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C. M. Smith.  
Oct. 15 1847.

ADVICE

TO THE

PRIVILEGED ORDERS

IN THE

SEVERAL STATES OF EUROPE,

RESULTING FROM THE

NECESSITY AND PROPRIETY

OF

A GENERAL REVOLUTION IN THE  
PRINCIPLE OF GOVERNMENT.

REPRODUCTION  
OF  
THE  
ORIGINAL  
MANUSCRIPT

Oct. 15 1847

PART I.

49  
135

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## ADVERTISEMENT.

**SPEEDILY** will be published the second part of this work ; in which will be treated the four last subjects mentioned in the plan, as explained in the Introduction : viz. *Revenue and Public Expenditure, Means of Subsistence, Literature, Sciences and Arts, War and Peace.*

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## ERRATUM.

Page 8, line 2 from bottom, for *or* read *of*.



# ADVICE

TO THE

PRIVILEGED ORDERS.

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## INTRODUCTION

**T**HE French Revolution is at last not only accomplished, but its accomplishment universally acknowledged, beyond contradiction abroad, or the power of retraction at home. It has finished its work, by organizing a government, on principles approved by reason; an object long contemplated by different writers, but never before exhibited, in this quarter of the globe. The experiment now in operation will solve a question of the first magnitude in human affairs: Whether *Theory* and *Practice*, which always agree together in things of slighter moment, are really to remain eternal enemies in the highest concerns of men?

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The change of government in France is, properly speaking, a renovation of society; an object peculiarly fitted to hurry the mind into a field of thought, which can scarcely be limited by the concerns of a nation, or the improvements of an age. As there is a tendency in human nature to imitation; and, as all the apparent causes exist in most of the governments of the world, to induce the people to wish for a similar change, it becomes interesting to the cause of humanity, to take a deliberate view of the real nature and extent of this change, and find what are the advantages and disadvantages to be expected from it.

There is not that necromancy in politics, which prevents our foreseeing, with tolerable certainty, what is to be the result of operations so universal, in which all the people concur. Many truths are as perceptible when first presented to the mind, as an age or a world of experience could make them; others require only an indirect and collateral experience; some demand an experience direct and positive.

It is happy for human nature, that in morals we have much to do with this first class of truths, less with the second, and very little with the third; while in physics we are perpetually driven to the slow process of patient and positive experience.

The Revolution in France certainly comes recommended to us under one aspect which renders it at first view extremely inviting: it is the work of argument and rational conviction, and not of the sword. The *ultima ratio regum* had nothing to do with it. It was an operation designed for the benefit of the people; it originated in the people, and was conducted by the people. It had therefore a legitimate origin; and this circumstance entitles it to our serious contemplation, on two accounts: because there is something venerable in the idea, and because other nations, in similar circumstances, will certainly be disposed to imitate it.

I shall therefore examine the nature and consequences of a similar revolution in government, as it will affect the following principal objects, which

make up the affairs of nations in the present state of Europe :

- I. The feudal System,
- II. The Church,
- III. The Military,
- IV. The Administration of Justice,
- V. Revenue and public Expenditure,
- VI. The Means of Subsistence,
- VII. Literature, Sciences and Arts,
- VIII. War and Peace.

The interests of kings and hereditary succession will not be forgotten in this arrangement ; they will be treated with the privileged orders under the several heads to which their different claims belong.

It must be of vast importance to all the classes of society, as it now stands classed in Europe, to  
calculate

calculate before hand what they are to gain or to lose by the approaching change; that, like prudent stock-jobbers, they may buy in or sell out, according as this great event shall affect them.

Philosophers and contemplative men, who may think themselves disinterested spectators of so great a political drama, will do well to consider how far the catastrophe is to be beneficial or detrimental to the human race; in order to determine whether in conscience they ought to promote or discourage, accelerate or retard it, by the publication of their opinions. It is true, the work was set on foot by this sort of men; but they have not all been of the same opinion relative to the best organization of the governing power, nor how far the reform of abuses ought to extend. Montesquieu, Voltaire, and many other respectable authorities, have accredited the principle, that republicanism is not convenient for a great state. Rousseau and others take no notice of the distinction between great and small states, in deciding, that this is the only government proper to ensure the happiness, and support the dignity of man. Of the former opinion

was a great majority of the constituting national assembly of France. Probably not many years will pass, before a third opinion will be universally adopted, never to be laid aside; That the republican principle is not only proper and safe for the government of any people; but, that its propriety and safety are in proportion to the magnitude of the society and the extent of the territory.

Among sincere enquirers after truth, all general questions on this subject reduce themselves to this; Whether men are to perform their duties by an easy choice or an expensive cheat; or, whether our reason be given us to be improved or stifled, to render us greater or less than brutes, to increase our happiness or aggravate our misery.

Among those whose anxieties arise only from interest, the enquiry is, how their privileges or their professions are to be affected by the new order of things. These form a class of men respectable both for their numbers and their sensibility; it is our duty to attend to their case. I sincerely hope to administer some consolation to them in the



course of this essay. And though I have a better opinion of their philanthropy, than political opponents generally entertain of each other, yet I do not altogether rely upon their presumed sympathy with their fellow-citizens, and their supposed willingness to sacrifice to the public good ; but I hope to convince them, that the establishment of general liberty will be less injurious to those who now live by abuses, than is commonly imagined ; that protected industry will produce effects far more astonishing than have ever been calculated ; that the increase of enjoyments will be such, as to ameliorate the condition of every human creature.

To persuade this class of mankind that it is neither their duty nor their interest to endeavour to perpetuate the ancient forms of government, would be a high and holy office ; it would be the greatest act of charity to them, as it might teach them to avoid a danger that is otherwise unavoidable ; it would preclude the occasion of the people's indulging what is sometimes called a ferocious disposition, which is apt to grow upon the revenge of injuries, and render them less harmonious in their

new station of citizens ; it would prevent the civil wars, which might attend the insurrections of the people, where there should be a great want of unanimity,—for we are not to expect in every country that mildness and dignity which have uniformly characterized the French, even in their most tumultuous movements \* : it would remove every  
obstacle

\* Whatever reason may be given for the fact, I believe all those who have been witnesses of what are called *mobs* in France (during the revolution) will join with me in opinion, that they were by no means to be compared with English mobs, in point of indiscriminate ferocity and private plunder. A popular commotion in Paris was uniformly directed to a certain well-explained object ; from which it never was known to deviate. Whether this object were to hang a man, to arrest the king, to intimidate the court, or to break the furniture of a hotel, all other persons and all other property, that fell in the way of the mob, were perfectly safe.

The truth is, those collections were composed of honest and industrious people, who had nothing in view but the public good. They believed that the cause of their country required an execution of justice more prompt than could be expected from any established tribunal. Besides, they were in the crisis of a revolution, when they were sensible, that the crimes or their enemies would remain unpunished, for want of a known  
rule

obstacle and every danger that may seem to attend that rational system of public felicity to which the nations of Europe are moving with rapid strides, and which in prospect is so consoling to the enlightened friends of humanity,

To induce the men who now govern the world to adopt these ideas, is the duty of those who now possess them. I confess the task at first view appears more than Herculean; it will be thought an object from which the eloquence of the closet must shrink in despair, and which prudence would leave to the more powerful argument of events. But I believe at the same time that some success may be expected; that though the harvest be great, the

rule by which they could be judged. Though a violation of *right*, is not always a violation of *law*; yet, in their opinion, occasions might exist, when it would be dangerous to let it pass with impunity.

It is indeed to be hoped, that, whenever mobs in other countries shall be animated by the same cause, they will conduct themselves with the same dignity; and that this singular phenomenon will be found not altogether attributable to national character.

laborers

laborers may not be few ; that prejudice and interest cannot always be relied on to garrison the mind against the assaults of truth. This belief, ill-grounded as it may appear, is sufficient to animate me in the cause ; and to the venerable host of republican writers, who have preceded me in the discussions occasioned by the French revolution, this belief is my only apology for offering to join the fraternity, and for thus practically declaring my opinion, that they have not exhausted the subject.

Two very powerful weapons, the force of reason and the force of numbers, are in the hands of the political reformers. While the use of the first brings into action the second, and ensures its co-operation, it remains a sacred duty, imposed on them by the God of reason, to wield with dexterity this mild and beneficent weapon, before recurring to the use of the other ; which, though legitimate, may be less harmless ; though infallible in operation, may be less glorious in victory.

The tyrannies of the world, whatever be the appellation of the government under which they are exercised, are all aristocratical tyrannies. An ordinance to plunder and murder, whether it fulminate from the Vatican, or steal silently forth from the Harem; whether it come clothed in the *certain science* of a Bed of Justice, or in the legal solemnities of a bench of lawyers; whether it be purchased by the careffes of a woman, or the treasures of a nation,—never confines its effects to the benefit of a single individual; it goes to enrich the whole combination of conspirators, whose business it is to dupe and to govern the nation. It carries its own bribery with itself through all its progress and connexions,—in its origination, in its enactment; in its vindication, in its execution; it is a fertilizing stream, that waters and vivifies its happy plants in the numerous channels of its communication. Ministers and secretaries, commanders of armies, contractors, collectors and tide-waiters, intendants, judges and lawyers,—whoever is permitted to drink of the salutary stream,—are all interested in removing the obstructions and in praising the fountain from whence it flows.

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The state of human nature requires that this should be the case. Among beings so nearly equal in power and capacity as men of the same community are, it is impossible that a solitary tyrant should exist. Laws that are designed to operate unequally on society, must offer an exclusive interest to a considerable portion of its members, to ensure their execution upon the rest. Hence has arisen the necessity of that strange complication in the governing power, which has made of politics an inexplicable science; hence the reason for arming one class of our fellow-creatures with the weapons of bodily destruction, and another with the mysterious artillery of the vengeance of heaven; hence the cause of what in England is called the independence of the judges, and what on the continent has created a judiciary nobility, a set of men who purchase the privilege of being the professional enemies of the people, of selling their decisions to the rich, and of distributing individual oppression; hence the source of those Draconian codes of criminal jurisprudence which enshrine the idol Property in a bloody sanctuary, and teach the modern European, that his life is of less value than the

the shoes on his feet; hence the positive discouragements laid upon agriculture, manufactures, commerce, and every method of improving the condition of men; for it is to be observed, that in every country the shackles imposed upon industry are in proportion to the degree of general despotism that reigns in the government. This arises not only from the greater debility and want of enterprise in the people, but from the superior necessity that such governments are under, to prevent their subjects from acquiring that ease and information, by which they could discern the evil and apply the remedy.

To the same fruitful source of calamities we are to trace that perversity of reason, which, in governments where men are permitted to discuss political subjects, has given rise to those perpetual shifts of sophistry by which they vindicate the prerogative of kings. In one age it is the *right of conquest*, in another *the divine right*, then it comes to be *a compact between king and people*, and last of all, it is said to be founded on general convenience, *the good of the whole community*. In Eng-  
land

land these several arguments have all had their day ; though it is astonishing that the two former could ever have been the subjects of rational debate : the first is the logic of the musquet, and the second of the chalice ; the one was buried at Rennimedg on the signature of Magna Charta, the other took its flight to the continent with James the Second. The compact of king and people has lain dormant the greater part of the present century ; till it was roused from slumber by the French revolution, and came into the service of Mr. Burke.

Hasty men discover their errors when it is too late. It had certainly been much more consistent with the temperament of that writer's mind, and quite as serviceable to his cause, to have recalled the fugitive claim of the divine right of kings. It would have given a mystic force to his declamation, afforded him many new epithets, and furnished subjects perfectly accordant with the copious charges of *sacrilege, atheism, murders, assassinations, rapes and plunders* with which his three volumes abound. He then could not have disap-  
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pointed his friends by his total want of argument, as he now does in his two first essays; for on such a subject no argument could be expected; and in his third, where it is patiently attempted, he would have avoided the necessity of showing that he has none, by giving a different title to his book; for the "appeal," instead of being "from the new to the old whigs," would have been *from the new whigs to the old Tories*; and he might as well have appealed to Cæsar; he could have found at this day no court to take cognizance of his cause.

But the great advantage of this mode of handling the subject would have been, that it could have provoked no answers; the gauntlet might have been thrown, without a champion to have taken it up; and the last solitary admirer of chivalry have retired in negative triumph from the field.

Mr. Burke, however, in his defence of royalty, does not rely on this argument of the compact. Whether it be, that he is conscious of its futility; or that in his rage he forgets that he has used it,  
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he is perpetually recurring to the last ground that has yet been heard of, on which we are called upon to consider kings even as a tolerable nuisance, and to support the existing forms of government: this ground is *the general good of the community*. It is said to be dangerous to pull down systems that are already formed, or even to attempt to improve them; and it is likewise said, that, were they peaceably destroyed, and we had society to build up anew, it would be best to create hereditary kings, hereditary orders, and exclusive privileges.

These are sober opinions, uniting a class of reasoners too numerous and too respectable to be treated with contempt. I believe however that their number is every day diminishing, and I believe the example which France will soon be obliged to exhibit to the world on this subject, will induce every man to reject them, who is not personally and exclusively interested in their support.

The inconsistency of the constituting assembly, in retaining an hereditary king, armed with an enormous civil list, to wage war with a popular government,

vernment, has induced some persons to predict the downfall of their constitution. But this measure had a different origin from what is commonly assigned to it, and will probably have a different issue. It was the result rather of local and temporary circumstances, than of any general belief in the utility of kings, under any modifications or limitations that could be attached to the office.

It is to be observed, *first*, that the French had a king upon their hands. This king had always been considered as a well-disposed man; so that, by a fatality somewhat singular, though not unexampled in *regal history*, he gained the love of the people, almost in proportion to the mischief which he did them. *Secondly*, their king had very powerful family connexions, in the sovereigns of Spain, Austria, Naples and Sardinia; besides his relations within the kingdom, whom it was necessary to attach, if possible, to the interests of the community. *Thirdly*, the revolution was considered by all Europe as a high and dangerous experiment. It was necessary to hide as much as possible the appearance of its magnitude from the

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eye of the distant observer. The reformers considered it as their duty to produce an internal regeneration of society, rather than an external change in the appearance of the court; to set in order the counting-house and the kitchen, before arranging the drawing-room. This would leave the sovereigns of Europe totally without a pretext for interfering; while it would be consoling to that class of philosophers, who still believed in the compatibility of royalty and liberty. *Fourthly*, this decree, That *France should have a king, and that he could do no wrong*, was passed at an early period of their operations; when the above reasons were apparently more urgent than they were afterwards, or probably will ever be again.

From these considerations we may conclude, that royalty is preserved in France for reasons which are fugitive; that a majority of the constituting assembly did not believe in it, as an abstract principle; that a majority of the people will learn to be disgusted with so unnatural and ponderous a deformity in their new edifice, and will soon hew it off.

After this improvement shall have been made, a few years experience in the face of Europe, and on so great a theatre as that of France; will probably leave but one opinion in the minds of honest men, relative to the republican principle, or the great simplicity of nature applied to the organization of society.

The example of America would have had great weight in producing this conviction; but it is too little known to the European reasoner, to be a subject of accurate investigation. Besides, the difference of circumstances between that country and the states of Europe has given occasion for imagining many distinctions which exist not in fact, and has prevented the application of principles which are permanently founded in nature, and follow not the trifling variations in the state of society.

But I have not prescribed to myself the task of entering into arguments on the utility of kings, or of investigating the meaning of Mr. Burke, in order to compliment him with an additional refutation. My subject furnishes a more extensive  
 C 2 scope.

scope. It depends not on me, or Mr. Burke, or any other writer, or description of writers, to determine the question, whether a change of government shall take place, and extend through Europe. It depends on a much more important class of men, the class that cannot write; and in a great measure, on those who cannot read. It is to be decided by men who reason better without books, than we do with all the books in the world. Taking it for granted, therefore, that a general revolution is at hand, whose progress is *irresistible*, my object is to contemplate its probable effects, and to comfort those who are afflicted at the prospect.

## CHAP. I.

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*Feudal System.*

THE most prominent feature in the moral face of Europe, was imprinted upon it by conquest. It is the result of the subordination necessary among military savages, on their becoming cultivators of the soil which they had desolated, and making an advantageous use of such of the inhabitants as they did not choose to massacre, and could not sell to foreigners for slaves.

The relation thus established between the officers and the soldiers, between the victors and the vanquished, and between them all and the lands which they were to cultivate, modified by the experience of unlettered ages, has obtained the name of the Feudal System, and may be considered as the foundation

dation of all the political institutions in this quarter of the world. The claims resulting to particular classes of men, under this modification of society, are called Feudal Rights; and to the individual possessors they are either nominal or real, conveying an empty title or a substantial profit.

My intention is not to enter on the details of this system, as a lawyer, or to trace its progress with the accuracy of an historian, and show its peculiar fitness to the rude ages of society which gave it birth. But, viewing it as an ancient edifice, whose foundation, worn away by the current of events, can no longer support its weight, I would sketch a few drawings, to show the style of its architecture, and compare it with the model of the new building to be erected in its place.

The *philosophy* of the Feudal System, is all that remains of it worthy of our contemplation. This I will attempt to trace in some of its leading points, leaving the practical part to fall, with its ancient founders and its modern admirers, into the peaceful



ful gulph of oblivion; to which I wish it a speedy and an unobstructed passage.

The original object of this institution was undoubtedly, what it was alledged to be, the preservation of turbulent societies, in which men are held together but by feeble ties; and it effected its purpose by uniting the personal interest of the head of each family, with the perpetual safety of the state. Thus far the purpose was laudable, and the means extremely well calculated for the end. But it was the fortune of this system to attach itself to those passions of human nature which vary not with the change of circumstances. While national motives ceased by degrees to require its continuance, family motives forbade to lay it aside. The same progressive improvements in society, which rendered military tenures and military titles first unnecessary and then injurious to the general interest, at the same time sharpened the avarice, and piqued the honor of those who possessed them, to preserve the exclusive privileges which rendered them thus distinguished. And these privileges, united with the operations of the church, have

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founded and supported the despotisms of Europe in all their divisions, combinations and refinements.

Feudal Rights are either *territorial* or *personal*. I shall divide them into these two classes, for the sake of bestowing a few observations upon each.

The pernicious effects of the system on territorial tenures are inconceivably various and great. In a legal view, it has led to those intricacies and vexations, which we find attached to every circumstance of real property, which have perplexed the science of civil jurisprudence, which have perpetuated the ignorance of the people relative to the administration of justice, rendered necessary the intervention of lawyers, and multiplied the means of oppression. But, in a political view, its consequences are still more serious, and demand a particular consideration.

The first quality of the feudal tenure is to confine the descendible property to the *eldest male issue*. To say that this is contrary to nature, is but a feeble

feeble expression. So abominable is its operation, that it has seduced and perverted nature; her voice is stifled, interest itself is laid asleep, and nothing but the eloquence of an incomprehensible pride is heard on the occasion. You will hear father and mother, younger brothers and sisters, rejoice in this provision of the law; the former consigning their daughters to the gloomy prison of a convent, and their younger sons to the church or the army, to ensure their celibacy; that no remnant of the family may remain but the heir of the estate entire; the latter congratulating each other, that the elder brother will transmit unimpaired the title and the property, while they themselves are content to perish in the obscurity of their several destinations. It is probable that, in another age, a tale of this kind will scarcely gain credit, and that the tear of sensibility may be spared by a disbelief of the fact. It is however no creature of the imagination; it happened every day in France previous to the revolution; I have seen it with my own eyes and heard it with my own ears; it is now to be seen and heard in most other catholic countries,

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But other points of view show this disposition of the law to be still more reprehensible in the eye of political philosophy. It swells the inequality of wealth, which, even in the best regulated society, is but too considerable; it habituates the people to believe in an unnatural inequality in the rights of men, and by this means prepares them for servility and oppression; it prevents the improvement of lands, and impedes the progress of industry and cultivation, which are best promoted on small estates, where proprietors cultivate for themselves; it discourages population, by inducing to a life of celibacy.—But I shall speak of celibacy when I speak of the church.

Whether men are born to govern, or to obey, or to enjoy equal liberty, depends not on the original capacity of the mind, but on the *instinct of analogy*, or the *habit of thinking*. When children of the same family are taught to believe in the unconquerable distinctions of birth among themselves, they are completely fitted for a feudal government; because their minds are familiarised with all the gradations and degradations that such a government

vernment requires. The birth-right of dominion is not more readily claimed on the one hand, than it is acknowledged on the other; and the Jamaica planter is not more habitually convinced that an European is superior to an African, than he is that a lord is better than himself.

This subject deserves to be placed in a light, in which no writer, as far as I know, has yet considered it. When a person was repeating to Fontenelle the common adage *l'habitude est la seconde nature*, the philosopher replied, *Et faites moi la grace de me dire, quelle est la première*. When we assert that nature has established *inequalities* among men, and has thus given to some the right of governing others, or when we maintain the *contrary* of this position, we should be careful to define what sort of nature we mean, whether the *first* or *second nature*; or whether we mean that there is but one. A mere savage, Colocolo \* for instance, would decide the question of equality by a trial of bodily strength, designating the man that could

\* See the Araucana of Ercilla.

lift the heaviest beam to be the legislator; and unless all men could lift the same beam, they could not be equal in their rights. Aristotle would give the preference to him that excelled in mental capacity. Ulysses would make the decision upon a compound ratio of both. But there appears to me another step in this ladder, and that the *habit of thinking* is the only safe and universal criterion to which, in practice, the question can be referred. Indeed, when interest is laid aside, it is the only one to which, in civilized ages, it ever is referred. We never submit to a king, because he is stronger than we in bodily force, nor because he is superior in understanding or in information; but because we believe him born to govern, or at least, because a majority of the society believes it.

This *habit of thinking* has so much of nature in it, it is so undistinguishable from the indelible marks of the man, that it is a perfectly safe foundation for any system that we may choose to build upon it; indeed it is the *only* foundation, for it is the only point of contact by which men communicate as moral associates. As a practical position there-

therefore, and as relating to almost all places and almost all times, in which the experiment has yet been made, Aristotle was as right in teaching, *That some are born to command, and others to be commanded,* as the national assembly was in declaring, *That men are born and always continue free and equal in respect to their rights.* The latter is as apparently false in the diet of Ratisbon, as the former is in the hall of the Jacobins.

Abstractedly considered, there can be no doubt of the unchangeable truth of the assembly's declaration; and they have taken the right method to make it a *practical* truth, by publishing it to the world for discussion. A general belief *that it is a truth,* makes it at once practical, confirms it in one nation, and extends it to others.

A due attention to the astonishing effects that are wrought in the world by *the habit of thinking,* will serve many valuable purposes. I cannot therefore dismiss the subject so soon as I intended; but will mention one or two instances of these effects,  
and

and leave the reflection of the reader to make the application to a thousand others.

*First*, It is evident that all the arbitrary systems in the world are founded and supported on this *second nature* of man, in counteraction of the *first*. Systems which distort and crush and subjugate every thing that we can suppose original and characteristic in man, as an undistorted being. It sustains the most absurd and abominable theories of religion, and honors them with as many martyrs as it does those that are the most peaceful and beneficent.

But *secondly*, we find for our consolation, that it will likewise support systems of equal liberty and national happiness. In the United States of America, the science of liberty is universally understood, felt and practised, as much by the simple as the wise, the weak as the strong. Their deep-rooted and inveterate habit of thinking is, that *all men are equal in their rights*, that *it is impossible to make them otherwise*; and this being their undisturbed belief, they have no conception how any  
man



man in his senses can entertain any other. This point once settled, every thing is settled. Many operations, which in Europe have been considered as incredible tales or dangerous experiments, are but the infallible consequences of this great principle. The first of these operations is *the business of election*, which with that people is carried on with as much gravity as their daily labor. There is no jealousy on the occasion, nothing lucrative in office ; any man in society may attain to any place in the government, and may exercise its functions. They believe that there is nothing more difficult in the management of the affairs of a nation, than the affairs of a family ; that it only requires more hands. They believe that it is the juggle of keeping up impositions to blind the eyes of the vulgar, that constitutes the intricacy of state. Banish the mysticism of inequality, and you banish almost all the evils attendant on human nature.

The people, being habituated to the election of all kinds of officers, the *magnitude* of the office makes no difficulty in the case. The president of the United States, who has more power while in office

office than some of the kings of Europe, is chosen with as little commotion as a churchwarden. There is a public service to be performed, and the people say who shall do it. The servant feels honored with the confidence reposed in him, and generally expresses his gratitude by a faithful performance.

Another of these operations is making every citizen a soldier, and every soldier a citizen; not only *permitting* every man to arm, but *obliging* him to arm. This fact, told in Europe previous to the French revolution, would have gained little credit; or at least it would have been regarded as a mark of an uncivilized people, extremely dangerous to a well ordered society. Men who build systems on an inversion<sup>d</sup> of nature, are obliged to invert every thing that is to make part of that system. It is *because the people are civilized, that they are with safety armed.* It is an effect of their conscious dignity, as citizens enjoying equal rights, that they wish not to invade the rights of others. The danger (where there is any) from armed citizens, is only to the *government*, not to the *society*; and as long as they have nothing to revenge in the go-  
vernment

vernment (which they cannot have while it is in their own hands) there are many advantages in their being accustomed to the use of arms, and no possible disadvantage.

*Power*, habitually in the hands of a whole community, loses all the ordinary associated ideas of power. The exercise of power is a relative term; it supposes an opposition,—something to operate upon. We perceive no exertion of power in the motion of the planetary system, but a very strong one in the movement of a whirlwind; it is because we see obstructions to the latter, but none to the former. Where the government is *not* in the hands of the people, there you find opposition, you perceive two contending interests, and get an idea of the exercise of power; and whether this power be in the hands of the government or of the people, or whether it change from side to side, it is always to be dreaded. But the word *people* in America has a different meaning from what it has in Europe. It there means the whole community, and comprehends every human creature; here it means something else, more difficult to define.

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Another consequence of the habitual idea of equality, is the *facility of changing the structure of their government* whenever and as often as the society shall think there is any thing in it to amend. As Mr. Burke has written no "reflections on the revolution" in America, the people there have never yet been told that they had no *right* "to frame a government for themselves;" they have therefore done much of this business, without ever affixing to it the idea of "sacrilege" or "usurpation," or any other term of rant to be found in that gentleman's vocabulary.

Within a few years the fifteen states have not only framed each its own state-constitution, and two successive federal constitutions; but since the settlement of the present general government in the year 1789, three of the states, Pennsylvania, South-Carolina and Georgia, have totally new modeled their own. And all this is done without the least confusion; the operation being scarcely known beyond the limits of the state where it is performed. Thus they are in the habit of "*choosing their own governors,*" of "*cashiering them for misconduct,*"

of

of "*framing a government for themselves,*" and all those abominable things, the mere naming of which, in Mr. Burke's opinion, has polluted the pulpit in the Old Jewry.

But it is said, These things will do very well for America, where the people are less numerous, less indigent, and better instructed; but they will not apply to Europe. This objection deserves a reply, not because it is solid, but because it is fashionable. It may be answered, that some parts of Spain, much of Poland, and almost the whole of Russia, are less peopled than the settled country in the United States; that poverty and ignorance are *effects* of slavery rather than its *causes*; but the best answer to be given, is the example of France. To the event of that revolution I will trust the argument. Let the people have time to become thoroughly and soberly grounded in the doctrine of *equality*; and there is no danger of oppression either from government or from anarchy. Very little instruction is necessary to teach a man his rights; and there is no person of common intellects in the most ignorant corner of Europe, but

receives lessons enough, if they were of the proper kind. For writing and reading are not indispensable to the object; it is *thinking* right which makes them act right. Every child is taught to repeat about fifty Latin prayers, which set up the Pope, the Bishop, and the King, as the trinity of his adoration; he is taught that *the powers that be are ordained of God*, and therefore the foldier quartered in the parish has a right to cut his throat. Half this instruction, upon opposite principles, would go a great way; in that case Nature would be assisted, while here she is counteracted. Engrave it on the heart of a man, *that all men are equal in rights*, and that the *government is their own*, and then persuade him to sell his crucifix and buy a musquet,—and you have made him a good citizen.

Another consequence of a settled belief in the equality of rights, is, that under this belief *there is no danger from Anarchy*. This word has likewise acquired a different meaning in America from what we read of it in books. In Europe it means confusion, attended with mobs and carnage, where the innocent perish with the guilty. But it is very different

different where a country is *used* to a representative government; though it should have an interval of no government at all. Where the people at large feel and know that they *can do every thing* by themselves personally, they really *do nothing* by themselves personally. In the heat of the American revolution, when the people in some states were for a long time without the least shadow of law or government, they always acted by committees and representation. This they must call anarchy, for they know no other.

These are materials for the formation of governments, which need not be dreaded, though disjointed and laid asunder to make some repairs. They are deep-rooted habits of thinking, which almost change the moral nature of man; they are principles as much unknown to the ancient republics as to the modern monarchies of Europe.

We must not therefore rely upon systems drawn from the experimental reasonings of Aristotle, when we find them contradicted by what we feel to be the eternal truth of nature, and see brought to

the test of our own experience. Aristotle was certainly a great politician; and Claudius Ptolemy was a great geographer; but the latter has said not a word of America, the largest quarter of the globe; nor the former, of representative republics, the resource of afflicted humanity.

Since I have brought these two great luminaries of science so near together, I will keep them in company a moment longer, to show the strange partiality that we may retain for one superstition after having laid aside another, though they are built on similar foundations. Ptolemy wrote a system of astronomy; in which he taught, among other things, that the earth was the centre of the universe, and that the heavenly bodies moved round it. This system is now taught (to the exclusion by anathema of all others) in Turkey, Arabia, Persia, Palestine, Egypt, and wherever the doctrines of Mahomet are taught; while at the same time, and with the same reverence, the politics of Aristotle are taught at the university of Oxford. The ground which supports the one is, that the sun stopt its course at the command of Joshua;



which it could not have done, had it not been in motion; and the other; that *the powers that be are ordained of God*. Mention to a Mussulman the Copernican system, and you might as well speak to Mr. Burke about the rights of man; they both call you an atheist.—But I will proceed with the feudal system.

The next quality of a feudal tenure is what is commonly called on the continent the right of *substitution*, in the English law, known by the name of *entail*. Of all the methods that have yet been discovered to prevent men from enjoying the advantages that nature has laid before them, this is the most extraordinary, and in many respects the most effectual. There have been superstitions entertained by many nations relative to property in lands; rendering them more difficult of alienation than other possessions, and consequently, less productive. Such was the *jus retractus* of the Romans, the family-right of redemption, and the absolute restoration once in fifty years among the Jews, similar regulations among the ancient Egyptians,

tians, and laws to the same purpose under the government of the Incas in Peru.

These were all calculated to perpetuate family distinctions, and to temper the minds of men to an aristocratical subordination. But none of them were attended with the barbarous exclusion of younger brothers; nor had they the presumption to put it into the power of a dying man, who could not regulate the disposition of his sandals for one hour, to say to all mankind thenceforward to the end of time, "Touch not my inheritance! I will that this tract of country, on which I have taken my pleasure, shall remain to the wild beasts and to the fowls of heaven; that one man only of each generation shall exist upon it; that all the rest, even of my own posterity, shall be driven out hence as soon as born; and that the inheritor himself shall not increase his enjoyments by alienating a part to ameliorate the rest."

There might have been individual madmen in all ages, capable of *expressing* a desire of this kind; but

but for whole nations, for many centuries together, to agree to *reverence* and *execute* such hostile testaments as these, comported not with the wisdom of the ancients; it is a suicide of society, reserved for the days of chivalry,—to support the governments of modern Europe,

Sir Edward Coke should have spared his panegyric on the parliament of Edward the first as the fathers of the law of entailments. He quotes with singular pleasure the words of Sir William Herle, who informs us that “ King Edward I. was the  
 “ wisest king that ever was, and they were sage  
 “ men who made this statute.” Whatever wisdom there is in the statute, is of an elder growth. It is a plant of genuine feudal extraction brought into England by the Normans or Saxons, or some other conquerors; and though settled as common law, it began to be disregarded and despised by the judicial tribunals, as a sense of good policy prevailed. But the progress of liberality was arrested by that parliament, and the law of entailments passed into the statute of Westminster the second,

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This was considered as law in America, previous to the revolution. But that epoch of light and liberty has freed one quarter of the world from this miserable appendage of Gothicism; and France has now begun to break the shackles from another quarter, where they were more strongly riveted. The simple destruction of these two laws, of *entailment* and *primogeniture*, if you add to it the *freedom of the press*, will ensure the continuance of liberty in any country where it is once established.

Other territorial rights, peculiar to the feudal tenure, are less general in their operation, though almost infinite in their number and variety. Not a current of water, nor a mill-seat, nor a fish-pond, nor a forest, nor the dividing line of a village or a farm, but gives name to and supports some seigniorial imposition; besides the numberless claims predicated upon all the possible actions and ceremonies that pass, or are supposed to pass, between the great lord and the little lord, and between the little lord and the less lord, and between him and the Lord knows whom. The national assembly in one decree suppressed about one hundred and fifty  
of

of these taxes by name, besides a general sweeping clause in the act, which perhaps destroyed as many more, the names of which no man could report.

One general character will apply to all these impositions: they are a discouragement to agriculture, an embarrassment to commerce, — they humiliate one part of the community, swell the pride of the other, and are a real pecuniary disadvantage to both.

But it is time to pay our respects to those feudal claims that we call *personal*. The first of these is *allegiance*,—in its genuine Gothic sense, called *perpetual allegiance*. It is difficult to express a suitable contempt for this idea, without descending to language below the dignity of philosophy. On the first investiture of a fief, the superior lord (supposing he had any right to it himself) has doubtless the power of granting it on whatever terms the vassal will agree to. It is an even bargain between the parties; and an unchangeable allegiance during the lives of these parties may be a condition

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tion of it. But for a man to be *born* to such an allegiance to another man, is to have an evil star indeed; it is to be born to unchangeable slavery.

A nobleman of Tuscany, at this moment, cannot step his foot over the limits of the duchy without leave from the Grand Duke, on pain of forfeiting his estate. Similar laws prevail in all feudal countries, where revolutions have not yet prevailed. They flee before the searching eye of liberty, and will soon flee from Europe.

Hitherto we have treated of claims, whether personal or territorial, that are confined to the eldest sons of families; but there is one genuine feudal claim, which "spreads undivided" to all the children, runs in all collateral directions, and extends to every drop of noble blood, wherever found, however mixt or adulterated,—it is the claim of *idleness*. In general it is supposed that all indigent noble children are to be provided for by the government. But alas! the swarm is too great to be easily hived. Though the army, the navy,  
and

and the church, with all their possible multiplication of places, are occupied only by them, yet, as celibacy deprives them not of the means of propagation, the number continues so considerable; that many remain out of employment and destitute of the means of support.

In contemplating the peculiar destiny of this description of men, we cannot but feel a mixture of emotions, in which compassion gets the better of contempt. In addition to the misfortunes incident to other classes of society, their noble birth has entailed upon them a singular curse; it has interdicted them every kind of business or occupation, even for procuring the necessaries of life. Other men may be found who have been deprived of their just inheritance by the barbarous laws of descent, who may have been neglected in youth and not educated to business, or who by aversion to industry are rendered incapable of any useful employment; but none but the offspring of a noble family can experience the superadded fatality of being told, that to put his hand to the plough, or  
his

his foot into a counting-house, would disgrace an illustrious line of ancestors, and wither a tree of genealogy, which takes its root in a groom of some fortunate robber, who perhaps was an archer of Charlemagne.

Every capital in Europe, if you except London, throngs with this miserable class of noblesse, who are really and literally tormented between their pride and their poverty. Indeed, such is the preposterous tyranny of custom, that those who are rich, and take the lead in society, have the cruelty to make *idleness a criterion of noblesse*. A proof of inoccupation is a ticket of admission into their houses, and an indispensable badge of welcome to their parties.

But in France their hands are at last untied; the charm is broken, and the feudal system, with all its infamous idolatries, has fallen to the ground. Honor is restored to the heart of man, instead of being suspended from his button-hole; and useful industry gives a title to respect. The men that  
 were



were formerly dukes and marquisses are now exalted to farmers, manufacturers and merchants; the rising generation among all classes of people are forming their maxims on a just estimate of things; and Society is extracting the poisoned dagger which conquest had planted in her vitals.

CHAP.

## CHAP. II.

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*The Church.*

**B**UT it would have been impossible for the feudal system, with all its powers of inversion, to have held human nature so long debased, without the aid of an agent more powerful than an arm of flesh, and without assailing the mind with other weapons than those which are furnished from its temporal concerns. Mankind are by nature religious; the governors of nations, or those persons who contrive to live upon the labors of their fellow-creatures, must necessarily be few, in comparison to those who bear the burthens of the whole; their object therefore is to dupe the community at large, to conceal the strength of the many, and magnify that of the few. An open arrangement of forces, whether physical or moral, must be artfully avoided;

avoided ; for men, however ignorant, are as naturally disposed to calculation, as they are to religion ; they perceive as readily that an hundred soldiers can destroy the captain they have made, as that thunder and lightning can destroy a man. Recourse must therefore be had to mysteries and invisibilities ; an engine must be forged out of the *religion* of human nature, and erected on its *credulity*, to play upon and extinguish the light of reason, which was placed in the mind as a caution to the one and a kind companion to the other.

This engine, in all ages of the world, has been the Church \*. It has varied its appellation, at  
different

\* From that association of ideas, which usually connects the *church* with *religion*, I may run the risque of being misunderstood by some readers, unless I advertise them, that I consider no connection as existing between these two subjects ; and that where I speak of church *indefinitely*, I mean the government of a state, assuming the name of God, to govern by divine authority ; or, in other words, *darkening the consciences of men, in order to oppress them.*

In the United States of America, there is, strictly speaking, no such thing as a Church ; and yet in no country are the peopl:

different periods and in different countries, according to the circumstances of nations; but has never changed its character; and it is difficult to say, under which of its names it has done the most mischief, and exterminated the greatest number of the human race. Were it not for the danger of being misled by the want of information, we should readily determine, that under the assumption of christianity it has committed greater ravages than under any other of its dreadful denominations.

But we must not be hasty in deciding this question; as, during the last fifteen centuries, in which we are able to trace with compassionate indignation the frenzy of our ancestors, and contemplate the wandering demon of carnage, con-

more religions. All sorts of religious opinions are entertained there, and yet no *heresy* among them all; all modes of worship are practised, and yet there is no *schism*; men frequently change their creed and their worship, and yet there is no *apostasy*; they have ministers of religion, but no *priests*. In short, religion is there a *personal* and not a *corporate* concern.

ducted by the *cross* of the West, the lights of history fail us with regard to the rest of the world,—we cannot travel with the *crescent* of the East, in its unmeasurable devastations from the Euxine to the Ganges; nor tell by what other incantations mankind have been inflamed with the lust of slaughter, from thence to the north of Siberia or to the south of Africa.

Could we form an estimate of the lives lost in the wars and persecutions of the Christian Church alone, it must be nearly equal to the number of souls now existing in Europe. But it is perhaps in mercy to mankind, that we are not able to calculate, with any accuracy, even this portion of human calamities. When Constantine ordered that the *hierarchy* should assume the name of Christ, we are not to consider him as forming a new weapon of destruction; he only changed a name, which had grown into disrepute, and would serve the purpose no longer, for one that was gaining an extensive reputation; it being built on a faith that was likely to meet the assent of a considerable portion

of mankind. The cold-hearted \* cruelty of that monarch's character, and his embracing the new doctrines with a temper hardened in the slaughter  
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\* The report of Zosimus respecting the motives which induced Constantine to embrace Christianity, has not been generally credited, though the circumstance is probable in itself, and the author is considered in other respects an historian of undoubted veracity; having written the history of all the emperors, down to his own time, which was the beginning of the fifth century. His account is, That Constantine could not be admitted into the *old established church of Ceres* at Eleusis, on account of the enormity of his crimes, in the murder of many of his own family. But on his demanding admission, the Hierophant cried out with horror, "Be gone, thou parricide, whom the gods will not pardon." The Christian doctors seized this occasion to administer to the wants of the emperor, on condition that he would administer to theirs; the bargain was advantageous on both sides; he declared himself a Christian, and took the church under his protection, and they pronounced his pardon.

The fawning servility of the new church and the blunt severity of the old, on that occasion, mark the precise character of the ecclesiastical policy of all ages; and both examples have been followed in numerous instances. The manœuvres of the Pope on the conversion of Clovis, on sanctioning the usurpa-  
tion

of his relations, were omens unfavorable to the future complexion of the hierarchy; though he had thus coupled it with a name that had hitherto been remarkable for its mildness and humiliation. This transaction has therefore given colour to a scene of enormities, which may be regarded as nothing more than the genuine offspring of the *alliance of Church and State*.

This fatal deviation from the principles of the first founder of the faith, who declared that his *kingdom was not of this world*, has deluged Europe in blood for a long succession of ages, and carried occasional ravages into all the other quarters of the globe. The pretence of extirpating the idolatries of ancient establishments and the innumerable heresies of the new, has been the never-failing argu-

tion of Pepin, and on the coronation of Charlemagne, are among the imitations of the former; the ridiculous chastisement of Henry the Second of England, and the numerous anathemas fulminated against whole kingdoms, are proofs of the latter. We may likewise remark, that the conduct of Constantine has been copied in all its essential points by Henry the Eighth.

ment of princes as well as pontiffs, from the wars of Constantine, down to the pitiful, still-born rebellion of Calonne and the Count d'Artois.

From the time of the conversion of Clovis, through all the Merovingian race, France and Germany groaned under the fury of ecclesiastical monsters, hunting down the Druids, overturning the temples of the Roman Polytheists, and drenching the plains with the blood of Arians \*. The wars of Charlemagne against the Saxons, the Huns, the Lombards and the Moors, which desolated Europe for forty years, had for their principal object the extending and purifying of the Christian faith. The Crusades, which drained Europe of its

\* Exterminating heretics was a principal object of national ambition. Childebert I. who died in 558, has the following epitaph on his tomb in the Abbey of *St. Germain-des-Prés*, at Paris.

*Le sang des Ariens dont rougirent les plaines,  
De montagnes de corps leur pays tout couvert,  
Et leurs chefs mis à mort, sont des preuves certaines  
De ce que les François firent sous Childebert.*



young men at eight successive periods, must have sacrificed, including Asiatics and Africans, at least four millions of lives. The wars of the Guelfs and Gibelins, or Pope and Anti-Pope, ravaged Italy, and involved half Europe in factions for two centuries together. The expulsion of the Moors from Spain depopulated that kingdom by a war of seven hundred years, and established the Inquisition to interdict the resurrection of society; while millions of the natives of South America have been destroyed by attempting to convert them.

In this enumeration, we have taken no notice of that train of calamities which attended the re-conversion of the eastern empire, and attaching it to the faith of Mahomet; nor of the various havoc which followed the dismemberment of the catholic church by that fortunate schism, which by some is denominated the Lutheran heresy, and by others the Protestant reformation.

But these, it will be said, are only general traits of uncivilized character, which we all contemplate with equal horror, and which, among enlightened

nations, there can be no danger of seeing renewed, It is true, that in several countries, the glooms of intolerance seem to be pierced by the rays of philosophy; and we may soon expect to see Europe universally disclaiming the right of one man to interfere in the religion of another. We may remark however, *first*, that this is far from being the case at this moment; and *secondly*, that it is a blessing which never can originate from any state-establishment of religion. For proofs of the former, we need not penetrate into Spain or Italy, nor recal the history of the late fanatical management of the war in Brabant,—but look to the two most enlightened countries in Europe; see the riots at Birmingham, and the conduct of the refractory priests in France.

With regard to the second remark,—we may as well own the truth at first as at last, and have sense this year as the next: *The existence of any kind of liberty is incompatible with the existence of any kind of church.* By *liberty* I mean the enjoyment of equal rights, and by *church* I mean any mode of  
 worship

worship declared to be national, or declared to have any preference in the eye of the law.

To render this truth a little more familiar to the mind of any reader who shall find himself startled with it, we will take a view of the church in a different light from what we have yet considered it. We have noticed hitherto only its most striking characteristics, in which it appears like a giant, stalking over society, and wielding the sword of slaughter; but it likewise performs the office of silent disease and of unperceived decay; where we may contemplate it as a canker, corroding the vitals of the moral world, and debasing all that is noble in man.

If I mention some traits which are rather peculiar to the Roman Catholic constitution, it is because that is the predominant church in those parts of Europe, where revolutions are soonest expected; and not because it is any worse or any better than any other that ever has or ever can exist. I hinted before, and it may not be amiss to repeat, that the hierarchy is every where the same, so far

as the circumstances of society will permit ; for it borrows and lends, and interchanges its features in some measure with the age and nation with which it has to deal, without ever losing sight of its object. It is every where the same engine of state ; and whether it be guided by a Lama or a Mufti, by a Pontifex or a Pope, by a Bramin, a Bishop or a Druid, it is entitled to an equal share of respect.

The first great object of the priest is to establish a belief in the minds of the people, that *he himself is possess of supernatural powers* ; and the church at all times has made its way in the world, in proportion as the priest has succeeded in this particular. This is the foundation of every thing,—the life and soul of all that is subversive and unaccountable in human affairs ; it is introducing a new element into society ; it is the rudder under the water, steering the ship almost directly contrary to the wind that gives it motion.

A belief in the supernatural powers of the priest has been inspired by means, which in different nations

nations have been known by different names,—such as astrologies, auguries, oracles or incantations. This article once established, its continuation is not a difficult task. For as the church acquires wealth, it furnishes itself with the necessary apparatus, and the trade is carried on to advantage. The imposition too becomes more easy from the authority of precedent, by which the inquisitive faculties of the mind are benumbed; men believe by prescription, and orthodoxy is hereditary.

In this manner every nation of antiquity received the poison in its infancy, and was rendered incapable of acquiring a vigorous manhood, of speaking a national will, or of acting with that dignity and generosity, which are natural to man in society. The moment that Romulus consulted the oracles for the building of his city, that moment he interdicted its future citizens the enjoyment of liberty among themselves, as well as all ideas of justice towards their neighbours. Men never act their own opinions, in company with those who can give them the opinions of gods; and as long as governors

vernors have an established mode of consulting the auspices, there is no necessity to establish any mode of consulting the people. *Nihil publice sine auspiciis nec domi nec militiæ gerebatur* \*, was the Roman *Magna Charta*; and it stood in place of a declaration of the rights of man. There is something extremely imposing in a maxim of this kind. Nothing is more pious, peaceful, and moderate in appearance; and nothing more savage and abominable in its operation. But it is a genuine *church-maxim*, and, as such, deserves a further consideration.

One obvious tendency of this maxim is, like the feudal rights, to inculcate radical ideas of inequalities among men; and it does this in a much greater degree. The feudal distance between man and man is perceptible and definite; but the moment you give one member of society a familiar intercourse with God, you launch him into the region of infinities and invisibilities; you unfit him and his brethren to live together on any terms but those of stupid reverence and of insolent abuse.

\* *Cicero de divinatione. Lib. I.*

Another tendency is to make men cruel and savage in a preternatural degree. When a person believes that he is doing the immediate work of God, he divests himself of the feelings of a man. And an ambitious general, who wishes to extirpate or to plunder a neighbouring nation, has only to order the priest to do his duty and set the people at work by an oracle; they then know no other bounds to their frenzy than the will of their leader, pronounced by the priest; whose voice to them is the voice of God. In this case the least attention to mercy or justice would be abhorred as a disobedience to the divine command. This circumstance alone is sufficient to account for two-thirds of the cruelty of all wars,—perhaps in a great measure for their existence,—and has given rise to an opinion, that nations are cruel in proportion as they are religious. But the observation ought to stand thus, *That nations are cruel in proportion as they are guided by priests*; than which there is no axiom more undeniably without exception.

Another tendency of governing men by oracles, is to make them factious and turbulent in the use  
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of liberty, when they feel themselves in possession of it. In all ancient democracies, the great body of the people enjoyed no liberty at all; and those who were called freemen exercised it only by starts, for the purpose of *revenging* injuries,—not in a regular constituted mode of *preventing* them; the body politic used liberty as a medicine, and not as daily bread. Hence it has happened, that the history of ancient democracies and of modern insurrections are quoted upon us, to the insult of common sense, to prove that a whole people is not capable of governing itself. The whole of the reasoning on this subject, from the profound disquisitions of Aristotle, down to the puny whinings of Dr. Tatham \*, are founded on a direct inversion of historical fact. It is the *want* of liberty, and not the *enjoyment* of it, which has occasioned all the factions in society from the beginning of

\* It may be necessary to inform the reader, that Dr. Tatham of Oxford has written a book in defence of Royalty and Mr. Burke. As this is the last as well as weakest thing against liberty that I have met with, it is mentioned in the text for the sake of widening the grasp of my assertion, as well as for heightening the contrast among all possible authors.



time, and will do so to the end; it is because the people are *not* habitually free from civil and ecclesiastical tyrants, that they are disposed to exercise tyranny themselves. Habitual freedom produces effects directly the reverse in every particular. For a proof of this, look into America; or, if that be too much trouble, look into human nature with the eyes of common sense.

When the Christian religion was perverted and pressed into the service of Government, under the name of the *Christian Church*, it became necessary that its priests should set up for supernatural powers, and invest themselves in the same cloak of infallibility, of which they had stripped their predecessors, the Druids and the Augurs. This they effected by miracles; for which they gained so great a reputation, that they were canonized after death, and have furnished modern Europe with a much greater catalogue of saints, than could be found in any breviary of the ancients. The polytheism of the Catholic Church is more splendid for the number of its divinities, than that of the Eleusian; and they are not inferior in point of attributes.

butes. The Denis of France is at least equal to the Jupiter of Greece or the Apis of Egypt. As to supernatural powers, the case is precisely the same in both; and the portions of infallibility are dealt out from the pope to the subordinate priests, according to their rank, in such a manner as to complete the harmony of the system.

Cicero has written with as much judgment and erudition on the "corruptions" of the old Roman Church, as Dr. Priestley has on those of the new. But it is not the *church* which is corrupted by men, it is *men* who are corrupted by the church; for the very existence of a church, as I have before defined it, is founded on a lie; it sets out with the blasphemy of giving to one class of men the attributes of God; and the practising of these forgeries by that class, and believing them by another, corrupts and vitiates the whole.

One of the most admirable contrivances of the Christian church is the business of *confessions*. It requires great reflection to give us an idea of the effects wrought on society by this part of the machinery.

machinery. It is a solemn recognition of the supernatural powers of the priest, repeated every day in the year by every human creature above the age of twelve years. Nothing is more natural than for men to judge of every thing around them, and even of themselves, by *comparison*; and in this case what opinion are the laity to form of their own dignity? When a poor, ignorant, vicious mortal is set up for the *God*, what is to be the *man*? I cannot conceive of any person going seriously to a confessional, and believing in the equality of rights, or possessing one moral sentiment that is worthy of a rational being\*.

\* The following tariff of the prices of absolution will show what ideas these holy fathers have inculcated relative to the proportional degree of moral turpitude in different crimes. It was reprinted at Rome no longer ago than the last century.

For a layman who shall strike a priest without effusion of blood	—	—	} £ 0 5 0
For one layman who shall kill another	—	—	0 3 3
For murdering a father, mother, wife or sister	—	—	0 5 0
For eating meat in Lent	—	—	0 5 5
For him who lies with his mother or sister	—	—	0 3 8
For marrying on those days when the Church forbids matrimony	—	—	} 2 0 0
For the absolution of all crimes	—	—	2 16 0
			Another

Another contrivance of the same sort, and little inferior in efficacy, is the law of *celibacy* imposed on the priesthood, both male and female, in almost all church-establishments that have hitherto existed. The priest is in the first place armed with the weapons of moral destruction, by which he is made the professional enemy of his fellow men; and then, for fear he should neglect to use those weapons,—for fear he should contract the feelings and friendships of rational beings, by mingling with society and becoming one of its members,—for fear his impositions should be discovered by the intimacy of family connections,—he is interdicted the most cordial endearments of life; he is severed from the sympathies of his fellow-creatures, and yet compelled to be with them; his affections are held in the *mortmain* of perpetual inactivity; and, like the dead men of Mezentius, he is lashed to society for tyranny and contamination.

The whole of this management, in selecting, preparing and organizing the members of the ecclesiastical body, is pursued with the same uniform, cold-blooded hostility against the social harmonies  
of

of life. The subjects are taken from the younger sons of noble families, who from their birth are considered as a nuisance to the house, and an out-cast from parental attachment: They are then cut off from all opportunities of forming fraternal affections, and educated in a cloister; till they enter upon their public functions, as disconnected from the feelings of the community, as it is designed they shall ever remain from its interests.

I will not mention the corruption of morals, which must result from the combined causes of the ardent passions of constrained celibacy, and the secret interviews of the priest with the women of his charge, for the purpose of confessions; I will draw no arguments from the dissensions sown in families; the jealousies and consequent aberrations of both husband and wife, occasioned by an intriguing stranger being in the secrets of both; the discouragements laid upon matrimony by a general dread of these consequences in the minds of men of reflection,—effects which are remarkable in all catholic countries; but I will conclude this article by observing the direct influence that ecclesiastical

celibacy alone has had on the population of Europe.

This policy of the church must have produced at least as great an effect, in thinning society, as the whole of her wars and persecutions. In Catholic Europe there must be near a million of ecclesiastics. This proportion of mankind continuing deducted from the agents of population for fifteen centuries, must have precluded the existence of more than one hundred millions of the human species.

Should the reader be disposed on this remark to listen to the reply which is sometimes made, that Europe is sufficiently populous; I beg he would suspend his decision, till he shall see what may be said, in the course of this work, on protected industry; and until he shall well consider the effects of liberty on the means of subsistence. That reply is certainly one of the axioms of tyranny, and is of kin to the famous wish of Caligula, that the whole Roman people had but one neck.

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The French have gone as far in the destruction of the hierarchy as could have been expected, considering the habits of the people and the present circumstances of Europe. The church in that country was like royalty,—the prejudices in its favor were too strong to be vanquished all at once. The most that could be done, was to tear the bandage from the eyes of mankind, break the charm of inequality, demolish ranks and infallibilities, and teach the people that mitres and crowns did not confer supernatural powers. As long as public teachers are chosen by the people, are salaried and removeable by the people, are born and married among the people, have families to be educated and protected from oppression and from vice,—as long as they have all the common sympathies of society to bind them to the public interest, there is very little danger of their becoming tyrants by force; and the liberty of the press will prevent their being so by craft.

In the United States of America there is no church; and this is one of the principal circumstances which distinguish that government from

all others that ever existed; it ensures the un-embarrassed exercise of religion, the continuation of public instruction in the science of liberty and happiness, and promises a long duration to a representative government.



## CHAP. III.

## THE MILITARY SYSTEM.

*Il importoit au maintien de l'autorité du roi, d'entre-*  
*tenir la guerre.*                      Histoire de Charlemagne.

THE church, in all modern Europe, may be considered as a kind of standing army; as the members of that community have been in every nation, the surest supporters of arbitrary power, both for internal oppression and for external violence. But this not being sufficient of itself, an additional instrument, to be known by the name of the *military system*, became necessary; and it seems to have been expedient to call up another element of human nature, out of which this new instrument might be created and maintained. The

church was in possession of the strongest ground that could be taken in the human mind, the *principle of religion*; a principle dealing with things invisible; and consequently the most capable of being itself perverted, and then of perverting the whole mind, and subjecting it to any unreasonable pursuit.

Next to that of religion, and similar to it in most of its characteristics, is the principle of *honor*. Honor, like religion, is an original, indelible sentiment of the mind, an indispensable ingredient in our nature. But its object is incapable of precise definition; and consequently, though given us in aid of the more definable feelings of morality, it is capable of total perversion, of losing sight of its own original nature, and still retaining its name; of pursuing the destruction of moral sentiments, instead of being their ornament; of debasing, instead of supporting, the dignity of man.

This camelion principle was therefore a proper element of imposition, and was destined to  
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make an immense figure in the world, as the foundation and support of the military system of all unequal governments. We must look pretty far into human nature, before we shall discover the cause, why killing men in battle should be deemed, *in itself*, an honorable employment. A hangman is universally despised; he exercises an office which not only the feelings but the policy of all nations have agreed to regard as infamous. What is it that should make the difference of these two occupations in favor of the former? Surely it is not because the victims in the former case are *innocent*, and in the latter *guilty*. To assert this, would be a greater libel upon human society than I can bring myself to utter; it would make the tyranny of opinion the most *detestable*, as well as the most sovereign of all possible tyrannies. But what can it be? It is not, what is sometimes alleged, that *courage* is the foundation of the business; that fighting is honorable because it is dangerous; there is often as much courage displayed in highway-robbery, as in the warmest conflict of armies; and yet it does no honor to the party; a Robin Hood is as dishonorable a character as a Jack

Jack Ketch. It is not because there is any idea of *justice* or *honesty* in the case; for to say the best that can be said of war, it is impossible that more than one side can be just or honest; and yet both sides of every contest are equally the road to fame; where a distinguished killer of men is sure to gain immortal honor. It is not *patriotism*, even in that sense of the word which deviates the most from general philanthropy; for a total stranger to both parties in a war, may enter into it on either side as a volunteer, perform more than a vulgar share of the slaughter, and be for ever applauded, even by his enemies. Finally, it is not from any *pecuniary advantages* that are ordinarily attached to the profession of arms; for soldiers are generally poor, though part of their business be to plunder.

Indeed, I can see but one reason in nature, why the principle of honor should be selected from all human incentives, and relied on for the support of the military system: it is because it was *convenient for the governing power*; that power being in the hands of a small part of the community whose business was to support it by imposition. No prin-

principle of a permanent nature, whose object is unequivocal, and whose slightest deviations are perceptible, would have answered the purpose. Justice, for instance, is a principle of common use, of which every man can discern the application. Should the prince say it was *just*, to commence an unprovoked war with his weak neighbours and plunder their country, the falsehood would be too glaring; all men would judge for themselves, and give him the lie; and no man would follow his standard, unless bribed by his avarice. But honor is of another nature; it is what we all can feel, but no one can define; it is therefore whatever the prince may choose to name it; and so powerful is its operation, that all the useful sentiments of life lose their effect; morality is not only banished from political cabinets, but generally and professionally from the bosoms of men who pursue honor in the profession of arms.

It is common for a king, who wishes to make a thing fashionable, to practise it himself; and in this he is sure of general imitation and success. As this device is extremely natural, and as the existence

istence of wars is absolutely necessary to the existence of kings; to give a fashion to the trade must have been a considerable motive to the ancient kings, for exposing themselves so much as they usually did in battle. They said, *Let human slaughter be honorable*, and honorable it was.

Hence it is, that warriors have been termed heroes; and the eulogy of heroes has been the constant business of historians and poets, from the days of Nimrod down to the present century. Homer, for his astonishing variety, animation, and sublimity, has not a warmer admirer than myself; he has been for three thousand years, like a reigning sovereign, applauded as a matter of course, whether from love or fear; for no man with safety to his own character can refuse to join the chorus of his praise. I never can express (and his other admirers have not done it for me) the pleasure I receive from his poems; but in a view of philanthropy, I consider his existence as having been a serious misfortune to the human race. He has given to military life a charm which few men can resist, a splendor which envelopes the scenes of carnage

nage in a cloud of glory, which dazzles the eyes of every beholder, steals from us our natural sensibilities in exchange for the artificial, debases men to brutes under the pretext of exalting them to gods, and obliterates with the same irresistible stroke the moral duties of life and the true policy of nations. Alexander \* is not the only human monster that has been formed after the model of Achilles; nor Persia and Egypt the only countries depopulated for no other reason than the desire of rivalling predecessors in military fame.

Another device of princes, to render honorable the profession of arms, was to make it enviable, by depriving the lowest orders of society of the power

\* It is not unworthy of remark, that Aristotle was the tutor of Alexander, and the most splendid editor and commentator of Homer. As we must judge an author by his works, it is but fair to take into view the *whole* of his works. Considered therefore as a political school-master to the world, the forming of his pupil and the illustrating of his poet are the greatest fruits of the industry of that philosopher, and have had much more influence on the affairs of nations, than his treatise that bears the name of *politicks*.

of becoming foldiers. Excluding the helots of all nations from any part in the glory of butchering their fellow-creatures, has had the same effect as in Sparta,—it has ennobled the trade; and this is the true feudal estimation, in which this trade has descended to us from our Gothic ancestors.

At the same time that the feudal system was furnishing Europe with a numerous body of noblesse, it became necessary, for various purposes of despotism, that they should be prevented from mingling with the common mass of society, that they should be held together by what they call *l'esprit de corps*, or the corporation spirit, and be furnished with occupations which should leave them nothing in common with their fellow men. These occupations were offered by the church and the army; and as the former was permanent, it was thought expedient to give permanency to the latter. Thus the military system has created the noblesse, and the noblesse the military system. They are mutually necessary to each other's existence,—concurrent and reciprocal causes and effects, generating and generated, perpetuating each other by interchangeable



changeable wants, and both indispensable to the governing power.

Those persons therefore who undertake to defend the noblesse as a necessary order in the great community of men, ought to be apprised of the extent of their undertaking. They must, in the first place, defend *standing armies*, and that too upon principles, not of national prudence, as relative to the circumstances of neighbours, but of internal necessity, as relative only to the organization of society. They must at the same time extend their arguments to the increase of those armies; for they infallibly must increase to a degree beyond our ordinary calculation, or they will not answer the purpose; both because the number of the noblesse, or "the men of the sword" (as they are properly styled by their friend Burke) is constantly augmenting, and because the influence of the church is on the decline. As the light of philosophy illuminates the world, it shines in upon the secrets of government; and it is necessary to make the blind as broad as the window, or the passengers will see what is doing in the cabinet.

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The means of imposition must be increased in the army, in proportion as they are lost in the church.

Secondly, they must vindicate *war*, not merely as an occurrence of fatality, and justifiable on the defensive; but as a thing of choice, as being the most nutritious aliment of that kind of government which requires privileged orders and an army: for it is no great figure of speech, to say that the nobility of Europe are always fed upon human gore. They originated in war, they live by war, and without war it would be impossible to keep them from starving. Or, to drop the figure entirely, if mankind were left to the peaceable pursuit of industry, the titled orders would lose their distinctions, mingle with society, and become reasonable creatures.

Thirdly, they must defend the *honor* of the occupation which is allotted to the noblesse. For the age is becoming extremely sceptical on this subject; there are heretics in the world (Mr. Burke calls them atheists) who affect to disbelieve that men were made expressly for the purpose of cutting  
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each other's throats; and who say that it is not the highest honor that a man can arrive at, to sell himself to another man for life at a certain daily price, and to hold himself in readiness, night and day, to kill individuals or nations, at home or abroad, without ever enquiring the cause. These men say, that it is no compliment to the judgment or humanity of a man, to lead such a life; and they do not see why a nobleman should not possess these qualities as well as other people.

Fourthly, they must prove that all occupations which tend to *life*, and not to *death*, are dishonorable and infamous. Agriculture, commerce, every method of augmenting the means of subsistence, and raising men from the savage state, must be held ignoble; or else men of honor will forget themselves so far as to engage in them; and then, farewell to distinctions. The national assembly may then create orders as fast as it has ever uncreated them; it is impossible for Nobility to exist, in France, or in any other country, unless the above articles are firmly defended by arguments, and fixed in the minds of mankind.

It seems difficult for a man of reflection to write one page on the subject of government, without meeting with some old established maxims, which are not only false, but which are precisely the reverse of truth. Of this sort is the opinion, That inevitable wars in modern times have given occasion to the present military system, and that standing armies are the best means of preventing wars. This is what the people of Europe are commanded to believe. With all due deference, however, to their commanders, I would propose a contrary belief, which I will venture to lay down as the true state of the fact: *That the present military system has been the cause of the wars of modern times, and that standing armies are the best, if not the only, means of PROMOTING wars.* This position has at least one advantage over those that are commonly established by governments, that it is believed by him who proposes it to the assent of others. Men who cannot command the power of the state, ought to enforce their doctrines by the power of Reason, and to risk on the sea of opinion nothing more than what she will take under her convoy.

To apply this maxim to the case now before us, let us ask, *What is war?* and on what propensity in human nature does it rest? For it is to MAN that we are to trace these questions, and not to *princes*; we must drive them up to *principle*, and not stop short at *precedent*; and endeavour to use our sense, instead of parading our learning. Among individual men, or savages acting in a desultory manner, antecedent to the formation of great societies, there may be many causes of quarrels and assassinations; such as love, jealousy, rapine, or the revenge of private injuries. But these do not amount to the idea of war. War supposes a vast association of men engaged in one cause, actuated by one spirit, and carrying on a bloody contest with another association in a similar predicament. Few of the motives which actuate private men can apply at once to such a multitude, the greatest part of which must be personal strangers to each other. Indeed, where the motives are clearly explained and well understood by the community at large, so as to be really felt by the people, there is but one of the ordinary causes above mentioned which can actuate such a body; it is *rapine*, or the

hope of enriching themselves by plunder. There can be then but two circumstances under which a nation will commence an offensive war: either the people at large must be thoroughly convinced that they shall be personally rewarded not only with conquest, but with a vast share of wealth from the conquered nation, or else they must be duped into the war by those who hold the reins of government. All motives for national offences are reduced to these two, and there can be no more. The subject, like most others, becomes extremely simple, the moment it is considered.

And how many of the wars of mankind originate in the first of these motives? Among civilized nations, none. A people considerably numerous, approaching towards ideas of sober policy, and beginning to taste the fruits of industry, require but little experience to convince themselves of the following truths,—that no benefit can be derived to the great body of individuals from conquest, though it were certain—that this event is always doubtful, and the decision to be dreaded,—that nine tenths of the losses in all wars are a *clear* loss to both parties,

parties, being sunk in expences,—that the remaining tenth necessarily comes into the hands of the principal managers, and produces a real misfortune even to the victorious party, by giving them masters at home, instead of riches from abroad.

The pitiful idea of feasting ourselves on a comparison of suffering, and balancing our own losses by those of the enemy, is a stratagem of government, a calculation of cabinet arithmetic. Individuals reason not in this manner. A distressed mother in England, reduced from a full to a scanty diet, and bewailing the loss of her son, receives no consolation from being told of a woman in France, whose son fell in the same battle, and that the taxes are equally increased in both countries by the same war. But kings, and ministers, and generals, and historians proclaim, as a glorious contest, every war which appears to have been as fatal to the enemy as to their own party, though one half of each nation are slaughtered in the field, and the other half reduced to slavery. This is one of the bare-faced impositions with which mankind are perpetually insulted, and which call upon us, in the

name of humanity, to pursue this enquiry into the causes of war.

The history of ancient Rome, from beginning to end, under all its kings, consuls and emperors, furnishes not a single instance, after the conquest of the Sabines, of what may properly be called a *popular* offensive war; I mean a war that would have been undertaken by the people, had they enjoyed a free government, so organized as to have enabled them to deliberate before they acted, and to suffer nothing to be carried into execution but the national will.

The same may be said of modern Europe, after a corresponding period in the progress of nations; which period should be placed at the very commencement of civilization. Perhaps after the settlement of the Saracens in Spain, the Lombards in Italy, the Franks in Gaul, and the Saxons in England, we should have heard no more of offensive operations, had they depended on the uninfluenced wishes of the people. For we are not to regard



regard as *offensive* the struggles of a nation for the recovery of liberty.

What an inconceivable mass of slaughter are we then to place to the other account; to dark, unequal government! to the magical powers possessed by a few men of blinding the eyes of the community, and leading the people to destruction by those who are called their fathers and their friends! These operations could not be carried on, for a long time together, in ages tolerably enlightened, without a permanent resource. As long as the military conditions of feudal tenures remained in full vigor, they were sure to furnish the means of destruction to follow the will of the sovereign; but as the asperities of this system softened away by degrees, it seems that governments were threatened with the necessity of applying to the people at large for voluntary enlistments, and contributions in money; on which application the purpose must be declared. This would be too direct an appeal to the consciences of men on a question of *offensive* war, and was, if possible, to be avoided. For even the power of the church, where there was no

question of heresy, could not be always relied on, to stimulate the people to a quarrel with their neighbours of the same faith; and still less was it sure of inducing them to part with their money. The expedient therefore of standing armies became necessary; and perhaps rather on account of the money than the men. Thus money is required to levy armies, and armies to levy money; and foreign wars are introduced as the pretended occasion for both.

One general character will apply to much the greater part of the wars of modern times, — they are *political*, and not *vindictive*. This alone is sufficient to account for their real origin. They are wars of agreement \*, rather than of dissention;

\* Whenever the real secret history of the English and Spanish armaments of 1790 shall be published to the world, though it may not furnish new arguments to men of reflection for distrusting political cabinets, it may at least increase the number of such men. But this cannot be done with safety during the lives of some of the principal actors in that astonishing piece of audacity. I am convinced that the person who at this moment should do it, would not survive the publication so long as pope Ganganelli did the suppression of the Jesuits.

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and the conquest is taxes, and not territory. To carry on this business, it is necessary not only to keep up the military spirit of the noblesse by titles and pensions, and to keep in pay a vast number of troops, who know no other God but their king; who lose all ideas of themselves, in contemplating their officers; and who forget the duties of a man, to practise those of a soldier,—this is but half the operation: an essential part of the military system is to disarm the people, to hold all the functions of war, as well the arm that executes, as the will that declares it, equally above their reach. This part of the system has a double effect, it palsies the hand and brutalizes the mind: an habitual disuse of physical forces totally destroys the moral; and men lose at once the power of protecting themselves, and of discerning the cause of their oppression,

It is almost useless to mention the conclusions which every rational mind must draw from these considerations. But though they are too obvious to be mistaken, they are still too important to be passed over in silence; for we seem to be arrived

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at that epoch in human affairs, when "all useful ideas, and truths the most necessary to the happiness of mankind, are no longer exclusively destined to adorn the pages of a book \*." Nations, wearied out with imposture, begin to provide for the safety of man, instead of pursuing his destruction.

I will mention as one conclusion, which bids fair to be a practical one, that the way to prevent wars is not merely to change the military system; for that, like the church, is a necessary part of the governments as they now stand, and of society as now organized: but the *principle of government* must be completely changed; and the consequence of this will be such a total renovation of society, as to banish standing armies, overturn the military system, and exclude the possibility of war.

Only admit the original, unalterable truth, *that all men are equal in their rights*, and the foundation of every thing is laid; to build the superstructure requires no effort but that of natural deduction.

\* *L'Assemblée nationale.*

The first necessary deduction will be, that the people will form an equal representative government; in which it will be impossible for *orders* or *privileges* to exist for a moment; and consequently the first materials for standing armies will be converted into peaceable members of the state. Another deduction follows, That the people will be universally armed: they will assume those weapons for security, which the art of war has invented for destruction. You will then have removed the *necessity* of a standing army by the organization of the legislature, and the *possibility* of it by the arrangement of the militia; for it is as impossible for an armed soldiery to exist in an armed nation, as for a nobility to exist under an equal government.

It is curious to remark how ill we reason on human nature, from being accustomed to view it under the disguise which the unequal governments of the world have always imposed upon it. During the American war, and especially towards its close, General Washington might be said to possess the hearts of all the Americans. His recommendation was law, and he was able to command the whole  
power

power of that people for any purpose of defence. The philosophers of Europe considered this as a dangerous crisis to the cause of freedom. They *knew*, from the example of Cæsar and Sylla and Marius and Alcibiades and Pericles and Cromwell, that Washington would never lay down his arms, till he had given his country a master. But after he did lay them down; then came the miracle,—his virtue was cried up to be more than human; and it is by this miracle of virtue in him, that the Americans are supposed to enjoy their liberty at this day,

I believe the virtue of that great man to be equal to the highest human virtue that has ever yet been known; but to an American eye no extraordinary portion of it could appear in that transaction. It would have been impossible for the general or the army to have continued in the field after the enemy left it; for the soldiers were all *citizens*; and if it had been otherwise, their numbers were not the hundredth part of the citizens at large, who were all *soldiers*. To say that he was wise in discerning the impossibility of success in an attempt

attempt to imitate the great heroes above-mentioned, is to give him only the same merit for sagacity which is common to every other person who knows that country, or who has well considered the effects of equal liberty.

Though infinite praise is due to the constituting assembly of France for the temperate resolution and manly firmness which mark their operations in general; yet it must be confessed that some of their reforms bear the marks of too timorous a hand. Preserving an hereditary king with a tremendous accumulation of powers, and providing an unnecessary number of priests, to be paid from the national purse, and furnished with the means of rebuilding the half-destroyed ruins of the hierarchy, are circumstances to be pardoned for reasons which I have already hinted. But the enormous military force, which they have decreed shall remain as a permanent establishment, appears to me not only unnecessary, and even dangerous to liberty, but totally and directly subversive of the end they had in-view. Their objects were the security of the frontiers and the tranquillity of the state; the reverse

verse of this will be the effect,—not perhaps that this army will be turned against the people, or involve the state in offensive wars. On the contrary, suppose that it simply and faithfully defends the frontiers and protects the people; this defence and this protection are the evils of which I complain. They tend to weaken the nation, by deadening the spirit of the people, and teaching them to look up to others for protection, instead of depending on their own invincible arm. A people that legislate for themselves ought to be in the habit of protecting themselves; or they will lose the spirit of both. A knowledge of their own *strength* preserves a temperance in their own *wisdom*, and the performance of their *duties* gives a value to their *rights*.

This is likewise the way to increase the solid domestic force of a nation, to a degree far beyond any ideas we form of a standing army; and at the same time to annihilate its capacity as well as inclination for foreign aggressive hostilities. The true guarantee of perpetual tranquillity at home and abroad, in such a case, would arise from this truth,



truth, which would pass into an incontrovertible maxim, that offensive operations would be impossible, and defensive ones infallible.

This is undoubtedly the true and only secret of exterminating wars from the face of the earth; and it must afford no small degree of consolation to every friend of humanity, to find this unspeakable blessing resulting from that equal mode of government, which alone secures every other enjoyment for which mankind unite their interests in society. Politicians, and even sometimes honest men, are accustomed to speak of war as an uncontrollable event, falling on the human race like a concussion of the elements,—a scourge which admits no remedy; but for which we must wait with trembling preparation, as for an epidemical disease, whose force we may hope to lighten, but can never avoid. They say that mankind are wicked and rapacious, and “it must be that offences will come.” This reasoning applies to individuals, and to countries when governed by individuals; but not to nations deliberately speaking a national voice. I hope I shall not be understood to mean;

that the nature of man is totally changed by living in a free republic. I allow that it is still *interested* men and *passionate* men, that direct the affairs of the world. But in national assemblies, passion is lost in deliberation, and interest balances interest; till the good of the whole community combines the general will. Here then is a great moral entity, acting still from interested motives; but whose interest it never can be, in any possible combination of circumstances, to commence an offensive war.

There is another consideration, from which we may argue the total extinction of wars, as a necessary consequence of establishing governments on the representative wisdom of the people. We are all sensible that superstition is a blemish of human nature, by no means confined to subjects connected with religion. Political superstition is almost as strong as religious; and it is quite as universally used as an instrument of tyranny. To enumerate the variety of ways in which this instrument operates on the mind, would be more difficult, than to form a general idea of the result of  
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its operations. In monarchies, it induces men to spill their blood for a particular family, or for a particular branch of that family, who happens to have been born first, or last, or to have been taught to repeat a certain creed, in preference to other creeds. But the effect which I am going chiefly to notice, is that which respects the territorial boundaries of a government. For a man in Portugal or Spain to prefer belonging to one of those nations rather than the other, is as much a superstition, as to prefer the house of Braganza to that of Bourbon, or Mary the second of England, to her brother. All these subjects of preference stand upon the same footing as the turban and the hat, the cross and the crescent, or the lilly and the rose.

The boundaries of nations have been fixed for the accommodation of the *government*, without the least regard to the convenience of the people. Kings and ministers, who make a profitable trade of governing, are interested in extending the limits of their dominion as far as possible. They have a property in the people, and in the territory that

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they cover. The country and its inhabitants are to them a farm stocked with sheep. When they call up these sheep to be sheared, they teach them to know their names, to follow their master, and avoid a stranger. By this unaccountable imposition it is, that men are led from one extravagant folly to another,—to adore their king, to boast of their nation, and to wish for conquest,—circumstances equally ridiculous in themselves, and equally incompatible with that rational estimation of things, which arises from the science of liberty.

In America it is not so. Among the several states, the governments are all equal in their force, and the people are all equal in their rights. Were it possible for one state to conquer another state, without any expence of money, or of time, or of blood,—neither of the states, nor a single individual in either of them, would be richer or poorer for the event. The people would all be upon their own lands, and engaged in their own occupations, as before; and whether the territory on which they live were called New York or Massachusetts, is a matter of total indifference, about  
 which

which they have no superstition. For the people belong not to the government, but the government belongs to the people.

Since the independence of those states, many territorial disputes have been settled, which had arisen from the interference of their ancient charters. The interference of charters is a kind of policy which, I suppose, every mother country observes towards her colonies, in order to give them a subject of contention; that she may have the opportunity of keeping all parties quiet by the parental blessing of a standing army. But on the banishment of foreign controul, and all ideas of European policy, the enjoyment of equal liberty has taught the Americans the secret of settling these disputes, with as much calmness as they have formed their constitutions. It is found, that questions about the boundaries between free states are not matters of interest, but merely of form and convenience. And though these questions may involve a tract of country equal to an European kingdom, it alters not the case; they are settled as merchants settle the course of exchange between

two commercial cities. Several instances have occurred, since the revolution, of deciding in a few days, by amicable arbitration; territorial disputes, which determine the jurisdiction of larger and richer tracts of country, than have formed the objects of all the wars of the two last centuries between France and Germany.

It is needless to spend any time in applying this idea to the circumstances of all countries, where the government should be freely and habitually in the hands of the people. It would apply to all Europe; and will apply to it, as soon as a revolution shall take place in the principle of government. For such a revolution cannot stop short of fixing the power of the state on the basis allotted by nature, the unalienable rights of man; which are the same in all countries. It will eradicate the superstitions about territorial jurisdiction; and this consideration must promise an additional security against the possibility of war.

## CHAP. IV.

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*The Administration of Justice.*

IT would be a curious speculation, and perhaps as useful as curious, to consider how far the moral nature of man is affected by the organization of society; and to what degree his predominant qualities depend on the nature of the government under which he lives. The adage, *That men are every where the same*, though not wholly false, would doubtless be found to be true only in a limited sense. I love to indulge the belief, that it is true so far as to ensure permanency to institutions that are good; but not so far as to discourage us from attempting to reform those that are bad. To consider it as true in an unlimited sense, would be to serve the purposes of despotism; for

which this, like a thousand other maxims, has been invented and employed. It would teach us to sit down with a gloomy satisfaction on the state of human affairs, to pronounce the race of man emphatically "fated to be curst," a community of self-tormentors and mutual assassins, bound down by the irresistible destiny of their nature to be robbed of their reason by priests, and plundered of their property by kings. It would teach us to join with Soame Jenyns, and furnish new weapons to the oppressors, by our manner of pitying the misfortunes of the oppressed.

In confirmation of this adage, and as an apology for the existing despotisms, it is said, That all men are by nature tyrants, and will exercise their tyrannies, whenever they find opportunity. Allowing this assertion to be true, it is surely cited by the wrong party. It is an apology for equal, and not for unequal governments; and the weapon belongs to those who contend for the republican principle. If government be founded on the vices of mankind, its business is to restrain those vices in all, rather than to foster them in a few. The disposition



tion to tyrannize is effectually restrained under the exercise of the equality of rights; while it is not only rewarded in the few, but invigorated in the many, under all other forms of the social connexion. But it is almost impossible to decide, among moral propensities, which of them belong to nature, and which are the offspring of habit; how many of our vices are chargeable on the permanent qualities of man, and how many result from the mutable energies of state.

If it be in the power of a bad government to render men worse than nature has made them, why should we say it is not in the power of a good one to render them better? and if the latter be capable of producing this effect in any perceivable degree, where shall we limit the progress of human wisdom and the force of its institutions, in ameliorating not only the social condition, but the controlling principles of man?

Among the component parts of government, that, whose operation is the most direct on the moral habits of life, is the Administration of Justice.

In this every person has a peculiar isolated interest, which is almost detached from the common sympathies of society. It is this which operates with a singular concentrated energy, collecting the whole force of the state from the community at large, and bringing it to act upon a single individual, affecting his life, reputation or property; so that the governing power may say with peculiar propriety to the minister of justice, *divide et impera*; for, in case of oppression, the victim's cries will be too feeble to excite opposition; his cause having nothing in common with that of the citizens at large. If therefore we would obtain an idea of the condition of men on any given portion of the earth, we must pay a particular attention to their judiciary system, not in its form and theory, but in its spirit and practice. It may be said in general of this part of the civil polity of a nation, that as it is a stream flowing from the common fountain of the government, and must be tinged with whatever impurities are found in the source from whence it descends, the only hope of cleansing the stream is by purifying the fountain.

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If I were able to give an energetic sketch of the office and dignity of a rational system of jurisprudence, describe the full extent of its effects on the happiness of men, and then exhibit the perversions and corruptions attendant on this business in most of the governments of Europe, it would furnish one of the most powerful arguments in favor of a general revolution, and afford no small consolation to those persons who look forward with certainty to such an event. But my plan embraces too many subjects, to be particular on any; all that I can promise myself, is to seize the rough features of systems, and mark the moral attitudes of man as placed in the necessary posture to support them.

It is generally understood that the object of government, in this part of its administration, is merely to *restrain* the vices of men. But there is another object prior to this; an office more sacred, and equally indispensable, is to *prevent* their vices,—to correct them in their origin, or eradicate them totally from the adolescent

adolescent mind. The latter is performed by instruction, the former by coercion; the one is the tender duty of a father, the other, the unrelenting drudgery of a master; but both are the business of government, and ought to be made concurrent branches of the system of jurisprudence.

The absurd and abominable doctrine, *that private vices are public benefits*, it is hoped, will be blotted from the memory of man, expunged from the catalogue of human follies, with the systems of governments which gave it birth. The ground of this insulting doctrine is, that advantage may be taken of the extravagant foibles of individuals to increase the revenues of the state; as if the chief end of society were, to steal money for the government's purse! to be squandered by the governors, to render them more insolent in their oppressions! It is humiliating, to answer such arguments as these; where we must lay open the most degrading retreats of prostituted logic, to discover the positions on which they are founded. But *Orders and Pri-*

*Privileges* will lead to any thing: once teach a man, that *some are born to command and others to be commanded*; and after that, there is no camel too big for him to swallow.

This idea of the objects to be kept in view by the system of Justice, involving in it the business of prevention as well as of restriction, leads us to some observations on the particular subject of criminal jurisprudence. Every society, considered in itself as a moral and physical entity, has the undoubted faculty of self-preservation. It is an independent being; and, towards other beings in like circumstances of independence, it has a right to use this faculty of defending itself, without previous notice to the party; or without the observance of any duty, but that of abstaining from offensive operations. But when it acts towards the members of its own family, towards those dependent and defenceless beings that make part of itself, the *right* of coercion is preceded by the *duty* of instruction. It may be safely pronounced, *that a state has no right to punish a man, to whom it has given no previous instruction*;

*fruition*; and consequently, any person has a right to do any action, unless he has been informed that it has an evil tendency. It is true, that as relative to particular cases, the having given this information is a thing that the society must sometimes *presume*, and is not always obliged to *prove*. But these cases are rare, and ought never to form a general rule. This presumption has, however passed into a general rule, and is adopted as universal practice. With what justice or propriety it is so adopted, a very little reflection will enable us to decide.

The great outlines of morality are extremely simple and easy to be understood; they may be said to be written on the heart of a man antecedent to his associating with his fellow-creatures. As a self-dependent being he is self-instructed; and as long as he should remain a simple child of *nature*, he would receive from nature all the lessons necessary to his condition. He would be a complete moral agent; and should he violate the rights of another independent man like himself, he would sin against sufficient

ficient light, to merit any punishment that the offended party might inflict upon him. But *society* opens upon us a new field of contemplation; it furnishes man with another class of rights, and imposes upon him an additional system of duties; it enlarges the sphere of his moral agency, and makes him a kind of artificial being, propelling and propelled by new dependencies, in which Nature can no longer serve him as a guide. Being removed from her rudimental school, and entered in the college of Society, he is called to encounter problems which the elementary tables of his heart will not always enable him to solve. Society then ought to be consistent with herself in her own institutions; if she sketches the lines of his duty with a variable pencil, too slight for his natural perception, she should lend him her optical glasses to discern them; if she takes the ferule in one hand, she is bound to use the fescue with the other.

We must observe farther,—that though Society itself be a state of nature, as relative to the nation at large,—though it be a state to  
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which mankind naturally recur to satisfy their wants and increase the sum of their happiness,—though all its laws and regulations may be perfectly reasonable, and calculated to promote the good of the whole,—yet, with regard to an individual member, his having *consented* to these laws, or even chosen to live in the society, is but a *fiction*; and a rigid discipline founded on a fiction, is surely hard upon its object. In general it may be said, that a man comes into society by birth; he neither consents nor dissents respecting his relative condition; he firsts opens his eyes on that state of human affairs in which the interests of his moral associates are infinitely complicated; with these his duties are so blended and intermingled, that nature can give him but little assistance in finding them out. His morality itself must be arbitrary; it must be varied at every moment, to comprehend some local and positive regulation; his science is to begin where that of preceding ages has ended; his alpha is their omega; and he is called upon to act by instinct what they have but learnt to do from the experience of all mankind. Natural  
reason



reason may teach me not to strike my neighbour without a cause ; but it will never forbid my sending a sack of wool from England, or printing the French constitution in Spain. These are positive prohibitions, which Nature has not written in her book ; she has therefore never taught them to her children. The same may be said of all regulations that arise from the social compact.

It is a truth, I believe, not to be called in question, that every man is born with an imprescriptible claim to a portion of the elements ; which portion is termed his *birth-right*. Society may vary this right, as to its form, but never can destroy it in substance. She has no control over the man, till he is born ; and the right being born with him, and being necessary to his existence, she can no more annihilate the one than the other, though she has the power of new-modeling both. But on coming into the world, he finds that the ground which nature had promised him is taken up,  
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and in the occupancy of others; Society has changed the form of his birth-right; the general stock of elements, from which the lives of men are to be supported, has undergone a new modification; and his portion among the rest. He is told that he cannot claim it in its present form, as an independant inheritance; that he must draw on the stock of society, instead of the stock of nature; that he is banished from the mother, and must cleave to the nurse. In this unexpected occurrence he is unprepared to act; but *knowledge* is a part of the stock of society; and an indispensable part to be allotted in the portion of the claimant, is *instruction* relative to the new arrangement of natural right. To withhold this instruction therefore would be, not merely the omission of a duty, but the commission of a crime; and society in this case would sin against the man, before the man could sin against society.

I should hope to meet the assent of all unprejudiced readers, in carrying this idea still farther. In cases where a person is born of poor  
 parents,

parents, or finds himself brought into the community of men without the means of subsistence, society is bound in duty to furnish him the means. She ought not only to instruct him in the artificial laws by which property is secured, but in the artificial industry by which it is obtained. She is bound, in *justice* as well as policy, to give him some art or trade. For the reason of his incapacity is, that *she* has usurped his birth-right; and this is restoring it to him in another form, more convenient for both parties. The failure of society in this branch of her duty, is the occasion of much the greater part of the evils that call for criminal jurisprudence. The individual feels that he is robbed of his natural right; he cannot bring his process to reclaim it from the great community, by which he is overpowered; he therefore feels authorized in reprisal; in taking another's goods to replace his own. And it must be confessed, that in numberless instances the conduct of society justifies him in this proceeding; she has seized upon his property, and commenced the war against him.

Some, who perceive these truths, say that it is unsafe for society to publish them; but I say it is unsafe not to publish them. For the party from which the mischief is expected to arise, has the knowledge of them already, and has acted upon them in all ages. It is the wise who are ignorant of these things, and not the foolish. They are truths of nature; and in them the teachers of mankind are the only party that remains to be taught. It is a subject on which the logic of indigence is much clearer than that of opulence. The latter reasons from contrivance, the former from feeling; and God has not endowed us with false feelings, in things that so weightily concern our happiness.

None can deny that the obligation is much stronger on me, to support my life, than to support the claim that my neighbour has to his property. Nature commands the first, society the second:—in one I obey the laws of God, which are universal and eternal; in the other, the laws of man, which are local and temporary.

It has been the folly of all old governments, to begin every thing at the wrong end, and to erect their institutions on an inversion of principle. This is more sadly the case in their systems of jurisprudence, than is commonly imagined. *Compelling* justice is always mistaken for *rendering* justice. But this important branch of administration consists not merely in compelling men to be just to each other, and individuals to society,—this is not the whole, nor is it the principal part, nor even the beginning, of the operation. The source of power is said to be the source of justice; but it does not answer this description, as long as it contents itself with *compulsion*. Justice must begin by flowing from its source; and the first as well as the most important object is, to open its channels from society to all the individual members. This part of the administration being well devised and diligently executed, the other parts would lessen away by degrees to matters of inferior consideration.

It is an undoubted truth, that our duty is inseparably connected with our happiness. And why should we despair of convincing every member of society of a truth so important for him to know? Should any person object, by saying, that nothing like this has ever yet been done; I answer, that nothing like this has ever yet been tried. Society has hitherto been curst with governments, whose existence depended on the extinction of truth. Every moral light has been smothered under the bushel of perpetual imposition; from whence it emits but faint and glimmering rays, always insufficient to form any luminous system on any of the civil concerns of men. But these covers are crumbling to the dust, with the governments which they support; and the probability becomes more apparent, the more it is considered, that society is capable of curing all the evils to which it has given birth.

It seems that men, to diminish the physical evils that surround them, connect themselves in society; and from this connection their moral

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ral evils arise. But the *immediate* occasion of the moral evils is nothing more than the *remainder* of the physical that still exist even under the regulations that society makes to banish them. The direct object therefore of the government ought to be, to destroy as far as possible the remaining quantity of physical evils; and the moral would so far follow their destruction. But the mistake that is always made on this subject is, that governments, instead of laying the ax at the root of the tree, aim their strokes at the branches; they attack the moral evils *directly* by vindictive justice, instead of removing the physical by distributive justice.

There are two distinct kinds of physical evils; one arises from want, or the apprehension of want; the other from bodily disease. The former seems capable of being removed by society; the latter is inevitable. But the latter gives no occasion to moral disorders; it being the common lot of all, we all bear our part in silence, without complaining of each other, or revenging ourselves on the community. As it

is out of the power of our neighbour's goods to relieve us, we do not covet them for this purpose. The former is the only kind from which moral evils arise; and to this the energies of government ought to be chiefly directed; especially that part which is called the administration of justice.

No nation is yet so numerous, nor any country so populous, as it is capable of becoming. Europe, taken together, would support at least five times its present number, even on its present system of cultivation; and how many times this increased population may be multiplied by new discoveries in the infinite science of subsistence, no man will pretend to calculate. This of itself is sufficient to prove, that society at present has the means of rendering all its members happy in every respect, except the removal of bodily disease. The common stock of the community appears abundantly sufficient for this purpose. By common stock, I would not be understood to mean the goods exclusively appropriated to individuals. Exclusive property  
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is not only consistent with good order among men, but it seems, and perhaps really is, necessary to the existence of society. But the common stock of which I speak, consists, first, in *knowledge*, or the improvements which men have made in the means of acquiring a support; and secondly, in the *contributions* which it is necessary should be collected from individuals, and applied to the maintenance of tranquillity in the state. The property exclusively belonging to individuals, can only be the surplussage remaining in their hands, after deducting what is necessary to the real wants of society. Society is the first proprietor; as she is the original cause of the appropriation of wealth, and its indispensable guardian in the hands of the individual.

Society then is bound, in the first place, to distribute knowledge to every person according to his wants, to enable him to be useful and happy; so far as to dispose him to take an active interest in the welfare of the state. *Secondly,*

where the faculties of the individual are naturally defective, so that he remains unable to provide for himself, she is bound still to support and render him happy. It is her duty in all cases to induce every human creature, by rational motives, to place his happiness in the tranquillity of the public, and in the security of individual peace and property. But *thirdly*, in cases where these precautions shall fail of their effect, she is driven indeed to the last extremity,—she is to use the rod of correction. These instances would doubtless be rare; and, if we could suppose a long continuance of wise administration, such as a well organized government would ensure to every nation in the world, we may almost persuade ourselves to believe, that the necessity for punishment would be reduced to nothing.

Proceeding however on the supposition of the existence of crimes, it must still remain an object of legislative wisdom, to discriminate between their different classes, and apply to each  
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its proper remedy, in the quantity and mode of punishment. It is no part of my subject to enter into this enquiry, any farther than simply to observe, that it is the characteristic of arbitrary governments to be jealous of their power. And, as jealousy is, of all human passions, the most vindictive and the least rational, these governments seek the revenge of injuries in the most absurd and tremendous punishments that their fury can invent. As far as any rule can be discovered in their gradation of punishments, it appears to be this, That the severity of the penalty is in proportion to the injustice of the law. The reason of this is simple,—the laws which counteract nature the most, are the most likely to be violated.

The publication, within the last half century, of a great number of excellent treatises on the subject of penal laws, without producing the least effect, in any part of Europe, is a proof that no reform is to be expected in the general system of criminal jurisprudence, but from a  
 radical

radical change in the principle of government\*.

A method of communicating instruction to every member of society, is not difficult to discover, and would not be expensive in practice. The government generally establishes ministers of justice in every part of the dominion. The first object of these ministers ought to be, to see that every person is well instructed in his duties and in his rights; that he is rendered perfectly acquainted with every law, in its true spirit and tendency, in order that he may know the reason of his obedience, and the manner of obtaining redress, in case he should deem it unjust; that he is taught to feel the cares and interests of an active citizen, to consider himself

\* The compassionate little treatise of Beccaria, *dei delitti e delle pene*, is getting to be a manual in all languages. It has already served as an introduction to many luminous essays on the policy and right of punishment, in which the spirit of enquiry is pursued much farther than that benevolent philosopher, surrounded as he is by the united fables of feudal and ecclesiastical tyranny, has dared to pursue it.

as a real member of the state, know that the government is his own, that the society is his friend, and that the officers of the state are the servants of the people. A person possessing these ideas will never violate the law, unless it be from necessity; and such necessity is to be prevented by means which are equally obvious.

For the purposes of compulsive justice, it is not enough that the laws be rendered familiar to the people; but the tribunals ought to be near at hand, easy of access, and equally open to the poor as to the rich; the means of coming at justice should be cheap, expeditious and certain; the mode of process should be simple and perfectly intelligible to the meanest capacity, unclouded with mysteries and unperplexed with forms. In short, justice should familiarise itself as the well-known friend of every man; and the consequence seems natural, that every man would be a friend to justice.

After considering what is the duty of society, and what *would be* the practice of a well-orga-

nized government, relative to the subject of this chapter, it is almost ufeless to enquire, what is the practice of all the old governments of Europe. We may be sure beforehand, that it is directly the contrary,—that, like all other parts of the system, it is the inversion of every thing that is right and reasonable. The pyramid is every where set on the little end, and all sorts of extraneous rubbish are constantly brought to prop it up.

Unequal governments are necessarily founded in ignorance, and they must be supported by ignorance; to deviate from their principle, would be voluntary suicide. The first great object of their policy is to perpetuate that undisturbed ignorance of the people, which is the companion of poverty, the parent of crimes, and the pillar of the state.

In England, the people at large are as perfectly ignorant of the acts of parliament after they are made, as they possibly can be before. They are printed by one man only, who is  
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called the king's printer,—in the old German character, which few men can read,—and sold at a price that few can afford to pay. But lest some scraps or comments upon them should come to the people through the medium of public news-papers, every such paper is stamped with a heavy duty; and an act of parliament is made, to prevent men from lending their papers to each other \*; so that, not one person in a hundred sees a news-paper once in a year. If a man at the bottom of Yorkshire discovers by instinct that a law is made, which is interesting for him to know, he has only to make a journey to London, find out the king's prin-

\* As this work may chance to fall into the hands of some people who never see the acts of parliament (the same precautions not being taken to prevent its circulation) it is out of compassion to that class of readers, that I give this information. It is a duty of humanity, to save our fellow-creatures from falling into snares, even those that are spread for them by the government. Therefore: Notice is hereby given to all persons, to whom these presents shall come, that the penalty for letting a news-paper, within the kingdom of Great-Britain, is fifty pounds.

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ter, pay a penny a page for the law, and learn the German alphabet. He is then prepared to spell out his duty.

As to the general system of the laws of the land, on which all property depends, no man in the kingdom knows them, and no man pretends to know them. They are a fathomless abyss, that exceeds all human faculties to sound. They are studied, not to be understood, but to be disputed; not to give information, but to breed confusion. The man whose property is depending on a suit at law, dares not look into the gulph that separates him from the wished-for decision; he has no confidence in himself, nor in reason, nor in justice; he mounts on the back of a lawyer, like one of Mr. Burke's heroes of chivalry between the wings of a griffin, and trusts the pilotage of a man, who is superior to himself, only in the confidence which results from having nothing at stake.

To penetrate into what are called the courts of justice, on the continent, and expose the general

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neral system of their administration, in those points which are common to most countries in Europe, would be to lay open an inconceivable scene of iniquity; it would be,

“ To pour in light on Pluto’s drear abodes,  
Abhorr’d by men, and dreadful e’en to gods.”

What are we to do with our sensibility, with our honest instinct of propriety,—how refrain from exclamations of horror, while we contemplate a set of men, assuming the sacred garb of justice, for the uniform and well-known purpose of selling their decisions to the highest bidder! For a judge to receive a bribe, we should think an indelible stain upon his character as a *man*; but what shall we say of the state of human nature, where it is no disgrace to him as a *judge*? Where it is not only expected as a matter of course, and practised without disguise, but is made almost a necessary part of the judiciary system?

Whether the practice of receiving bribes was the original idea on which is founded the *venality*

*lity of offices* in modern governments, it is not to our purpose to enquire. But certain it is, they are concomitant ideas, and coextensive practices; and it is designed that they should be so. In France, before the revolution, the office of judge was not indeed hereditary, like that of king; but it was worse; it was held up for sale by the king, and put at auction by the minister. As a part of the king's revenue arose from the sale of justice, the government sold all the offices in that department at fixed prices; but the minister made the bargains with those who would give him most. Thus the seats of the judges became objects of speculation, open to all the world; and the man whose conscience was the best fitted to make a profitable trade of deciding causes, could afford to give the highest price, and was consequently sure to be judge.

Justice then was a commodity which necessarily gave a profit to three sets of men, before it could be purchased by the suitor; even supposing it might have flowed to him in a direct channel.

channel. But this was a thing impossible: there were other descriptions of men, more numerous, if not more greedy, than those of whom we have spoken, through whose hands it must pass and repass, before it could arrive at the client, who had paid his money to the judge. These men, who infested the tribunals in all stages of the business, were divided in France into about six classes. For want of the precise names in English to designate all their official distinctions, we shall rank the whole under the general appellation of Lawyers \*. But though we here confound them together, as we often do objects at a distance; yet they were not to be so treated by the client. He must address them all distinctly and respectfully, with the same *argumentum ad patronum*, with which he had addressed the judge; as one or more of each

\* To avoid any suspicion of exaggeration, I will mention by their original names such of these classes as occur to me. There were the *conseiller*, *avocat*, *procureur*, *secrétaire du juge*, *greffier*, *huissier-priseur*, *huissier-audiencier*, with all their clerks, who must likewise all be paid, or the cause would stop in any stage of its progress.

clafs had a neceffary part in bringing forward and putting backward every caufe that came into court.

Lawyers in France ferved two important purpofes, which it is fuppofed they do not ferve in England : they added confiderably to the revenues of the crown by the purchafe of their places ; and they covered the iniquity of the judges under the impenetrable veil of their own. In a caufe of ordinary confequence, there was more writing to be done in France than there is even in England, perhaps by a hundred and fifty pages. The reafon of this was, that it was more neceffary to involve the queftion in myfteries and perplexities that fhould be abfolutely infcrutable. For it muft never be known, either at the time of trial or ever after, on what point or principle the caufe was decided. To anfwer this end, the multiplying of the different orders of the managers, as well as increafing the quantity of writing, had an admirable effect ; it removed the poffibility of fixing a charge of fraud or mifmanagement on

any one of the great fraternity, or of discovering, among the formidable piles of papers and parchments that enveloped the mysteries of the trial, in what stage the iniquity was introduced.

To call this whole system of operations a solemn farce, is to give no utterance to our feelings; to say it is a splendid mockery of justice, by which individuals are robbed of their property, is almost to speak in its praise. The reflecting mind cannot rest upon it a moment, without glancing over society, and bewailing the terrible inroads made upon morals public and private, the devastation of principle, the outrage upon nature, the degradation of the last particle of dignity by which we recognize our own resemblance in man.

Its obvious tendency is, by its enormous expence, to bar the door of justice against the poor, who in such countries are sure to form the great body of mankind,—to render them enemies to society, by teaching that society is an enemy to them,—to stimulate them to crimes,

both from their own necessities, and from the example of their masters,—and to spread over the people at large an incrustation of ignorance, which, excluding all ideas of their duties and their rights, compels them to forget their relation to the human race.

Are these to be ranked among the circumstances, which call for a change in the governments of Europe? Or are we to join with Mr. Burke, and lament as an evil of the French revolution, “ That the ancient system of jurisprudence will no more be studied?” The whining of that good gentleman on this idea, is about as rational, as it would be to lament that the noble science of Heraldry was in danger of being forgotten; or that men had lost the mystical meaning of *Abacadabra*. This word, serving as a charm, answered the same purpose in Medicine, as heraldry does in Honor; or the old jurisprudence, in Justice: it rendered men superstitious; and consequently, immoral and unhappy.

( It is so fashionable in Europe, especially among Englishmen, to speak in praise of the English jurisprudence, and to consider it as a model of perfection, that it may seem necessary for a person to begin with an apology for offering his ideas on that subject, if he means to deviate from the opinion so generally established. But, instead of doing this, I will begin by apologizing for those who at this day support the established opinion: Your fairest apology, Gentlemen, is, that you understand nothing of the matter. To assign any other, would be less favourable to your characters as honest men.

Exclusive of the rules by which the merits of a cause are to be decided (and which, if they could be ascertained, would be the *law*) the mere *form* of bringing a question before a court is of itself a science, an art, less understood, and more difficult to learn, than the construction and use of the most complicated machine, or even the motions of the heavenly bodies. It is not enough, that the administration of

justice (which ought to be as simple as possible) is so involved in perplexity, that none but men of professional skill can pretend to understand it, but the professors are divided, as in France, into several distinct classes; each of which is absolutely necessary to lend a helping hand in every step of the progress of a cause. This dark multiplicity of form has not only removed the knowledge of law from the generality of men, but has created such an expence in obtaining justice, that very few ever make the attempt. The courts are effectually shut against the great body of the people, and justice as much out of their reach, as if no laws existed\*.

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\* The provision made in the English law, enabling a person to bring his suit *in forma pauperis*, is rather an insult than a real advantage. Certainly, not one person in a hundred, who is deprived of justice in the ordinary course, would ever seek it in this; as, in order to be entitled to it, he must go into court and swear that he has not property enough to prosecute his claim. A young tradesman, and in general every person who wishes to carry on business, or has spirit enough to seek for justice, has a higher interest in establishing a credit among his

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Those who have attempted to purchase justice through the necessary forms, have never been known to pronounce eulogies on the courts. But their number has always been so small, that, had they uttered the anathemas that the system deserves, their feeble voice could scarcely have been heard. No man, whose eyes are not blinded by fees or by prejudice, can look upon the enormous mass of writings which accumulate in a cause, without reflecting with indignation on the expence; one hundredth part of which would have been more than sufficient for every purpose of obtaining justice between the parties. A writer who should give the names and descriptions of the various parts of a process, with the expences annexed to each part, would scarcely gain credit, except with professional men. Several hundred pounds are expended

connexions in business, than in prosecuting any ordinary suit at law. He knows, that to expose his own poverty, especially in a commercial country, would be irretrievable ruin; it would be a *positive* injury; while setting down with the loss of his right, without bringing his suit, is only a negative injury.

only in writing Bills, Subpœnas, Pleas, Demurrers, Answers, Petitions, Orders, Motions, Amendments, Notices, Reports, &c. in a single cause, where no witness is called.

Let us trace a few of the windings, and see where some of the paths lead, which are laid down as necessary to obtaining a decision in Chancery; we shall there find how hundreds, and sometimes thousands of pounds are expended in a cause, before any defence is set up, and where no defence is ever intended to be set up. The suitor begins his incomprehensible operation, by stating his claim, in what is called a *Bill*, which he leaves at a certain office belonging to the court, and obtains an order, called a subpœna, for summoning the defendant. This being done, the court requires the defendant to send an Attorney to write his name at another office of the court. This writing the name, is called an *appearance*; it answers no possible purpose, but that of encreasing expences and fees of office, for which it is a powerful engine. For if the defendant does not comply, an ex-  
pence

pençe of thousands of pounds may be made, to compel him. A *capias*, a process for *outlawry*, a commission of *rebellion*, and an order and commission of *sequestration*, are pursued in their proper routine, till he consents to write his name.

If the plaintiff has property to go through this process, he may be said to be able just to keep his ground; and his cause is in every respect precisely where it was at first. If he has not sufficient property, the cause is lost for want of fees; and he is no better than if he had never been able to have begun the suit.

We will however suppose that the defendant very good-naturedly writes his name; he is then entitled to a certain delay, during which, the court informs him, he must plead, demur, or answer to the bill. When this time expires, he is entitled to a farther delay of four weeks. But though he is *entitled* to this farther delay, and neither the plaintiff nor the court can refuse it; still he must employ a solicitor to make  
a brief

a brief for counsel ; and this solicitor must attend the counsel, and give him and his clerk their fees, for moving the court for this delay, which cannot be refused. The counsel must attend the court and make the motion ; the solicitor must attend the court, and pay for the order, entry and copy ; and then must cause it to be served.

At the end of this term of four weeks, the defendant is *entitled* to a farther delay of three weeks ; which again cannot be refused. But he must pay his solicitor for drawing and engrossing a petition for that purpose, and the petition must be presented, and answered ; for which he must pay ; he must also pay for order, entry, copy, and service. At the end of these three weeks he is in the same manner *entitled* to a farther delay of two weeks ; but the same farce must be acted over again, to obtain it. And a very solemn farce it is to the parties, a very pleasant farce to the officers of the court, and a very ridiculous farce to every body else.

If, during all this time, the defendant had stopt paying, or the solicitor had stopt writing, the same process, which was used to compel his appearance, must have been repeated: to wit, *capias*, *outlawry*, commission of *rebellion*, and *sequestration*. But we have arrived at the time when the defendant is in duty bound to answer to the bill; and here, if he does not answer, then *capias*, *outlawry*, *rebellion* and *sequestration* again,

These terms must be explained to the reader; and this is the best opportunity to do it. For the cause still remaining precisely where it was at first, we may suppose it sufficiently at rest, not to move during the explanation. A *capias* is an order, to take the man, and hold him in goal till he obeys the order of the court; whether it be to write his name, or any thing else. The word *outlawry* explains, of itself, this horrid engine of the court. A commission of *rebellion* is an order issued, after the officer with the *capias* has searched and cannot find the man, and after an *outlawry* has taken place. It is directed

directed to other persons, requiring them to take up the man who was guilty of rebellion in refusing to write his name. But as the officer with the *capias*, before outlawry, could not find the man, the issuing the commission of rebellion *now*, has no other meaning but *fees*. A *sequestration* is taking the whole property of the defendant into the hands of the court. And when this is done, the cause is soon done also; for no estate could last long there. When the money is gone, the proceedings cease.

But let us suppose that the defendant has complied with all orders thus far, and has put in a good and sufficient answer. Let us leave out of our account all motions, petitions, decrees, orders, &c. for amending the bill, for referring to Masters the insufficiency of answers, reports upon those answers, and farther answers, and exceptions to Masters' reports, and orders and decisions relative to them; and, instead of enquiring into the expence of these, let us go back and ask what is the use of all, or of any part of this process? Thirty thousand Lawyers (this is

said to be the number in the kingdom) are now living on just such stuff as the process here described; and I call on them all, to point out the purpose that any of it ever served, or ever can serve, to their clients.

It must be remembered, that all the proceedings thus far, were to end in three pretended objects,—to compel an appearance; to obtain the *usual* and *legal* time for the defendant to prepare his answer, and to compel him to give his answer. For the *appearance*, which is the solemn appellation given to the action of writing a name, it would be an insult to the understanding of a child, to tell him that this could be of any service towards forwarding justice. Next comes the succession of applications and orders, for time to answer the bill. The practice of the court, which is the law in this case, allows the defendant, first a short term, and then the delay of four weeks, three weeks, and two weeks; which in all reckonings, unless it be in law, make nine weeks. And if that be a reasonable  
time

time, when divided into three parts, why is it not so before it is divided? And if neither the party, nor the court, nor any body else, has a right to refuse that term of time, why might not the defendant take it, without the expence of asking three times? The remainder of the process goes to compel the defendant to give in an answer to the bill. And what is the importance of an answer? To solve this question, let us consider the object of the bill, to which the answer is required.

The bill expresses the claim of the plaintiff, and points out the nature of the decree, which he prays may be made in his favor against the defendant. Notice is given to the defendant, that such a suit is pending, and that he may appear and show cause why the decree should not be made. Having given this notice, it is not only cruel, but absurd, to think of forcing him to defend himself, whether he will or no. One would suppose it little to the purpose, to make the attempt. Why may not the subpoena, which



which gives notice to the defendant, point out the day, beyond which he cannot give an answer? then, if he chooses to defend, hear him candidly; but if he refuses to come, and does not choose to defend,—proceed in the cause; he is willing that the decree should pass. Can it be reasonable,—can it be any thing short of flat contradiction and nonsense, to compel him to appear, to compel him to ask for a delay, and to compel him to defend? Can his defence be necessary in doing justice to the plaintiff? And, if he will not defend himself, can you make him? Can any one of the whole host of all the professions of the law, show the least shadow of use in all this flourish of process thus far, but *fees* on the one hand, and *oppression* on the other?

To proceed through all the forms, to the end of a suit in Chancery, would be to write a commentary on many volumes of practice, and would be calling the patience of the reader to a trial from which it would certainly shrink. But  
there

there are parts as much worse than what we have described, as this is worse than common sense. Strip from the Administration of Justice the forms that are perfectly useless and oppressive, and counsellors will have much less to do; while the whole order of attornies and sollicitors will fall to the ground. If the mysteries of nonsense were out of the way, a counsellor who was called upon to hazard his reputation on the manner of conducting his client's cause, would no more have it prepared and brought forward by an attorney, than a man of business would hazard his fortune by doing that business through an ignorant agent, which he could more easily do himself. The quantity of writing, really necessary, in a simple and dignified system of practice, is so small, as to be perhaps incredible to those who are acquainted only with the English process.

I have seen the mode of conducting this business in a country, where the common law of England is the general rule of decision, and  
 where

where the adjudications of Westminster-hall are authorities, as much as they are in Great-Britain. But the laws of that country have stripped legal process of its principal follies; and the consequence is, that the whole profession of attorneys and solicitors has vanished. The counsellor does the whole business of his client; and so simple is the operation, that a man may with ease commence, and carry through every stage, to final judgment and execution, five hundred causes in a year. And the whole proceedings in all these shall not afford writing enough to employ a single clerk one hour in twenty-four. The proceedings and judgments in five hundred causes, in this country, would fill a warehouse. And yet in that country, every allegation is necessary in their declaration and pleadings, which is necessary in Westminster-hall. As they are not paid by the line, their declarations have but one Count, and in that Count there is no tautology. And so little is the expence of suits, where no more is done than is necessary for justice; that judgment, in a cause where there is no defence, may be obtained for

less than ten shillings ; and every person employed be fully paid for his service \*.

Men

\* As this may awaken the curiosity of some of my readers, I will give the details. Suppose a suit to recover money due on Note or Bond : The writ and declaration are incorporated in one instrument ; that is, the declaration is contained in the writ. The sheriff is ordered to read this to the defendant, or leave a copy at his dwelling, at least twelve days previous to the sitting of the court. This writ is usually filled up in a well-known form, in a printed blank ; of which a man may with ease fill a hundred in a day. For this the court taxes one shilling and six-pence. The sheriff, if he has no travel to the defendant, is paid six-pence for reading the writ to him, and delivering it to the clerk of the court. It is then the duty of the plaintiff, or of his lawyer, (who is both counsellor and solicitor) to attend the court on the first day of the sitting ; and then the parties in all causes are called by the crier. For this attendance the court will tax three shillings and four-pence halfpenny ; and if the defendant intends to make no defence he will not answer when called ; and the clerk thereupon, on the third day after calling, if no motion is made by the defendant, enters judgment for the plaintiff ; for which he has about two shillings ; one shillings more is paid for a writ of execution, which is in form and effect a *feri facias*, a *capias ad satisfaciendum*, and an *elegit* : that is, it goes against the goods and chattels of the debtor ; and if the sheriff cannot find those, he is to take the  
body,

Men who are habituated to the expences incurred in law-suits in England, will scarcely be persuaded of the extent to which a reform would be carried, on a general destruction of abuses. But let them reflect, that when law proceedings are stripped of every thing, but what the nature of the subject requires, there is no mystery left. The rational part that remains is soon comprehended, and easily retained in memory. This would doubtless augment the number of suits; for it would open the courts to vast multitudes of people, against whom they are now effectually shut. But in proportion as it increased the number of law-suits, it would diminish the quantity of *law-business*; and the number of lawyers would dwindle to one tenth of what it is at present. In the country above alluded to, the number of men supported by this profession is to the whole population, as one to 4600. Reduce the lawyers here to that proportion, and there would

body, or the land, Added to these costs, there is a duty of 1s. 6d. to government. These several charges are an ample reward for all services rendered.

be left about three thousand in the kingdom. It is asserted, (I know not on what ground) that the present number is thirty thousand. Allowing it to be true, an army of twenty-seven thousand lawyers, on this reform, would find some other employment. But whether the reduction would amount to the number here supposed, or to half of it, is a question of little moment. Saving the expence of maintaining twenty or thirty thousand men in a useless occupation, and sending them to profitable business, however important the object may appear, bears no proportion to the advantage of opening the door of justice to the people, and habituating them to an easy and well-known method of demanding their right.

There is a strange idea prevalent in England, (it has had its day in America) that it is good policy to raise the expences of legal proceedings above the reach of the lower classes of people; as it lessens the number of suits. This kind of reasoning appears too absurd to support its own weight for a moment; and it would

would be beneath our serious notice, were it not for the reflection, that men of superficial research are perpetually caught by it. The human mind is fitted, from its own indolence, to be dazzled by the glare of a proposition; and to receive and utter for truth, what it never gives itself the trouble to examine. There is no paradox among all the enormities of despotism, but what finds its advocates from this very circumstance. We must not therefore scorn to encounter an argument because it is foolish. The business of sober philosophy is often a task of drudgery; it must sometimes listen to the most incoherent clamours, which would be unworthy of its attention, did they not form a part of the general din, by which mankind are deafened and misled.

For a man to bring into court a suit that is manifestly unjust, is a crime against the state; to hinder him from bringing one that is just, is a crime of the state against him. It is a poor compliment to the wisdom of a nation, to suppose that no method can be devised for preventing

venting the first of these evils, without running into the last; and the last is ten times the greatest of the two. The French, who appear to have been desir'd to give lessons to the world by the wisdom of their new institutions, as well as by the folly of their old, have found the secret of imposing a small fine on a vexatious plaintiff; and of establishing many other regulations on this subject, which effectually shut the door of the tribunal against the oppressor, while it easily opens to the feeblest cry of the oppressed.

They have likewise established a method of communicating the knowledge of the laws to every human creature in the kingdom, however ignorant he may be in other respects. They are printed and pasted up on public buildings in every town and village, and read and explained by the curate from the pulpit in every parish. It is in contemplation likewise to institute a general system of public instruction; on a more useful and extensive plan than has ever yet been devised. Several enlightened phi-

losophers



losophers are busied in these researches; and several societies are formed, whose object is to discover and bring forward the best concerted plan for this important purpose. In their whole system of distributing *knowledge* and *justice*, they seem to be aiming at a degree of perfection which promises great success. With all my partiality for the institutions of the United States, I should quote them (in comparison to those of France) with less confidence on the subject of this chapter, than of any other.

In the administration of justice, the Americans are too much attached to the English forms; which serve to increase the expence and to mysticise the business, to a degree that is manifestly inconsistent with the dignity of a true republic. But in respect to Public Instruction, there are some circumstances which deserve to be mentioned to their praise. I am going to speak only of the particular state with which I am best acquainted. How many of the others are better regulated in this respect, and how many are worse, I am not accurately informed. This  
 6 state

state (which contains less than 240,000 inhabitants) is divided into about one hundred towns. These are sub-divided into small portions, called school-districts, suitable for the support of small schools. Each of these districts has a drawback on the state-treasury for a sum, which bears a proportion to the public taxes paid by the inhabitants of the district, and which is about half equal to the support of a school-master. But this sum can be drawn only on condition, that a school is maintained in the district.

The following remarkable consequences seem to have resulted from this provision: There is not perhaps in that state, a person of six years old and of common intellects, who cannot read; and very few who cannot write and cast accounts!—besides the useful books that are found in every family, it is computed that there are in the state about three hundred public libraries, which have been formed by voluntary subscription among the people of the districts and the parishes;—till about the year 1768, which was more than one hundred and thirty years after the

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the settlement of the state, no capital punishment, as I am informed, had been inflicted within its jurisdiction, nor any person convicted of a capital offence; since that period, very few have been convicted, and those few are generally Europeans by birth and education;—there is no extreme poverty in the state, and no extraordinary wealth accumulated by individuals.

It would be absurd to suppose, that Public Instruction is by any means carried to the perfection that it ought to be, in this or any other state in the universe. But this experiment proves, that good morals and equal liberty are reciprocal causes and effects; and that they are both the parents of national happiness, and of great prosperity.

All governments that lay any claim to respectability or justice have proscribed the idea of *ex-post-facto laws*, or laws made after the performance of an action, constituting that action a crime, and punishing the party

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for a thing that was innocent at the time of its being done. Such laws would be so flagrant a violation of natural right, that in the French and several of the American State Constitutions, they are solemnly interdicted in their Declarations of Rights. This proscription is likewise considered as a fundamental article of English liberty, and almost the only one that has not been habitually violated, within the present century. But let us resort to reason and justice, and ask what is the difference between a violation of this article, and the observance of that tremendous maxim of jurisprudence, common to all the nations above-mentioned, *ignorantia legis neminem excusat?*

Most of the laws of society are positive regulations, not taught by nature. Indeed, such only are applicable to the subject now in question. For *ignorantia legis* can have reference only to laws arising out of society, in which our natural feelings have no concern; and where a man is ignorant of such a law, he is in the same situation as if the law did not exist. To  
read

read it to him from the tribunal, where he stands arraigned for the breach of it, is to him precisely the same thing as it would be to originate it at the time by the same tribunal, for the express purpose of his condemnation. The law till then, as relative to him, is not in being. He is therefore in the same predicament that the society in general would be, under the operation of an *ex-post-facto* law. Hence we ought to conclude that, as it seems difficult for a government to dispense with the maxim above-mentioned, a free people ought, in their declaration of rights, to provide for universal public instruction. If they neglect to do this, and mean to avoid the absurdity of a self-destroying policy, by adhering to a system of justice which would preserve a dignity and inspire a confidence worthy the name of liberty, they ought to reject the maxim altogether; and insert in their declaration of rights, that instruction alone can constitute a duty; and that laws can enforce no obedience, but where they are explained.

It

It is truly hard and sufficiently to be regretted, that any part of society should be obliged to yield obedience to laws to which they have not literally and personally consented. Such is the state of things; it is necessary that a majority should govern. If it be an evil to obey a law to which we have not consented, it is at least a necessary evil; but to compel a compliance with orders which are unknown, is carrying injustice beyond the bounds of necessity; it is absurd, and even impossible. Laws in this case may be avenged, but cannot be obeyed; they may inspire terror, but can never command respect.

F I N I S.

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