

Spirit of the Laws

The Baron de Montesquieu

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A republic requires virtuous citizens; its laws should promote the love of equality and frugality. They should also attend to the proper distribution of land and to fair rules of inheritance, to ensure that neither promotes gross inequalities. Only those inequalities that preserve democracy should be tolerated. Democracies founded on commerce and trade are an exception. They may produce great and unequal wealth without harm, so long as the spirit of work is not undermined. The establishment of a Senate should be dedicated to preserving ancient customs and the purity of morals.

Book V

That the Laws Given by the Legislator
Ought to Be in Relation
to the Principle of Government

1. Idea of this Book. That the laws of education should relate to the principle of each government has been shown in the preceding book. Now the same

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may be said of those which the legislator gives to the whole society. The relation of laws to this principle strengthens the several springs of government; and this principle derives thence, in its turn, a new degree of vigour. And thus it is in mechanics, that action is always followed by reaction.

Our design is, to examine this relation in each government, beginning with the republican state, the principle of which is virtue.

2. What is meant by Virtue in a political State. Virtue in a republic is a most simple thing: it is a love of the republic; it is a sensation, and not a consequence of acquired knowledge: a sensation that may be felt by the meanest as well as by the highest person in the state. When the common people adopt good maxims, they adhere to them more steadily than those whom we call gentlemen. It is very rarely that corruption commences with the former: nay, they frequently derive from their imperfect light a stronger attachment to the established laws and customs.

The love of our country is conducive to a purity of morals, and the latter is again conducive to the former. The less we are able to satisfy our private passions, the more we abandon ourselves to those of a general nature. How comes it that monks are so fond of their order? It is owing to the very cause that renders the order insupportable. Their rule debars them from all those things by which the ordinary passions are fed; there remains therefore only this passion for the very rule that torments them. The more austere it is, that is, the more it curbs their in-

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clinations, the more force it gives to the only passion left them.

3. What is meant by a Love of the Republic in a Democracy. A love of the republic in a democracy is a love of the democracy; as the latter is that of equality.

A love of the democracy is likewise that of frugality. Since every individual ought here to enjoy the same happiness and the same advantages, they should consequently taste the same pleasures and form the same hopes, which cannot be expected but from a general frugality.

The love of equality in a democracy limits ambition to the sole desire, to the sole happiness, of doing greater services to our country than the rest of our fellow-citizens. They cannot all render her equal services, but they all ought to serve her with equal alacrity. At our coming into the world, we contract an immense debt to our country, which we can never discharge.

Hence distinctions here arise from the principle of equality, even when it seems to be removed by signal services or superior abilities.

The love of frugality limits the desire of having to the study of procuring necessaries to our family, and superfluities to our country. Riches give a power which a citizen cannot use for himself, for then he would be no longer equal. They likewise procure pleasures which he ought not to enjoy, because these would be also repugnant to the equality.

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Thus well-regulated democracies, by establishing domestic frugality, made way at the same time for public expenses, as was the case at Rome and Athens, when magnificence and profusion arose from the very fund of frugality. And as religion commands us to have pure and unspotted hands when we make our offerings to the gods, the laws required a frugality of life to enable them to be liberal to our country.

The good sense and happiness of individuals depend greatly upon the mediocrity of their abilities and fortunes. Therefore, as a republic, where the laws have placed many in a middling station, is composed of wise men, it will be wisely governed; as it is composed of happy men, it will be extremely happy.

4. In what Manner the Love of Equality and Frugality is inspired. The love of equality and of a frugal economy is greatly excited by equality and frugality themselves, in societies where both these virtues are established by law.

In monarchies and despotic governments, nobody aims at equality; this does not so much as enter their thoughts; they all aspire to superiority. People of the very lowest condition desire to emerge from their obscurity, only to lord it over their fellow-subjects.

It is the same with respect to frugality. To love it, we must practise and enjoy it. It is not those who are enervated by pleasure that are fond of a frugal life; were this natural and common, Alcibiades would never have been the admiration of the universe. Nei-

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ther is it those who envy or admire the luxury of the great; people that have present to their view none but rich men, or men miserable like themselves, detest their wretched condition, without loving or knowing the real term or point of misery.

A true maxim it is, therefore, that in order to love equality and frugality in a republic, these virtues must have been previously established by law.

5. In what Manner the Laws establish Equality in a Democracy. Some ancient legislators, as Lycurgus and Romulus, made an equal division of lands. A settlement of this kind can never take place except upon the foundation of a new republic; or when the old one is so corrupt, and the minds of the people are so disposed, that the poor think themselves obliged to demand, and the rich obliged to consent to a remedy of this nature.

If the legislator, in making a division of this kind, does not enact laws at the same time to support it, he forms only a temporary constitution; inequality will break in where the laws have not precluded it, and the republic will be utterly undone.

Hence for the preservation of this equality it is absolutely necessary there should be some regulation in respect to women's dowries, donations, successions, testamentary settlements, and all other forms of contracting. For were we once allowed to dispose of our property to whom and how we pleased, the will of each individual would disturb the order of the fundamental law.

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Solon, by permitting the Athenians, upon failure of issue to leave their estates to whom they pleased, acted contrary to the ancient laws, by which the estates were ordered to continue in the family of the testator; and even contrary to his own laws, for by abolishing debts he had aimed at equality.

The law which prohibited people having two inheritances was extremely well adapted for a democracy. It derived its origin from the equal distribution of lands and portions made to each citizen. The law would not permit a single man to possess more than a single portion.

From the same source arose those laws by which the next relative was ordered to marry the heiress. This law was given to the Jews after the like distribution. Plato, who grounds his laws on this division, made the same regulation which had been received as a law by the Athenians.

At Athens there was a law whose spirit, in my opinion, has not been hitherto rightly understood. It was lawful to marry a sister only by the father's side, but it was not permitted to espouse a sister by the same venter. This custom was originally owing to republics, whose spirit would not permit that two portions of land, and consequently two inheritances, should devolve on the same person. A man who married his sister only by the father's side could inherit but one estate, namely, that of his father; but by espousing his sister by the same venter, it might happen that this sister's father, having no male issue, might

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leave her his estate, and consequently the brother who married her might be possessed of two.

Little will it avail to object to what Philo says, that although the Athenians were allowed to marry a sister by the father's side, and not by the mother's, yet the contrary practice prevailed among the Lacedæmonians, who were permitted to espouse a sister by the mother's side, and not by the father's. For I find in Strabo that at Sparta, whenever a woman was married to her brother she had half his portion for her dowry. Plain is it that this second law was made in order to prevent the bad consequences of the former. That the estate belonging to the sister's family might not devolve on the brother's, they gave half the brother's estate to the sister for her dowry.

Seneca speaking of Silanus, who had married his sister, says that the permission was limited at Athens, but general at Alexandria. In a monarchical government there was very little concern about any such thing as a division of estates.

Excellent was that law which, in order to maintain this division of lands in a democracy, ordained that a father who had several children should pitch upon one of them to inherit his portion, and leave the others to be adopted, to the end that the numbers of citizens might always be kept upon an equality with that of the divisions.

Phaleas of Chalcedon contrived a very extraordinary method of rendering all fortunes equal, in a republic where there was the greatest inequality.

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This was that the rich should give fortunes with their daughters to the poor, but receive none themselves; and that the poor should receive money for their daughters, instead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It lays the citizens under such hard and oppressive conditions as would make them detest the very equality which they designed to establish. It is proper sometimes that the laws should not seem to tend so directly to the end they propose.

Though real equality be the very soul of a democracy, it is so difficult to establish that an extreme exactness in this respect would not be always convenient. Sufficient is it to establish a census which shall reduce or fix the differences to a certain point: it is afterwards the business of particular laws to level, as it were, the inequalities, by the duties laid upon the rich, and by the ease afforded to the poor. It is moderate riches alone that can give or suffer this sort of compensation; for as to men of overgrown estates, everything which does not contribute to advance their power and honour is considered by them as an injury.

All inequality in democracies ought to be derived from the nature of the government, and even from the principle of equality. For example, it may be apprehended that people who are obliged to live by their labour would be too much impoverished by a public employment, or neglect the duties attending it; that artisans would grow insolent, and that too great a number of freemen would overpower the ancient

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citizens. In this case the equality in a democracy may be suppressed for the good of the state. But this is only an apparent equality; for a man ruined by a public employment would be in a worse condition than his fellow-citizens; and this same man, being obliged to neglect his duty, would reduce the rest to a worse condition than himself, and so on.

6. In what Manner the Laws ought to maintain Frugality in a Democracy. It is not sufficient in a well-regulated democracy that the divisions of land be equal; they ought also to be small, as was customary among the Romans. "God forbid," said Curius to his soldiers, "that a citizen should look upon that as a small piece of land which is sufficient to maintain him."

As equality of fortunes supports frugality, so the latter maintains the former. These things, though in themselves different, are of such a nature as to be unable to subsist separately; they reciprocally act upon each other; if one withdraws itself from a democracy, the other surely follows it.

True is it that when a democracy is founded on commerce, private people may acquire vast riches without a corruption of morals.

This is because the spirit of commerce is naturally attended with that of frugality, economy, moderation, labour, prudence, tranquillity, order, and rule. So long as this spirit subsists, the riches it produces have no bad effect. The mischief is, when excessive wealth destroys the spirit of commerce, then it is that the inconveniences of inequality begin to be felt.

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In order to support this spirit, commerce should be carried on by the principal citizens; this should be their sole aim and study; this the chief object of the laws: and these very laws, by dividing the estates of individuals in proportion to the increase of commerce, should set every poor citizen so far at his ease as to be able to work like the rest, and every wealthy citizen in such a mediocrity as to be obliged to take some pains either in preserving or acquiring a fortune.

It is an excellent law in a trading republic to make an equal division of the paternal estate among the children. The consequence of this is that how great soever a fortune the father has made, his children, being not so rich as he, are induced to avoid luxury, and to work as he has done. I speak here only of trading republics; as to those that have no commerce, the legislator must pursue quite different measures.

In Greece there were two sorts of republics: the one military, like Sparta; the other commercial, as Athens. In the former, the citizens were obliged to be idle; in the latter, endeavours were used to inspire them with the love of industry and labour. Solon made idleness a crime, and insisted that each citizen should give an account of his manner of getting a livelihood. And, indeed, in a well-regulated democracy, where people's expenses should extend only to what is necessary, every one ought to have it; for how should their wants be otherwise supplied?

7. Other Methods of favouring the Principle of Democracy. An equal division of lands cannot be established in all democracies. There are some circum-

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stances in which a regulation of this nature would be impracticable, dangerous, and even subversive of the constitution. We are not always obliged to proceed to extremes. If it appears that this division of lands, which was designed to preserve the people's morals, does not suit the democracy, recourse must be had to other methods.

If a permanent body be established to serve as a rule and pattern of manners; a senate, to which years, virtue, gravity, and eminent services procure admittance; the senators, by being exposed to public view like the statues of the gods, must naturally inspire every family with sentiments of virtue.

Above all, this senate must steadily adhere to the ancient institutions, and mind that the people and the magistrates never swerve from them.

The preservation of the ancient customs is a very considerable point in respect to manners. Since a corrupt people seldom perform any memorable actions, seldom establish societies, build cities, or enact laws; on the contrary, since most institutions are derived from people whose manners are plain and simple, to keep up the ancient customs is the way to preserve the original purity of morals.

Besides, if by some revolution the state has happened to assume a new form, this seldom can be effected without infinite pains and labour, and hardly ever by idle and debauched persons. Even those who had been the instruments of the revolution were desirous it should be relished, which is difficult to

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compass without good laws. Hence it is that ancient institutions generally tend to reform the people's manners, and those of modern date to corrupt them. In the course of a long administration, the descent to vice is insensible; but there is no reascending to virtue without making the most generous efforts.

It has been questioned whether the members of the senate we are speaking of ought to be for life or only chosen for a time. Doubtless they ought to be for life, as was the custom at Rome, at Sparta, and even at Athens. For we must not confound the senate at Athens, which was a body that changed every three months, with the Areopagus, whose members, as standing patterns, were established for life.

Let this be therefore a general maxim; that in a senate designed to be a rule, and the depository, as it were, of manners, the members ought to be chosen for life: in a senate intended for the administration of affairs, the members may be changed.

The spirit, says Aristotle, waxes old as well as the body. This reflection holds good only in regard to a single magistrate, but cannot be applied to a senatorial assembly.

At Athens, besides the Areopagus, there were guardians of the public morals, as well as of the laws. At Sparta, all the old men were censors. At Rome, the censorship was committed to two particular magistrates. As the senate watched over the people, the censors were to have an eye over the people and the

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senate. Their office was to reform the corruptions of the republic, to stigmatise indolence, to censure neglects, and to correct mistakes; as to flagrant crimes, these were left to the punishment of the laws.

That Roman law which required the accusations in cases of adultery to be public was admirably well calculated for preserving the purity of morals; it intimidated married women, as well as those who were to watch over their conduct.

Nothing contributes more to the preservation of morals than an extreme subordination of the young to the old. Thus they are both restrained, the former by their respect for those of advanced age, and the latter by their regard for themselves.

Nothing gives a greater force to the law than a perfect subordination between the citizens and the magistrate. "The great difference which Lycurgus established between Sparta and the other cities," says Xenophon, "consists chiefly in the obedience the citizens show to their laws; they run when the magistrate calls them. But at Athens a rich man would be highly displeased to be thought dependent on the magistrate."

Paternal authority is likewise of great use towards the preservation of morals. We have already observed that in a republic there is not so coercive a force as in other governments. The laws must therefore endeavour to supply this defect by some means or other; and this is done by paternal authority.

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Fathers at Rome had the power of life and death over their children. At Sparta, every father had a right to correct another man's child.

Paternal authority ended at Rome together with the republic. In monarchies, where such a purity of morals is not required, they are controlled by no other authority than that of the magistrates.

The Roman laws, which accustomed young people to dependence, established a long minority. Perhaps we are mistaken in conforming to this custom; there is no necessity for so much constraint in monarchies.

This very subordination in a republic might make it necessary for the father to continue in the possession of his children's fortune during life, as was the custom at Rome. But this is not agreeable to the spirit of monarchy.

[Translated by Thomas Nugent and revised by J. V. Prichard (notes omitted)]