of time
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* I do not here mean, by the term *republican*, either an aristocracy or democracy; but in general every government influenced by the general will of the people, which is the law. To make a government legal, it is not necessary that it should be confounded with the sovereign, but that it should be the minister: so that in this sense even a monarchy is a republic. This will be more fully explained in the subsequent track.

and place; and should be enabled to set the present and perceptible advantages of things, against the distant and concealed evil that may attend them. Individuals often see the good which they reject; the public is desirous of that which it is incapable to see. Both stand equally in need of a guide: the former should be compelled to conform their desires to reason, and the latter should be instructed in the discovery of what it desires. It is thus from the proper information of the public, that there results an union of the understanding and the will in the body of society; and thence the exact concurrence of its parts, and in the end the greatest force of the whole. Hence arises the necessity of a legislator.

CHAP. VII. *Of the genius and character of a legislator.*

TO investigate those conditions of society which may best answer the purposes of nations, would require the abilities of some superior intelligence, who should be witness to all the passions of men, but be subject itself to none; who should have no connection with human nature, but should have a perfect knowledge of it; a being, in short, whose happiness should be independent of us, and who would nevertheless employ itself about ours*. It is the province of gods indeed to make laws for men.

The same argument which Caligula made use of in point of fact, Plato himself employs in
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* Nations become famous only as their legislature declines. The institution of Lycurgus made the Spartans happy for ages before they were famous in Greece.

point of right, when he goes about to define the civil or royal personage, in treating of a king. But if it be certain that a great prince is a personage rarely to be met with, what is that of a great legislator? The former hath nothing more to do than to follow the model designed by the latter. The one is the mechanical genius who invents the machine, the other only the workman who puts it into execution. In the commencement of societies, says Montesquieu, it is the principal persons in republics which form their institution; and afterwards it is the institution which forms the chiefs of republics.

He who should undertake to form a body politic, ought to perceive himself capable of working a total change in human nature; of transforming every individual, of himself a solitary and independent being, into a part of a greater whole, from which such individual is to receive in one sense his life and existence: he must be capable of altering the constitution of the man, in order to strengthen it; and to substitute a partial and moral existence, in the room of that physical and independent existence which we receive from the hands of nature. In a word, he must be able to deprive man of his natural abilities, in order to invest him with foreign powers which he cannot make use of without the assistance of others. The more such natural force is annihilated and extinct, the greater and more durable are those which are acquired, and the more perfect and solid is the social institution. So that if each citizen be nothing and can effect nothing but by the existence and assistance of all the rest, and the force acquired by the whole body be equal or superior to the sum of the natural forces

forces of all its individuals, the legislature may be said to have reached the highest pitch of perfection it is capable to attain.

The legislator is in every respect a most extraordinary person in a state. If he be undoubtedly so on account of his genius, he is not less so from his function. Yet this is not that of the magistrate or the sovereign. That function, which constitutes the republic, doth not enter into its constitution. It is, on the contrary, a particular and superior employment that hath nothing in common with human government: for if he who hath the command over the citizens should not be entrusted with the command over the laws, he who hath the power over the laws ought as little to have the power over the citizens: for were it otherwise, his laws being made instrumental to his passions, would often serve to perpetuate his injustice, and he could never prevent particular views from altering his system.

When Lycurgus gave laws to his country, he began by abdicating the throne. It was the custom of most of the Grecian cities to entrust their establishment with strangers; a custom that hath been often imitated by the modern republics of Italy: that of Geneva did the same, and found its account in it †. In the most flourishing age of Rome, that city suffered under flagitious acts of tyranny, and beheld itself on the
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† Those who consider Calvin only as a theologian, know but little of his comprehensive genius. The digest of our laws, in which he had a considerable share, do him as much honour as his religious system; and what revolution soever time may effect in our public worship, the memory of this great man will continue to be revered so long as patriotism and a sense of liberty survive among us.

brink of ruin for having entrusted the sovereign power and the legislative authority in the same hands.

Even the Decemviri themselves, however, never assumed the right of passing any law merely on their own authority. *Nothing that we propose, said they to the people, can pass into a law without your consent. Be yourselves, ye Romans, the authors of those laws on which your happiness depends.*

The legislator, therefore, who digests the laws, should have no right to make them pass for such; nor indeed can the people, though inclined to do it, deprive themselves of that incommunicable right; because, according to the fundamental compact, it is the general will only that is obligatory on individuals; and it is impossible to be assured that any particular will is conformable to the general, till it be submitted to on the free suffrage of the people. I have said this before, but perhaps have not unnecessarily repeated it.

Thus, in the business of a legislature, we find two things apparently incompatible; a design superior to human abilities, carried into execution by an authority which is nothing.

Another difficulty which merits attention is, that wise men, in talking their own language to the vulgar, speak unintelligibly. And yet there are many kinds of ideas which it is impossible to convey in the language of the people. Views too general, and objects too distant, are equally beyond their comprehension; the individual, relishing no other plan of government than that which is conducive to his private interest, is with difficulty brought to see those advantages which are to be deduced from the continual
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