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11. THE VARIOUS SYSTEMS OF LEGISLATION

IF we ask in what precisely consists the greatest good of all, which should be the end of every system of legislation, we shall find it reduce itself to two main objects, liberty and equality -- liberty, because all particular dependence means so much force taken from the body of the State and equality, because liberty cannot exist without it.

I have already defined civil liberty; by equality, we should understand, not that the degrees of power and riches are to be absolutely identical for everybody; but that power shall never be great enough for violence, and shall always be exercised by virtue of rank and law; and that, in respect of riches, no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself:[16] which implies, on the part of the great, moderation in goods and position, and, on the side of the common sort, moderation in avarice and covetousness.

Such equality, we are told, is an unpractical ideal that cannot actually exist. But if its abuse is inevitable, does it follow that we should not at least make regulations concerning it? It is precisely because the

force of circumstances tends continually to destroy equality that the force of legislation should always tend to its maintenance.

But these general objects of every good legislative system need modifying in every country in accordance with the local situation and the temper of the inhabitants; and these circumstances should determine, in each case, the particular system of institutions which is best, not perhaps in itself, but for the State for which it is destined. If, for instance, the soil is barren and unproductive, or the land too crowded for its inhabitants, the people should turn to industry and the crafts, and exchange what they produce for the commodities they lack. If, on the other hand, a people dwells in rich plains and fertile slopes, or, in a good land, lacks inhabitants, it should give all its attention to agriculture, which causes men to multiply, and should drive out the crafts, which would only result in depopulation, by grouping in a few localities the few inhabitants there are.[17] If a nation dwells on an extensive and convenient coast-line, let it cover the sea with ships and foster commerce and navigation. It will have a life that will be short and glorious. If, on its coasts, the sea washes nothing but almost inaccessible rocks, let it remain barbarous and ichthyophagous: it will have a quieter, perhaps a better, and certainly a happier life. In a word, besides the principles that are common to all, every nation has in itself something that gives them a particular application, and makes its legislation peculiarly its own. Thus, among the Jews long ago and more recently among the Arabs, the chief object was religion, among the Athenians letters, at Carthage and Tyre commerce, at Rhodes shipping, at Sparta war, at Rome virtue. The author of *The Spirit of the Laws* has shown with many examples by what art the legislator directs the constitution towards each of these objects. What makes the constitution of a State really solid and lasting is the due observance of what is proper, so that the natural relations are always in agreement with the laws on every point, and law only serves, so to speak, to assure, accompany and rectify them. But if the legislator mistakes his object and adopts a principle other than circumstances naturally direct; if his principle makes for servitude while they make for liberty, or if it makes for riches, while they make for populousness, or if it makes for peace, while they make for conquest -- the laws will insensibly lose

their influence, the constitution will alter, and the State will have no rest from trouble till it is either destroyed or changed, and nature has resumed her invincible sway.

12. THE DIVISION OF THE LAWS

IF the whole is to be set in order, and the commonwealth put into the best possible shape, there are various relations to be considered. First, there is the action of the complete body upon itself, the relation of the whole to the whole, of the Sovereign to the State; and this relation, as we shall see, is made up of the relations of the intermediate terms.

The laws which regulate this relation bear the name of political laws, and are also called fundamental laws, not without reason if they are wise. For, if there is, in each State, only one good system, the people that is in possession of it should hold fast to this; but if the established order is bad, why should laws that prevent men from being good be regarded as fundamental? Besides, in any case, a people is always in a position to change its laws, however good; for, if it choose to do itself harm, who can have a right to stop it?

The second relation is that of the members one to another, or to the body as a whole; and this relation should be in the first respect as unimportant, and in the second as important, as possible. Each citizen would then be perfectly independent of all the rest, and at the same time very dependent on the city; which is brought about always by the same means, as the strength of the State can alone secure the liberty of its members. From this second relation arise civil laws.

We may consider also a third kind of relation between the individual and the law, a relation of disobedience to its penalty. This gives rise to the setting up of criminal laws, which, at bottom, are less a particular class of law than the sanction behind all the rest.

Along with these three kinds of law goes a fourth, most important of all, which is not graven on tablets of marble or brass, but on the

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7. THE CENSORSHIP

AS the law is the declaration of the general will, the censorship is the declaration of the public judgment: public opinion is the form of law which the censor administers, and, like the prince, only applies to particular cases.

The censorial tribunal, so far from being the arbiter of the people's opinion, only declares it, and, as soon as the two part company, its decisions are null and void.

It is useless to distinguish the morality of a nation from the objects

of its esteem; both depend on the same principle and are necessarily indistinguishable. There is no people on earth the choice of whose pleasures is not decided by opinion rather than nature. Right men's opinions, and their morality will purge itself. Men always love what is good or what they find good; it is in judging what is good that they go wrong. This judgment, therefore, is what must be regulated. He who judges of morality judges of honour; and he who judges of honour finds his law in opinion.

The opinions of a people are derived from its constitution; although the law does not regulate morality, it is legislation that gives it birth. When legislation grows weak, morality degenerates; but in such cases the judgment of the censors will not do what the force of the laws has failed to effect.

From this it follows that the censorship may be useful for the preservation of morality, but can never be so for its restoration. Set up censors while the laws are vigorous; as soon as they have lost their vigour, all hope is gone; no legitimate power can retain force when the laws have lost it.

The censorship upholds morality by preventing opinion from growing corrupt, by preserving its rectitude by means of wise applications, and sometimes even by fixing it when it is still uncertain. The employment of seconds in duels, which had been carried to wild extremes in the kingdom of France, was done away with merely by these words in a royal edict: "As for those who are cowards enough to call upon seconds." This judgment, in anticipating that of the public, suddenly decided it. But when edicts from the same source tried to pronounce duelling itself an act of cowardice, as indeed it is, then, since common opinion does not regard it as such, the public took no notice of a decision on a point on which its mind was already made up.

I have stated elsewhere^[40] that as public opinion is not subject to any constraint, there need be no trace of it in the tribunal set up to represent it. It is impossible to admire too much the art with which this resource, which we moderns have wholly lost, was employed by the

Romans, and still more by the Lacedæmonians.

A man of bad morals having made a good proposal in the Spartan Council, the Ephors neglected it, and caused the same proposal to be made by a virtuous citizen. What an honour for the one, and what a disgrace for the other, without praise or blame of either! Certain drunkards from Samos^[41] polluted the tribunal of the Ephors: the next day, a public edict gave Samians permission to be filthy. An actual punishment would not have been so severe as such an impunity. When Sparta has pronounced on what is or is not right, Greece makes no appeal from her judgments.