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***The Spirit of Laws*** **(Excerpts)**

By Charles de Secondat, Baron de Montesquieu

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PREFACE

IF amidst the infinite number of subjects contained in this book there is anything which, contrary to my expectation, may possibly offend, I can at least assure the public that it was not inserted with an ill intention: for I am not naturally of a captious temper. Plato thanked the gods that he was born in the same age with Socrates: and for my part I give thanks to the Supreme that I was born a subject of that government under which I live; and that it is His pleasure I should obey those whom He has made me love. I beg one favour of my readers, which I fear will not be granted me; this is, that they will not judge by a few hours' reading of the labour of twenty years; that they will approve or condemn the book entire, and not a few particular phrases. If they would search into the design of the author, they can do it in no other way so completely as by searching into the design of the work. I have first of all considered mankind; and the result of my thoughts has been, that amidst such an infinite diversity of laws and manners, they were not solely conducted by the caprice of fancy.

I have laid down the first principles, and have found that the particular cases follow naturally from them; that the histories of all nations are only consequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent.

When I have been obliged to look back into antiquity, I have endeavoured to assume the spirit of the ancients, lest I should consider those things as alike which are really different; and lest I should miss the difference of those which appear to be alike.

I have not drawn my principles from my prejudices, but from the nature of things.

Here a great many truths will not appear till we have seen the chain which connects them with others. The more we enter into particulars, the more we shall perceive the certainty of the principles on which they are founded. I have not even given all these particulars, for who could mention them all without a most insupportable fatigue?

The reader will not here meet with any of those bold flights which seem to characterise the works of the

present age. When things are examined with never so small a degree of extent, the sallies of imagination must vanish; these generally arise from the mind's collecting all its powers to view only one side of the subject, while it leaves the other unobserved.

I write not to censure anything established in any country whatsoever. Every nation will here find the reasons on which its maxims are founded; and this will be the natural inference, that to propose alterations belongs only to those who are so happy as to be born with a genius capable of penetrating the entire constitution of a state.

It is not a matter of indifference that the minds of the people be enlightened. The prejudices of magistrates have arisen from national prejudice. In a time of ignorance they have committed even the greatest evils without the least scruple; but in an enlightened age they even tremble while conferring the greatest blessings. They perceive the ancient abuses; they see how they must be reformed; but they are sensible also of the abuses of a reformation. They let the evil continue, if they fear a worse; they are content with a lesser good, if they doubt a greater. They examine into the parts, to judge of them in connection; and they examine all the causes, to discover their different effects.

Could I but succeed so as to afford new reasons to every man to love his prince, his country, his laws; new reasons to render him more sensible in every nation and government of the blessings he enjoys, I should think myself the most happy of mortals.

Could I but succeed so as to persuade those who command, to increase their knowledge in what they ought to prescribe; and those who obey, to find a new pleasure resulting from obedience—I should think myself the most happy of mortals.

The most happy of mortals should I think myself could I contribute to make mankind recover from their prejudices. By prejudices I here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves.

It is in endeavouring to instruct mankind that we are best able to practise that general virtue which comprehends the love of all. Man, that flexible being, conforming in society to the thoughts and impressions of others, is equally capable of knowing his own nature, whenever it is laid open to his view; and of losing the very sense of it, when this idea is banished from his mind.

Often have I begun, and as often have I laid aside, this undertaking. I have a thousand times given the leaves I had written to the winds: I, every day, felt my paternal hands fall. I have followed my object without any fixed plan: I have known neither rules nor exceptions; I have found the truth, only to lose it again. But when I once discovered my first principles, everything I sought for appeared; and in the course of twenty years, I have seen my work begun, growing up, advancing to maturity, and finished.

If this work meets with success, I shall owe it chiefly to the grandeur and majesty of the subject. However, I do not think that I have been totally deficient in point of genius. When I have seen what so many great men both in France, England, and Germany have said before me, I have been lost in admiration; but I have not lost my courage: I have said with Correggio, “And I also am a painter.”

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1. For the better understanding of the first four books of this work, it is to be observed that what I distinguish by the name of virtue, in a republic, is the love of one's country, that is, the love of equality. It is not a moral, nor a Christian, but a political virtue; and it is the spring which sets the republican government in motion, as honour is the spring which gives motion to monarchy. Hence it is that I have distinguished the love of one's country, and of equality, by the appellation of political virtue. My ideas are new, and therefore I have been obliged to find new words, or to give new acceptations to old terms,

in order to convey my meaning. They, who are unacquainted with this particular, have made me say most strange absurdities, such as would be shocking in any part of the world, because in all countries and governments morality is requisite.

2. The reader is also to notice that there is a vast difference between saying that a certain quality, modification of the mind, or virtue, is not the spring by which government is actuated, and affirming that it is not to be found in that government. Were I to say such a wheel or such a pinion is not the spring which sets the watch going, can you infer thence that they are not to be found in the watch? So far is it from being true that the moral and Christian virtues are excluded from monarchy, that even political virtue is not excluded. In a word, honour is found in a republic, though its spring be political virtue; and political virtue is found in a monarchical government, though it be actuated by honour.

To conclude, the honest man of whom we treat in the third book, chapter 5, is not the Christian, but the political honest man, who is possessed of the political virtue there mentioned. He is the man who loves the laws of his country, and who is actuated by the love of those laws. I have set these matters in a clearer light in the present edition, by giving a more precise meaning to my expression: and in most places where I have made use of the word virtue I have taken care to add the term political.

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## Book I. Of Laws in General

### 1. Of the Relation of Laws to different Beings.

Laws, in their most general signification, are the necessary relations arising from the nature of things. In this sense all beings have their laws: the Deity[1] His laws, the material world its laws, the intelligences superior to man their laws, the beasts their laws, man his laws.

They who assert that a blind fatality produced the various effects we behold in this world talk very absurdly; for can anything be more unreasonable than to pretend that a blind fatality could be productive of intelligent beings?

There is, then, a prime reason; and laws are the relations subsisting between it and different beings, and the relations of these to one another.

God is related to the universe, as Creator and Preserver; the laws by which He created all things are those by which He preserves them. He acts according to these rules, because He knows them; He knows them, because He made them; and He made them, because they are in relation to His wisdom and power.

Since we observe that the world, though formed by the motion of matter, and void of understanding, subsists through so long a succession of ages, its motions must certainly be directed by invariable laws; and could we imagine another world, it must also have constant rules, or it would inevitably perish.

Thus the creation, which seems an arbitrary act, supposes laws as invariable as those of the fatality of the Atheists. It would be absurd to say that the Creator might govern the world without those rules, since without them it could not subsist.

These rules are a fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, or lost, according to the relations of the quantity of matter and velocity; each diversity is uniformity, each change is constancy.

Particular intelligent beings may have laws of their own making, but they have some likewise which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible

justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal.

We must therefore acknowledge relations of justice antecedent to the positive law by which they are established: as, for instance, if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to show their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence; if one intelligent being injures another, it deserves a retaliation; and so on.

But the intelligent world is far from being so well governed as the physical. For though the former has also its laws, which of their own nature are invariable, it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error; and on the other, their nature requires them to be free agents. Hence they do not steadily conform to their primitive laws; and even those of their own instituting they frequently infringe.

Whether brutes be governed by the general laws of motion, or by a particular movement, we cannot determine. Be that as it may, they have not a more intimate relation to God than the rest of the material world; and sensation is of no other use to them than in the relation they have either to other particular beings or to themselves.

By the allurement of pleasure they preserve the individual, and by the same allurement they preserve their species. They have natural laws, because they are united by sensation; positive laws they have none, because they are not connected by knowledge. And yet they do not invariably conform to their natural laws; these are better observed by vegetables, that have neither understanding nor sense.

Brutes are deprived of the high advantages which we have; but they have some which we have not. They have not our hopes, but they are without our fears; they are subject like us to death, but without knowing it; even most of them are more attentive than we to self-preservation, and do not make so bad a use of their passions.

Man, as a physical being, is like other bodies governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loses; and as a sensible creature, he is hurried away by a thousand impetuous passions. Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures; legislators have therefore by political and civil laws confined him to his duty.

**2. Of the Laws of Nature**.

Antecedent to the above-mentioned laws are those of nature, so called, because they derive their force entirely from our frame and existence. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society: the laws received in such a state would be those of nature.

The law which, impressing on our minds the idea of a Creator, inclines us towards Him, is the first in importance, though not in order, of natural laws. Man in a state of nature would have the faculty of knowing, before he had acquired any knowledge. Plain it is that his first ideas would not be of a speculative nature; he would think of the preservation of his being, before he would investigate its origin. Such a man would feel nothing in himself at first but impotency and weakness; his fears and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in forests,[2] trembling at the motion of a leaf, and flying from every shadow.

In this state every man, instead of being sensible of his equality, would fancy himself inferior. There would therefore be no danger of their attacking one another; peace would be the first law of nature.

The natural impulse or desire which Hobbes attributes to mankind of subduing one another is far from being well founded. The idea of empire and dominion is so complex, and depends on so many other notions, that it could never be the first which occurred to the human understanding.

Hobbes[3] inquires, “For what reason go men armed, and have locks and keys to fasten their doors, if they be not naturally in a state of war?” But is it not obvious that he attributes to mankind before the establishment of society what can happen but in consequence of this establishment, which furnishes them with motives for hostile attacks and self-defence?

Next to a sense of his weakness man would soon find that of his wants. Hence another law of nature would prompt him to seek for nourishment.

Fear, I have observed, would induce men to shun one another; but the marks of this fear being reciprocal, would soon engage them to associate. Besides, this association would quickly follow from the very pleasure one animal feels at the approach of another of the same species. Again, the attraction arising from the difference of sexes would enhance this pleasure, and the natural inclination they have for each other would form a third law.

Beside the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge; and thence arises a second tie, which brutes have not. Mankind have therefore a new motive of uniting; and a fourth law of nature results from the desire of living in society.

**3. Of Positive Laws.**

As soon as man enters into a state of society he loses the sense of his weakness; equality ceases, and then commences the state of war.

Each particular society begins to feel its strength, whence arises a state of war between different nations. The individuals likewise of each society become sensible of their force; hence the principal advantages of this society they endeavour to convert to their own emolument, which constitutes a state of war between individuals.

These two different kinds of states give rise to human laws. Considered as inhabitants of so great a planet, which necessarily contains a variety of nations, they have laws relating to their mutual intercourse, which is what we call the law of nations. As members of a society that must be properly supported, they have laws relating to the governors and the governed, and this we distinguish by the name of politic law. They have also another sort of law, as they stand in relation to each other; by which is understood the civil law.

The law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good they can, and in time of war as little injury as possible, without prejudicing their real interests.

The object of war is victory; that of victory is conquest; and that of conquest preservation. From this and the preceding principle all those rules are derived which constitute the law of nations.

All countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners: for they send and receive ambassadors, and understand the rights of war and peace. The mischief is that their law of nations is not founded on true principles.

Besides the law of nations relating to all societies, there is a polity or civil constitution for each

particularly considered. No society can subsist without a form of government. “The united strength of individuals,” as Gravina[4] well observes, “constitutes what we call the body politic.”

The general strength may be in the hands of a single person, or of many. Some think that nature having established paternal authority, the most natural government was that of a single person. But the example of paternal authority proves nothing. For if the power of a father relates to a single government, that of brothers after the death of a father, and that of cousins-german after the decease of brothers, refer to a government of many. The political power necessarily comprehends the union of several families.

Better is it to say, that the government most conformable to nature is that which best agrees with the humour and disposition of the people in whose favour it is established.

The strength of individuals cannot be united without a conjunction of all their wills. “The conjunction of those wills,” as Gravina again very justly observes, “is what we call the civil state.”

Law in general is human reason, inasmuch as it governs all the inhabitants of the earth: the political and civil laws of each nation ought to be only the particular cases in which human reason is applied.

They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another.

They should be in relation to the nature and principle of each government; whether they form it, as may be said of politic laws; or whether they support it, as in the case of civil institutions.

They should be in relation to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered.

This is what I have undertaken to perform in the following work. These relations I shall examine, since all these together constitute what I call the Spirit of Laws.

I have not separated the political from the civil institutions, as I do not pretend to treat of laws, but of their spirit; and as this spirit consists in the various relations which the laws may bear to different objects, it is not so much my business to follow the natural order of laws as that of these relations and objects.

I shall first examine the relations which laws bear to the nature and principle of each government; and as this principle has a strong influence on laws, I shall make it my study to understand it thoroughly: and if I can but once establish it, the laws will soon appear to flow thence as from their source. I shall proceed afterwards to other and more particular relations.

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[1] “Law,” says Plutarch, “is the king of mortal and immortal beings.” See his treatise, A Discourse to an Unlearned Prince.

[2] Witness the savage found in the forests of Hanover, who was carried over to England during the reign of George I.

[3] In pref., De cive.

[4] Italian poet and jurist, 1664–1718.

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