

Spirit of the Laws

Montesquieu

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BOOK III

CHAP. I

Difference between the Nature and Principle of Government.

After having examined the laws relative to the nature of each government, we must investigate those that relate to its principle.

There is this difference ¹ between the nature and principle of government, that its nature is that by which it is constituted, and its principle that by which it is made to act. One is its particular structure, and the other the human passions which set it in motion.

Now laws ought to be no less relative to the principle than to the nature of each government. We must therefore inquire into this principle, which shall be the subject of this third book.

CHAP. II.

Of the Principle of different Governments.

I have already observed that it is the nature of a republican government, that either the collective body of the people, or particular families should be possessed of the sovereign power: of a monarchy, that the prince should have this sovereign power, but in the execution of it should be directed by established laws: of a despotic government, that a single person should rule according to his own will and caprice. No more do I want to enable me to discover their three principles; these are from thence naturally derived. I shall begin with a republican government, and in particular with that of democracy.

CHAP. III.

Of the Principle of Democracy.

There is no great share of probity necessary to support a monarchical or despotic government. The force of laws in one, and the prince's arm in the other, are sufficient to direct and maintain the whole. But in a popular state, one spring more is necessary, namely *virtue*.

What I have here advanced, is confirmed by the unanimous testimony of historians, and is extremely agreeable to the nature of things. For it is clear that in a monarchy, where he who commands the execution of the laws generally thinks himself above them, there is less need of virtue than in a popular government, where the person intrusted with the execution of the laws is sensible of his being subject to their authority.

Clear is it also that a monarch, who through bad council or indolence ceases to enforce the execution of the laws, may easily repair the evil; he has only to change his council; or to shake off this indolence. But when in a popular government, there is a suspension of the laws, as this can proceed only from the corruption of the republic, the state is certainly undone.

A very droll spectacle it was in the last century to behold the impotent efforts the English made for the establishment of democracy. As those who had a share in the direction of public affairs were void of all virtue, as their ambition was inflam'd by the success of the most daring of their members, as the spirit of a faction was suppressed only that of a succeeding faction, the government was continually changing: the people amazed at so many revolutions, fought every where for a democracy without being able to find it. At length after a series of tumultuary motions and violent shocks, they were obliged to have recourse to the very government they had so odiously proscribed.

When Sylla wanted to restore *Rome* to its liberty, this unhappy city was incapable of receiving it. She had only some feeble remains of virtue, as this was every day diminishing, instead of being roused out of her lethargy by Caesar, Tiberius, Caius, Claudius, Nero, and Domitian, she riveted every day her chains; the blows she struck were levelled against the tyrants, but not at the tyranny.

The politic Greeks who lived under a popular government, knew no other support but virtue. The modern inhabitants of that country are intirely taken up with manufactures, commerce, finances, riches, and luxury.

When virtue is banished, ambition invades the hearts of those who are capable of receiving it, and avarice possesses the whole community. Desires then change their

objects; what they were fond of before, becomes now indifferent; they were free with laws, and they want to be free without them; every citizen is like a slave who has escaped from his master's house; what was maxim is called rigor; to rule they give the name of constraint; and of fear to attention. Frugality then, and not the thirst of gain, passes for avarice. Formerly the property of private people constituted the public treasure; but now the public treasure becomes the patrimony of private people. Then it is the members of the commonwealth riot on the public spoils, and its whole force is reduced to the power of a few, and to the licentiousness of many.

BOOK VIII.

Of the Corruption of the Principles of the three Governments.

CHAP. XVI.

Distinctive Properties of a Republic.

It is natural for a republic to have only a small territory; otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interests of his own; he soon begins to think that he may be happy, great, and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country.

In an extensive republic the public good is sacrificed to a thousand private views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses have a less extent, and of course, are less protected.

The long duration of the republic of Sparta was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty, glory.

It was the spirit of the Greek republics to be as contented with their territories, as with their laws. Athens was first fired with ambition and gave it to Lacedaemon; but it was an ambition rather of commanding a free people than of governing slaves; rather of directing than of breaking the union. All was lost upon the starting up of monarchy, a government whose spirit is more turned to increase and advancement.

Excepting particular circumstances,²³ it is difficult for any other than a republican government to subsist longer in a single town. A prince of so petty a state would naturally endeavour to oppress his subjects, because his power would be great, while the means of enjoying it or of causing it to be respected, would be inconsiderable. The consequence is, he would trample upon his people. On the other hand, such a prince might be easily crushed by a foreign or even a domestic force; the people might every instant unite and rise up against him. Now as soon as a prince of single town is expelled, the quarrel is over; but if he has many towns, it only begins.

BOOK IX.

Of Laws In The Relation They Bear To a Defensive Force.

CHAP. I.

In what manner Republics provide for their Safety.

If a republic is small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection.

To this twofold inconvenience both Democracies and Aristocracies are equally liable, and that whether they be good or bad. The evil is in the very thing itself; and no form can redress it.

It is therefore very probable that mankind would have been at length obligated to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean a confederate republic.

This form of government is a convention by which several small states *agree* to become members of a larger one which they intend to form. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of new associations, till they arrive at such a degree of power as to be able to provide for the security of the united body.

It was these associations that contributed so long to the prosperity of Greece. By these the Romans attacked the universe, and by these alone the universe withstood them; for when Rome was arrived to her highest pitch of grandeur, it was the associations behind

the Danube and the Rhine, associations formed by the terror of her arms, that enabled the Barbarians to resist her.

From hence it proceeds that Holland, Germany, and the Swiss Cantons, are considered in Europe as perpetual republics.

The associations of cities were formerly more necessary than in our times. A weak, defenceless town was exposed to greater danger. By conquest it was deprived not only of the executive and legislative power, as at present, but, moreover, of all human property.

A republic of this kind able to withstand an external force, may support itself without any internal corruption; the form of this society prevents all manner of inconveniences.

If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great an influence over one, this would alarm the rest; were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped, and overpower him before he could be settled in his usurpation.

Should a popular insurrection happen in one of the confederate states, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

As this government is composed of petty republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed by means of the association, of all the advantages of large monarchies.

BOOK XI.

Of the Laws that form political Liberty, with regard to the Constitution

CHAP. I.

A general IDEA.

I make a distinction between the laws that form political liberty with regard to the constitution, and those by which it is formed in respect to the citizen. The former shall be the subject of this book; the latter I shall examine in the next.

CHAP. II

Different significations given to the word Liberty.

There is no word that has admitted of more various significations, and has made more different impressions on human minds, than that of *Liberty*. Some have taken it for a facility of deposing a person on whom they had conferred a tyrannical authority; others for the power of chusing a person whom they are obliged to obey; others for the right of bearing arms, and of being thereby enabled to use violence; others in fine for the privilege of being governed by a native of their own country or by their own laws. A certain nation for a long time thought liberty consisted in the privilege of wearing a long beard. Some have annexed this name to one form of government, in exclusion of others: Those who had a republican taste, applied it to this government; those who liked a monarchical state, gave it to monarchies. Thus they all have applied the name of *liberty* to the government most suitable to their own customs and inclinations: and as in a republic people have not so constant and so present a view of the instruments of the evils they complain of, and likewise as the laws less, it is generally attributed to republics, and denied to monarchies. In fine as in democracies the people seem to do very near whatever they please, liberty has been placed in this sort of government, and the power of the people has been confounded with their liberty.>

CHAP. III.

In what Liberty consists.

It is true that in democracies the people seem to do what they please; but political liberty does not consist in an unrestrained freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must have continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid, he would no longer be possess of liberty, because all his fellow citizens would have the same power.

CHAP. IV.

The same Subject continued.

Democratic and aristocratic states are not necessarily free. Political liberty is to be met with only in moderate governments: yet even in these it is not always met with. It is there only when there is no abuse of power: but constant experience shews us that every man invested with power is apt to abuse it; he pushes on till he comes to the utmost limit. It is not strange, tho' true, to say, that virtue itself has need of limits?

To prevent this abuse, 'tis necessary that by the very disposition of things power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.

CHAP. V.

Of the end or view of different Governments.

Tho' all governments have the same general *end*, which is that of preservation, yet each has another particular view. Increase of dominion was the view of Rome; war, of Sparta; religion, of the Jewish laws; commerce, that of Marseilles; public tranquillity, that of the laws of China; navigation, of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general the pleasures of the prince, that of despotic states; that of monarchies, the prince's and the kingdom's glory: the independence of individuals is the end aimed at by the laws of Poland, and from thence results the oppression of the whole.³¹

“The natural end of a state that has no foreign enemies, or that thinks itself secured against them by barriers.

One nation there is also in the world, that has for the direct end of its constitution political liberty. We shall examine presently the principles on which this liberty is founded: if they are sound, liberty will appear in a mirror.

To discover political liberty in a constitution, no great labour is requisite. If we are capable of seeing it where it exists, why should we go any further in search of it?

CHAP. VI.

Of the Constitution of England.

In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already [e]nacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

There would be an end of every thing, were the same man or the same body whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of judging the crimes or differences of individuals.

Most kingdoms of Europe enjoy a moderate government, because the prince who is invested with the two first powers, leaves the third to his subjects. In Turkey, where these three powers are united in the Sultan's person, the subjects groan under the weight of a most frightful oppression. In the republics of Italy where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods for its support, as even that of the Turks;

witness the state inquisitors,³² and the lion's mouth into which every informer may at all hours throw his written accusations.

What a situation must the poor subject be in under those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

The whole power is here united in one body; and tho' there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

Hence it is that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting in their own persons, all the branches of magistracy, and all the great offices of state.

I allow indeed that the mere hereditary aristocracy of the Italian republics, does not answer exactly to the despotic power of the Eastern princes. The number of magistrates sometimes softens the power of the magistracy; the whole body of the nobles do not always concur in the same design; and different tribunals are erected, that temper each other. Thus at Venice the legislative power is in the *council*, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the mischief is that these different tribunals are composed of magistrates all belonging to the same body; which constitutes almost one and the same power.

The judiciary power ought not to be given to a standing senate; it should be exercised by person taken from the body of the people at certain times of the year, and pursuant to a form and manner prescribed by law, in order to erect a tribunal that should last only as long as necessity requires.

By this means the power of judging, a power so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate.

In accusations of a deep or criminal nature, it is proper the person accused should have the privilege of chusing in some measure his judges in concurrence with the law; or at least he should have a right to except against so great a number, that the remaining part may be deemed his own choice.

The other two powers may be given rather to magistrates or permanent bodies, because they are not exercised on any private subject; one being no more than the general will of the state, and the other the execution of that general will.

But tho' the tribunals ought not to be fixt, yet the judgments ought, and to such a degree as to be always conformable to the exact letter of the law. Were they to be the private opinion of the judge, people would then live in society without knowing exactly the nature of their obligations it lays them under.

The judges ought likewise to be in the same station as the accused, or in other words, his peers, to the end that he may not imagine he is fallen into the hands of persons inclined to treat him with rigour.

If the legislature leaves the executive power in possession of a right to imprison those subjects who can give security for their good behaviour, there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime; in this case they are really free, being subject only to the power of the law.

But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it for ever.

And this is the only reasonable method. that can be substituted to the tyrannical magistracy of the *Ephori*, and to the *state inquisitors* of Venice, who are also despotical.

As in a free state, every man who is supposed a free agent, ought to be his own governor; so the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniences; it is fit the people should act by their representatives, what they cannot act by themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests, than with those of other places; and are better judges of the capacity of their neighbours, than of that of the rest of their countrymen. The members therefore of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place, a representative should be elected by the inhabitants.

The great advantage of representatives is their being capable of discussing affairs. For this the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy.

It is not at all necessary that the representatives who have received a general instruction from their electors, should wait to be particularly instructed on every affair, as is practiced in the diets of Germany. True it is that by this way of proceeding, the speeches of the deputies might with greater propriety be called the voice of the nation: but on the other hand, this would throw them into infinite delays, would give each deputy a power of controlling the assembly; and on the most urgent and pressing occasions the springs of the nation might be stopped by a single caprice.

When the deputies, as Mr. Sidney well observes, represent a body of people as in Holland, they ought to be accountable to their constituents: but it is a different thing in England, where they are deputed by boroughs.

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation, as to be deemed to have no will of their own.

One great fault there was in most of the ancient republics; that the people had a right to active resolutions, such as require some execution, a thing of which they are absolutely incapable. They ought to have no hand in the government but for the chusing of representatives, which is within their reach. For tho' few can tell the exact degree of men's capacities, yet there are none but are capable of knowing in general whether the person they chuse is better qualified than most of his neighbours.

Neither ought the representative body to be chosen for the active resolutions, for which it is not so fit; but for the enacting of laws, or to see whether the laws already enacted be duly executed, a thing they are very capable of, and which none indeed but themselves can properly perform.

In a state there are always persons distinguished by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have therefore in the legislature ought to be proportioned to the other advantages in the state; which happens only when they form a body that has a right to

put a stop to the enterprizes of the people, as the people have a right to oppose any incroachment of theirs.

The legislative power is therefore committed to the body of the nobles, and to the body chosen to represent the people, which have each their assemblies and deliberations apart, each their separate view and interests.

Of the three powers above-mentioned the judiciary is in some measure next to nothing. There remains therefore only two; and as these have need of a regulating power to temper them, the part of the legislative body composed of the nobility is extremely proper for this very purpose.

The body of the nobility ought to be hereditary. In the first place it is so in its own nature; and in the next there must be a considerable interest to preserve its privileges; privileges that in themselves are obnoxious to popular envy, and of course in a free state are always in danger.

But as an hereditary power might be tempted to pursue its own particular interests, and forget those of the people; it is proper that where they may reap a singular advantage from being corrupted, as in the laws relating to the supplies, they should have no other share in the legislation, than the power of rejecting, and not that of resolving.

By *the power of resolving*, I mean the right of ordaining by their own authority, or of amending what has been ordained by others. By the *power of rejecting*, I would be understood to mean the right of annulling a resolution taken by another; which was the power of the tribunes at Rome. And tho' the person possessed of the privilege of rejecting may likewise have the right of approving, yet this approbation passes for no more than a declaration, that he intends to make no use of his privilege of rejecting, and is derived from that very privilege.

The executive power ought to be in the hands of a monarch; because this branch of government, having need of expedition, is better administered by one than by many: whereas, whatever depends on the legislative power is oftentimes better regulated by many than by a single person.

But if there was no monarch, and the executive power was committed to a certain number of persons selected from the legislative body, there would be an end then of

liberty; by reason the two powers would be united, as the same persons would actually sometimes have, and would moreover be always able to have, a share in both.

Were the legislative body to be a considerable time without meeting, this would likewise put an end to liberty. For of two things one would naturally follow; either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and moreover would cut out too much work for the executive power, so as to take off its attention from executing, and oblige it to think only of defending its own prerogatives and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body was once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next: but were it to be always the same body, the people upon seeing it once corrupted, would no longer expect any good from its laws; and of course they would either become desperate or fall into a state of indolence.

The legislative body should not assemble of itself. For a body is supposed to have no will but when it is assembled; and besides were it not to assemble unanimously, it would be impossible to determine which was really the legislative body, the part assembled, or the other. And if it had a right to prorogue itself, it might happen never to be prorogued; which would be extremely dangerous in case it should ever attempt to inroach on the executive power. Besides there are seasons, some of which are more proper than others, for assembling the legislative body: it is fit therefore that the executive power should regulate the time of convening, as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself.

Were the executive power not to have a right of putting a stop to the encroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper on the other hand that the legislative power should have a right to stop the executive. For as the execution has its natural limits, it is useless to confine it; besides the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the execution itself; which was attended with infinite mischiefs.

But if the legislative power in a free government has no right to stay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Cosmi and the Ephori gave no account of their administration.

But whatever may be the issue of that examination, the legislative body ought not to have a power of judging the person, nor of course the conduct of him who is intrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried, there is an end of liberty.

In this case the state would be no longer a monarchy, but a kind of republican, tho' not a free, government. But as the person intrusted with the executive power cannot abuse it without bad counsellors, and such as have the laws as ministers, tho' the laws favour them as subjects; these men may be examined and punished. An advantage which this government has over that of *Gnidus*, where the law allowed of no such thing as calling the *Amymones*³⁴ to an account, even after their administration and therefore the people could never obtain any satisfaction for the injuries done them.

Tho' in general the judiciary power ought not to be united with any part of the legislative, yet this is liable to three exceptions founded on the particular interest of the party accused.

The great are always obnoxious to popular envy; and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meanest subject is possessed of in a free state, of being tried by their peers. The nobility for this reason ought not to be cited before the ordinary courts of judicature, but before that part of the legislature which is composed of their own body.

It is possible that the law, which is clear-sighted in one sense, and blind in another, might in some cases be too severe. But as we have already observed, the national judges

are no more than the mouth that pronounces the words of the law, mere passive beings incapable of moderating either its force or rigor. That part therefore of the legislative body, which we have just now observed to be a necessary tribunal on another occasion, is also a necessary tribunal in this; it belongs to its supreme authority to moderate the law in favour of the law itself, by mitigating the sentence.

It might also happen that a subject intrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not, or would not punish. But, in general the legislative power cannot judge; and much less can it be a judge in this particular case, where it represents the party concerned, which is the people. It can only therefore impeach. But before what court shall it bring its impeachment? Must it go and demean itself before the ordinary tribunals, which are its inferiors, and being composed moreover of men who are chosen from the people as well as itself, will naturally be swayed by the authority of so powerful an accuser? No: in order to preserve the dignity of the people, and the security of the subject, the legislative part which represents the nobility, must bring in its charge before the legislative part which represents the nobility, who have neither the same interests nor the same passions.

Here is an advantage which this government has over most of the ancient republics, where there was this abuse, that the people were at the same time both judge and accuser.

The executive power, pursuant to what has been already said, ought to have a share in the legislature by the power of rejecting, otherwise it would soon be stripp'd of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone.

If the prince were to have a share in the legislature by the power of resolving, liberty would be lost. But as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting.

The change of government at Rome was owing to this, that neither the senate who had one part of the executive power, nor the magistrates who were entrusted with the other, had the right of rejecting, which was entirely lodged in the people.

Here then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, one checks, the other, by the mutual

privilege of rejecting. They are both checked by the executive power, as the executive is by the legislative.

These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still to move in concert.