

BOOK 2

Of Laws Directly Derived from the Nature of Government

1. Of the Nature of the three different Governments.

There are three species of government: republican, monarchical, and despotic. In order to discover their nature, it is sufficient to recollect the common notion, which supposes three definitions, or rather three facts: that a republican government is that in which the body, or only a part of the people, is possessed of the supreme power; monarchy, that in which a single person governs by fixed and established laws; a despotic government, that in which a single person directs everything by his own will and caprice.

This is what I call the nature of each government; we must now inquire into those laws which directly conform to this nature, and consequently are the fundamental institutions.

2. Of the Republican Government, and the Laws in relation to Democracy.¹

When the body of the people is possessed of the supreme power, it is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy.

In a democracy the people are in some respects the sovereign, and in others the subject.

There can be no exercise of sovereignty but by their suffrages, which are their own will; now the sovereign's will is the sovereign himself. The laws therefore which establish the right of suffrage are fundamental to this government. And indeed it is as important to regulate in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern.

Libanius² says that at Athens a stranger who intermeddled in the assemblies of the people was punished with death. This is because such a man usurped the rights of sovereignty.

It is an essential point to fix the number of citizens who are to form the public assemblies; otherwise it would be uncertain whether the whole, or only a part of the people, had given their votes. At Sparta the number was fixed at ten thousand. But Rome, designed by Providence to rise from the weakest beginnings to the highest pitch of grandeur; Rome, doomed to experience all the vicissitudes of fortune; Rome, who had sometimes all her inhabitants without her walls, and sometimes all Italy and a considerable part of the world within them; Rome, I say, never fixed the number³ and this was one of the principal causes of her ruin.

The people, in whom the supreme power resides, ought to have the management of everything within their reach: that which exceeds their abilities must be conducted by their ministers.

But they cannot properly be said to have their ministers, without the power of nominating them: it is, therefore, a fundamental maxim in this government, that the people should choose their ministers -- that is, their magistrates.

They have occasion, as well as monarchs, and even more so, to be directed by a council or senate. But to have a proper confidence in these, they should have the choosing of the members; whether

the election be made by themselves, as at Athens, or by some magistrate deputed for that purpose, as on certain occasions was customary at Rome.

The people are extremely well qualified for choosing those whom they are to entrust with part of their authority. They have only to be determined by things to which they cannot be strangers, and by facts that are obvious to sense. They can tell when a person has fought many battles, and been crowned with success; they are, therefore, capable of electing a general. They can tell when a judge is assiduous in his office, gives general satisfaction, and has never been charged with bribery: this is sufficient for choosing a praetor. They are struck with the magnificence or riches of a fellow-citizen; no more is requisite for electing an Aedile. These are facts of which they can have better information in a public forum than a monarch in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this surpasses their abilities.

Should we doubt the people's natural capacity, in respect to the discernment of merit, we need only cast an eye on the series of surprising elections made by the Athenians and Romans; which no one surely will attribute to hazard.

We know that though the people of Rome assumed the right of raising plebeians to public offices, yet they never would exert this power; and though at Athens the magistrates were allowed, by the law of Aristides, to be elected from all the different classes of inhabitants, there never was a case, says Xenophon,⁴ when the common people petitioned for employments which could endanger either their security or their glory.

As most citizens have sufficient ability to choose, though unqualified to be chosen, so the people, though capable of calling others to an account for their administration, are incapable of conducting the administration themselves.

The public business must be carried on with a certain motion, neither too quick nor too slow. But the motion of the people is always either too remiss or too violent. Sometimes with a hundred thousand arms they overturn all before them; and sometimes with a hundred thousand feet they creep like insects.

In a popular state the inhabitants are divided into certain classes. It is in the manner of making this division that great legislators have signalized themselves; and it is on this the duration and prosperity of democracy have ever depended.

Servius Tullius followed the spirit of aristocracy in the distribution of his classes. We find in Livy⁵ and in Dionysius Halicarnassus,⁶ in what manner he lodged the right of suffrage in the hands of the principal citizens. He had divided the people of Rome into 193 centuries, which formed six classes; and ranking the rich, who were in smaller numbers, in the first centuries, and those in middling circumstances, who were more numerous, in the next, he flung the indigent multitude into the last; and as each century had but one vote⁷ it was property rather than numbers that decided the election.

Solon divided the people of Athens into four classes. In this he was directed by the spirit of democracy, his intention not being to fix those who were to choose, but such as were eligible:

therefore, leaving to every citizen the right of election, he made⁸ the judges eligible from each of those four classes; but the magistrates he ordered to be chosen only out of the first three, consisting of persons of easy fortunes.⁹

As the division of those who have a right of suffrage is a fundamental law in republics, so the manner of giving this suffrage is another fundamental.

The suffrage by lot is natural to democracy; as that by choice is to aristocracy.¹⁰

The suffrage by lot is a method of electing that offends no one, but animates each citizen with the pleasing hope of serving his country.

Yet as this method is in itself defective, it has been the endeavor of the most eminent legislators to regulate and amend it.

Solon made a law at Athens that military employments should be conferred by choice; but that senators and judges should be elected by lot.

The same legislator ordained that civil magistracies, attended with great expense, should be given by choice; and the others by lot.

In order, however, to amend the suffrage by lot, he made a rule that none but those who presented themselves should be elected; that the person elected should be examined by judges¹¹ and that every one should have a right to accuse him if he were unworthy of the office:¹² this participated at the same time of the suffrage by lot, and of that by choice. When the time of their magistracy had expired, they were obliged to submit to another judgment in regard to their conduct. Persons utterly unqualified must have been extremely backward in giving in their names to be drawn by lot.

The law which determines the manner of giving suffrage is likewise fundamental in a democracy. It is a question of some importance whether the suffrages ought to be public or secret. Cicero observes¹³ that the laws¹⁴ which rendered them secret towards the close of the republic were the cause of its decline. But as this is differently practiced in different republics, I shall offer here my thoughts concerning this subject.

The people's suffrages ought doubtless to be public¹⁵ and this should be considered as a fundamental law of democracy. The lower class ought to be directed by those of higher rank, and restrained within bounds by the gravity of eminent personages. Hence, by rendering the suffrages secret in the Roman republic, all was lost; it was no longer possible to direct a populace that sought its own destruction. But when the body of the nobles are to vote in an aristocracy¹⁶ or in a democracy the senate¹⁷ as the business is then only to prevent intrigues, the suffrages cannot be too secret.

Intriguing in a senate is dangerous; it is dangerous also in a body of nobles; but not so among the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on account of an actor as ever they could be for the welfare of the state. The misfortune of a republic is when intrigues are at an end; which happens when the people are gained by bribery and corruption: in this case they grow indifferent to public

affairs, and avarice becomes their predominant passion. Unconcerned about the government and everything belonging to it, they quietly wait for their hire.

It is likewise a fundamental law in democracies, that the people should have the sole power to enact laws. And yet there are a thousand occasions on which it is necessary the senate should have the power of decreeing; nay, it is frequently proper to make some trial of a law before it is established. The constitutions of Rome and Athens were excellent. The decrees of the senate¹⁸ had the force of laws for the space of a year, but did not become perpetual till they were ratified by the consent of the people.

3. Of the Laws in relation to the Nature of Aristocracy.

In an aristocracy the supreme power is lodged in the hands of a certain number of persons. These are invested both with the legislative and executive authority; and the rest of the people are, in respect to them, the same as the subjects of a monarchy in regard to the sovereign.

They do not vote here by lot, for this would be productive of inconveniences only. And indeed, in a government where the most mortifying distinctions are already established, though they were to be chosen by lot, still they would not cease to be odious; it is the nobleman they envy, and not the magistrate.

When the nobility are numerous, there must be a senate to regulate the affairs which the body of the nobles are incapable of deciding, and to prepare others for their decision. In this case it may be said that the aristocracy is in some measure in the senate, the democracy in the body of the nobles, and the people are a cipher.

It would be a very happy thing in an aristocracy if the people, in some measure, could be raised from their state of annihilation. Thus at Genoa, the bank of St. George being administered by the people¹⁹ gives them a certain influence in the government, whence their whole prosperity is derived.

The senators ought by no means to have the right of naming their own members; for this would be the only way to perpetuate abuses. At Rome, which in its early years was a kind of aristocracy, the senate did not fill up the vacant places in their own body; the new members were nominated by the censors.²⁰

In a republic, the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy. In the latter the laws have provided for, or in some measure adapted themselves to, the constitution; and the principle of government checks the monarch: but in a republic, where a private citizen has obtained an exorbitant power,²¹ the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it.

There is an exception to this rule, when the constitution is such as to have immediate need of a magistrate invested with extraordinary power. Such was Rome with her dictators, such is Venice with her state inquisitors; these are formidable magistrates, who restore, as it were by violence, the state to its liberty. But how comes it that these magistracies are so very different in these two republics? It is because Rome supported the remains of her aristocracy against the people; whereas Venice employs her state inquisitors to maintain her aristocracy against the nobles. The consequence

was that at Rome the dictatorship could be only of short duration, as the people acted through passion and not with design. It was necessary that a magistracy of this kind should be exercised with luster and pomp, the business being to intimidate, and not to punish, the multitude. It was also proper that the dictator should be created only for some particular affair, and for this only should have an unlimited authority, as he was always created upon some sudden emergency. On the contrary, at Venice they have occasion for a permanent magistracy; for here it is that schemes may be set on foot, continued, suspended, and resumed; that the ambition of a single person becomes that of a family, and the ambition of one family that of many. They have occasion for a secret magistracy, the crimes they punish being hatched in secrecy and silence. This magistracy must have a general inquisition, for their business is not to remedy known disorders, but to prevent the unknown. In a word, the latter is designed to punish suspected crimes; whereas the former used rather menaces than punishment even for crimes that were openly avowed.

In all magistracies, the greatness of the power must be compensated by the brevity of the duration. This most legislators have fixed to a year; a longer space would be dangerous, and a shorter would be contrary to the nature of government. For who is it that in the management even of his domestic affairs would be thus confined? At Ragusa²² the chief magistrate of the republic is changed every month, the other officers every week, and the governor of the castle every day. But this can take place only in a small republic environed²³ by formidable powers, who might easily corrupt such petty and insignificant magistrates.

The best aristocracy is that in which those who have no share in the legislature are so few and inconsiderable that the governing party have no interest in oppressing them. Thus when²⁴ Antipater made a law at Athens that whosoever was not worth two thousand drachms should have no power to vote, he formed by this method the best aristocracy possible; because this was so small a sum as to exclude very few, and not one of any rank or consideration in the city.

Aristocratic families ought therefore, as much as possible, to level themselves in appearance with the people. The more an aristocracy borders on democracy, the nearer it approaches perfection: and, in proportion as it draws towards monarchy, the more is it imperfect.

But the most imperfect of all is that in which the part of the people that obeys is in a state of civil servitude to those who command, as the aristocracy of Poland, where the peasants are slaves to the nobility.

4. Of the Relation of Laws to the Nature of Monarchical Government.

The intermediate, subordinate, and dependent powers constitute the nature of monarchical government; I mean of that in which a single person governs by fundamental laws. I said the intermediate, subordinate, and dependent powers. And indeed, in monarchies the prince is the source of all power, political and civil. These fundamental laws necessarily suppose the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and of course there is no fundamental law.

The most natural, intermediate, and subordinate power is that of the nobility. This in some measure seems to be essential to a monarchy, whose fundamental maxim is: no monarch, no nobility; no nobility, no monarch; but there may be a despot prince.

There are men who have endeavored in some countries in Europe to suppress the jurisdiction of the nobility, not perceiving that they were driving at the very thing that was done by the parliament of England. Abolish the privileges of the lords, the clergy and cities in a monarchy, and you will soon have a popular state, or else a despotic government.

The courts of a considerable kingdom in Europe have, for many ages, been striking at the patrimonial jurisdiction of the lords and clergy. We do not pretend to censure these sage magistrates; but we leave it to the public to judge how far this may alter the constitution. Far am I from being prejudiced in favor of the privileges of the clergy; however, I should be glad if their jurisdiction were once fixed. The question is not whether their jurisdiction was justly established; but whether it be really established; whether it constitutes a part of the laws of the country, and is in every respect in relation to those laws: whether between two powers acknowledged independent, the conditions ought not to be reciprocal; and whether it be not equally the duty of a good subject to defend the prerogative of the prince, and to maintain the limits which from time immemorial have been prescribed to his authority.

Though the ecclesiastic power be so dangerous in a republic, yet it is extremely proper in a monarchy, especially of the absolute kind. What would become of Spain and Portugal, since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power? A barrier ever useful when there is no other: for since a despotic government is productive of the most dreadful calamities to human nature, the very evil that restrains it is beneficial to the subject.

In the same manner as the ocean, threatening to overflow the whole earth, is stopped by weeds and pebbles that lie scattered along the shore, so monarchs, whose power seems unbounded, are restrained by the smallest obstacles, and suffer their natural pride to be subdued by supplication and prayer.

The English, to favor their liberty, have abolished all the intermediate powers of which their monarchy was composed. They have a great deal of reason to be jealous of this liberty; were they ever to be so unhappy as to lose it, they would be one of the most servile nations upon earth.

Mr. Law, through ignorance both of a republican and monarchical constitution, was one of the greatest promoters of absolute power ever known in Europe. Besides the violent and extraordinary changes owing to his direction, he would fain suppress all the intermediate ranks, and abolish the political communities. He was dissolving²⁵ the monarchy by his chimerical reimbursements, and seemed as if he even wanted to redeem the constitution.

It is not enough to have intermediate powers in a monarchy; there must be also a depository of the laws. This depository can only be the judges of the supreme courts of justice, who promulgate the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence and contempt of civil government, require that there should be a body invested with the power of reviving and executing the laws, which would be otherwise buried in oblivion. The prince's council are not a proper depository. They are naturally the depository of the momentary will of the prince, and not of the fundamental laws. Besides, the prince's council is continually changing; it is neither permanent nor numerous; neither has it a sufficient share of the confidence of the people; consequently it is capable of setting them right in difficult conjunctures, or of reducing them to

proper obedience.

Despotic governments, where there are no fundamental laws, have no such kind of depositary. Hence it is that religion has generally so much influence in those countries, because it forms a kind of permanent depositary; and if this cannot be said of religion, it may of the customs that are respected instead of laws.

5. Of the Laws in relation to the Nature of a despotic Government.

From the nature of despotic power it follows that the single person, invested with this power, commits the execution of it also to a single person. A man whom his senses continually inform that he himself is everything and that his subjects are nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs. But were he to commit the administration to many, there would be continual disputes among them; each would form intrigues to be his first slave; and he would be obliged to take the reins into his own hands. It is, therefore, more natural for him to resign it to a vizir,²⁶ and to invest him with the same power as himself. The creation of a vizier is a fundamental law of this government.

It is related of a pope that he had started an infinite number of difficulties against his election, from a thorough conviction of his incapacity. At length he was prevailed on to accept of the pontificate, and resigned the administration entirely to his nephew. He was soon struck with surprise, and said, "I should never have thought that these things were so easy." The same may be said of the princes of the East, who, being educated in a prison where eunuchs corrupt their hearts and debase their understandings, and where they are frequently kept ignorant even of their high rank, when drawn forth in order to be placed on the throne, are at first confounded: but as soon as they have chosen a vizier, and abandoned themselves in their seraglio to the most brutal passions; pursuing, in the midst of a prostituted court, every capricious extravagance, they would never have dreamed that they could find matters so easy.

The more extensive the empire, the larger the seraglio; and consequently the more voluptuous the prince. Hence the more nations such a sovereign has to rule, the less he attends to the cares of government; the more important his affairs, the less he makes them the subject of his deliberations.

FOOTNOTES

1. Compare Aristotle, *Politics*, vi. 2.
2. *Declamations*, 17, 18.
3. See the *Considerations on the Causes of the Grandeur and Decline of the Romans*, 9.
4. Pp. 691, 693, ed. Wechel, 1596.
5. Bk. I.
6. Bk. iv, art. 15 et seq.
7. See in the *Considerations on the Causes of the Grandeur and Decline of the Romans*, 9, how this spirit of Servius Tullius was preserved in the republic.
8. Dionysius Halicarnassus, *Eulogium of Isocrates*, ii, p. 97, ed. Wechel. Pollux, viii. 10, art. 130.
9. See Aristotle's *Politics*, ii. 12.
10. *Ibid*, iv. 9.
11. See the oration of Demosthenes, *De Falsa legat.*, and the oration against Timarchus.
12. They used even to draw two tickets for each place, one which gave the place, and the other which named the person who was to succeed, in case the first was rejected.
13. *De Leg.*, i, iii.

14. They were called *leges tabulares*; two tablets were presented to each citizen, the first marked with an A, for *Antique*, or I forbid it; and the other with an U and an R, for *Uti rogas*, or Be it as you desire.
15. At Athens the people used to lift up their hands.
16. As at Venice.
17. The thirty tyrants at Athens ordered the suffrages of the *Areopagites* to be public, in order to manage them as they pleased. -- *Lysias*, *Orat. contra Agorat.* 8.
18. See *Dionysius Halicarnassus*, iv, ix.
19. See *Mr. Addison*, *Travels to Italy*, p. 16.
20. They were named at first by the consuls.
21. This is what ruined the republic of Rome. See *Considerations on the Causes of the Grandeur and Decline of the Romans*, 14, 16.
22. *Tournefort*, *Voyages*.
23. At *Lucca* the magistrates are chosen only for two months.
24. *Diodorus*, xviii, p. 601, ed. *Rhodomannus*.
25. *Ferdinand*, king of *Aragon*, made himself grand master of the orders, and that alone changed the constitution.
26. The Eastern kings are never without vizirs, says *Sir John Chardin*.