



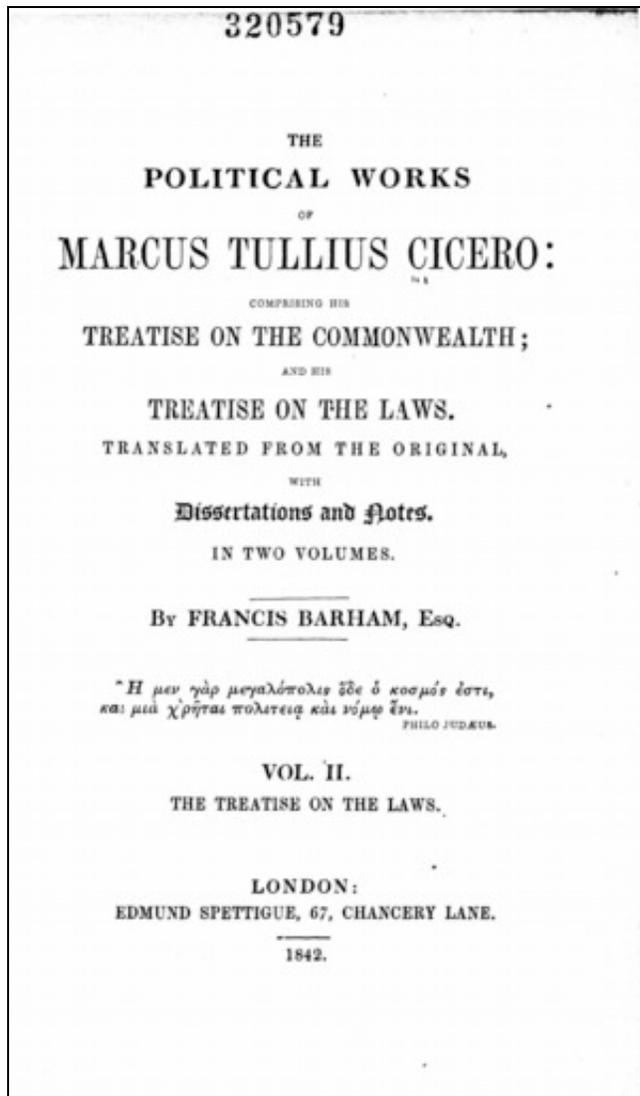
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**MARCUS TULLIUS CICERO, *TREATISE ON THE LAWS* (51 BC)**

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**ABOUT THE AUTHOR**

Cicero was a Roman lawyer and statesman who was active during the late Republic in resisting the rise of dictatorship. His polish style of writing Latin greatly influenced later generations.

**ABOUT THE BOOK**

*The Treatise on the laws* is Cicero's imitation of Plato's dialogue *The Laws* where he develops a Stoic theory of natural law as right reason. This book became very influential during the middle ages.

**THE EDITION USED**

vol. 2 of *The Political Works of Marcus Tullius Cicero: Comprising his Treatise on the Commonwealth; and his Treatise on the Laws. Translated from the original, with Dissertations and Notes in Two Volumes. By Francis Barham, Esq. (London: Edmund Spettigue, 1841-42).*

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## MARCUS TULLIUS CICERO, *TREATISE ON THE LAWS* (51 BC)

### PREFACE.

ALL who are acquainted with Cicero's Republic are probably aware that it forms a general introduction to the Treatise on Laws, which we now translate for the first time into English. This treatise is therefore to be regarded as a necessary supplement to the former work, and each supports and illustrates the other with surprising force and beauty.

Cicero evidently intended it as a text book of the grand principles and elements of law; and next to the bible, we cannot mention any volume better entitled to our esteem in this respect. The influence that this treatise on Laws has avowedly possessed over the minds of the great jurisconsults who have subsequently written on legal morals, has been immense. It has been continually quoted and referred to, as a kind of legal oracle by the sages of modern times and nations, and in indirect modes, it has diffused its sublime sentiment through the main body of ethical literature.

In the course of this work, Cicero treats of the law,—divine or theologic; the law of nature and nations; the law ecclesiastical or canonical, and the law civil and municipal.

In translating it, we have endeavoured to preserve that *basso rilievo* style of translation, if we may use the term, which gives the original phrases something of that relief and prominence, which are necessary to produce a distinct and durable impression on the modern reader. Many words and phrases occur in the original, which were strong and definite enough for the Romans to whom Cicero wrote, but which would not strike into the apprehension and realization of the English reader, had we not developed and expanded their latent energies, by certain paraphractical illustrations, calculated to elicit familiar associations, ideas, and images of truth, which come home to men's bosom and business in real life as it is.

Many of these terms are of so technical a nature in Cicero's laws, that we never met with any thing more difficult and obscure in all Latinity. Yet we hope in the great majority of instances, to have hit their meaning with sufficient precision. Where we have not done so, we shall willingly submit to the emendations of any scholars who can propose more perfect renderings.

*Should some more sober critic come abroad,  
If wrong, we smile, if right, we kiss the rod.*

In order to make this a more complete introduction to the study of law, we have endeavoured in the notes to illustrate the text by numerous extracts from authors who have treated of the various branches of legislation,—divine, natural, national, canonical, civil, and municipal. Such

passages, though they possess no claim to originality, will be found of much service in familiarly introducing the student to the Justinian Institution and the diversified spheres of jurisprudence.

Certain it is, that at the present moment, our more literary lawyers are reviving an interest in the laws of which Cicero treats, and especially the civil laws of Rome, whose important connection with modern codes is more and more felt. As an instance of the improved state of our literature in this respect, we may particularly mention Mr. Hayward's translation of Savigny's history of the civil law, and the admirable critiques on the subject principally borrowed from recent German authors, in the New Classical Dictionary of Antiquities, published by Taylor.

It may be safely stated with respect to Cicero's Treatise on Laws, that it is calculated in an eminent degree to give the legal student that religious and moral elevation of thought and feeling, which so especially befits the higher order of lawyers and gentlemen.

We cannot sufficiently admire the divine and transcendent ethics which Cicero has interwoven with his legal lucubrations. They are scattered through all this treatise, like sunbeams through the atmosphere, bright in themselves, and brightening all around them. Nor will our admiration of these resplendent fragments of eternal truth be lessened, by finding them often connected in the course of the work with those remnants of Gentile superstition, which even Cicero's mind was not heroic enough to annihilate, but which, for us, have been annihilated by the lapse of ages.

Every man, says the proverb, owes a debt to the profession in which he has been enrolled. Our portion of this debt we have in some measure sought to liquidate, by the publication of the present volume of Cicero's laws. It is calculated to do much good, and little evil; and the more attentively it is perused, the more will the spirit of the reader become ennobled and enlightened, and rise above the vices and chicaneries that bring inevitable disgrace on those who practise them.

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## **A REVIEW OF THE HISTORY OF CICERO'S TREATISE ON THE LAWS.**

CICERO'S Treatise on the Laws, which we now for the first time translate into the English language, was composed by its illustrious author in his fifty-sixth year, about two years after the publication of his Commonwealth, to which it forms a supplement.

In order to introduce it more familiarly to the reader's acquaintance, we shall quote a few passages from Middleton, Morabin, and other authors who have criticized the work.

"Soon after the death of Clodius (says Middleton) Cicero seems to have written his Treatise on Laws, after the example of Plato, whom of all writers he most loved to imitate. For as Plato after he had written on government in general, drew up a body of laws adapted to that particular form of it which he had been delineating, so Cicero chose to deliver his political sentiments in the same method, not by translating Plato, but imitating his manner in the

explication of them. This work being designed, then, as a supplement, or second volume to his other, upon the Commonwealth, was distributed probably as the other was, into six books, for we meet with some quotations among the ancients from the fourth and fifth, though there are but three now remaining, and those in some places imperfect. In the first of these he lays open the origin of laws, and the source of obligations, which he derives from the universal nature of things, or, as he explains it, from the consummate reason and will of the supreme God. In the other two books, he gives a body of laws, conformable to his own plan and idea of a well-ordered state. First, those which relate to religion, and the worship of the gods. Secondly, those which prescribe the duties and powers of the several magistrates, from which the peculiar form of each government is denominated. These laws are generally taken from the old constitution or custom of Rome, with some little variation and temperament, contrived to obviate the disorders to which that commonwealth was liable, and to give a stronger turn toward the aristocratic side. In the other books, which are lost, he treated, as he tells us, of the particular rights and privileges of the Roman people." (Vide Middleton's Life of Cicero).

A larger explanation of the history and nature of this work, is given by M. Morabin, its French translator. Morabin deserves the gratitude of all the lovers of Cicero, for he not only wrote a biography of him, almost equal in merit to Middleton's, but translated his greatest works into his native language. His preface to the *De Legibus* is so just and comprehensive that we choose to translate it almost entire.

"This Treatise on Laws (says Morabin) composed by Cicero, is one of the most valuable monuments which antiquity has bequeathed to us. And if among those works of Tully, which the barbarous ravages of time have destroyed, we regret especially the loss of a large portion of his commonwealth, we must likewise feel disappointed that only three books of his laws still survive, which form the natural supplement to the admirable politics of the preceding masterpiece.

Cicero was not merely an orator and philosopher: he was also a statesman. Being perfectly acquainted with the interests of the Roman government, and conversant with all branches of natural, national, and civil law, he added to the grand speculations of jurisprudence a practical intimacy with public affairs, in which he was deeply engaged during the most critical periods.

Thus, we cannot doubt, that, as the students of eloquence emulated the rhetoric of this great master of oratory, so likewise did statesmen and lawyers derive from these his political and legal writings, maxims of inestimable value, inasmuch as they were adapted to prove, as St. Augustin expresses it, that all true state policy must be perfectly harmonious with the principles of justice.

The general design of Cicero's books on the Commonwealth and the Laws is taken from those works of Plato which bear the same titles. But Cicero executed this design in a very original and yet practical manner, according to the lessons of his personal experience. Far from seeking to change the ancient Roman constitution, I conceive his main object was to reform the abuses of the new one.

In a period when the ambition of the nobles and the spirit of independence and faction among the people were hastening on that terrible tragedy whose last act could only terminate in the loss of liberty, Cicero depicted before the eyes of his fellow-citizens, the image of the Roman Commonwealth in its best conceivable state, when laws, morals, discipline, subordination, patriotism, justice, disinterestedness, frugality, and the other virtues were encouraged and patronized.

He therefore sought to convince all his fellow-citizens who retained the sentiment of national honour, that the integrity and excellence of the state, must consist in the integrity and excellence of their lives and manners. To feel convinced of this, it is only necessary to read a passage in the fifth book of his Commonwealth, which St. Augustine has preserved, in which Cicero after having quoted this verse of Ennius,

*"The wealth of Rome in men and manners lies,"*

thus continues:—

"What remains to us of ancient manners and discipline? Alas! their traces are so much effaced, that they are not even to be recognized, where it is most desirable they should be practised. What shall we say of the men of our times? The true reason why our manners are corrupted, is because our men are degenerated. A strange predicament! in which we are impleaded in the court of conscience, and are obliged to exculpate ourselves as well as we can from the charge of being accomplices in those political abuses, which have left us little more than the phantom of our glorious commonwealth, the vain name and shadow of a blessing, whose reality we have long since lost."

The reader may very reasonably expect to find this same spirit of high-toned patriotism, which is so conspicuous in Cicero's Commonwealth, prevalent in his Treatise on Laws, which we now translate for the public benefit. Indeed the main object of these books, is to prove that justice and law are the only secure foundations of all rational societies.

In the First Book, Cicero endeavours to establish the correct principles of that justice and law whose names are vulgarly employed to signify the regulations of legislators, and the decisions of judges; and which, understood in this current popular sense, do not impress the mind with that sublime veneration, which justice and law in their higher relations necessarily inspire.

Cicero therefore insists in his present treatise, that both justice and law derive their origin from God himself; that they have therefore an eternal and immutable morality; that they are institutions of universal nature, or rather nature itself; the bond of affinity that attaches all moral beings to the gods, and the main-spring of that sociality which binds men to each other; the principle which elicits gratitude to our Creator, and sympathy for our fellow-creatures, the invariable rule of all equity, honour, and happiness; the universal light common to all men, which at once irradiates the reason of the philosopher, and which reveals to the unstudious multitude, the loveliness of the virtues which constitute the honest man and the good citizen.

In the first part of the Second Book, Cicero discusses those laws which concern religion, the worship of God, the sacred festivals, ministrations, and ceremonials. In the second, he illustrates them, and shews their wisdom and propriety.

He pursues the same order in the Third Book, which treats of the laws respecting public rights, the duties of magistrates, their authorities, powers, functions, and personal qualities.

A fragment quoted from the Fifth Book of Cicero's laws by Macrobius, convinces us that we have lost at least two of these books of laws. I say at least two, for from the manner in which the interlocutors employ the time, and the distribution of days in their dialogue, it appears highly probable that the original work was composed in six books, answerable to those of the Commonwealth. This, however, is merely a conjecture, and we have still to determine, whether the following fragment is quoted from the beginning or end of a book. The words are these.

"Would it not be more agreeable, since the sun has only just past his meridian line, and these young shrubs do not yet afford sufficient shadow to protect us from his beams,—would it not be more agreeable that we should descend to the banks of the Liris, and conclude our conversation under the elm trees?"

But beside this loss, which is irreparable, the first of those books which are extant, is interrupted by lacunes and gaps in three or four places, and there is a gap in the Third Book which absorbs the expositions of more than half the magisterial laws therein discussed.

Besides this misfortune, whether the MSS. were corrupted from which the editions of these books on the Laws were printed, or whether they wanted the last polish of Cicero's hand,—for they were probably posthumous publications,—they contain many passages which appear unfinished and broken. This circumstance, added to the difficulty of the subject-matter, has deterred scholars from attempting to translate this treatise *De Legibus*, and very few versions of it exist in modern languages.

This fact, which I could not suppress, and which I cannot confess without trembling, would have altogether deterred me from this perilous undertaking, if I had looked merely to the difficulties of the case. But I did not stay to consider all the objections that might be urged, and, entirely occupied by the pleasure of giving the first translation of a work of Cicero in my native language, I was more gratified at finding that no one had undertaken my task before me, than if some ingenious scholar had forstalled my labours, and left me nothing but the honour of following him, with the treacherous hope of a better success.

I therefore set about studying the first book, and translated it with a rapidity which fortified my former resolution. In the Second Book, however, the thorns began to make their appearance among the roses; and although encouraged by those to whom I showed my first essay, though sustained by the Commentary of Turnebus, so recommended by Scioppius and Casaubon, I should undoubtedly have stopped half way, had I not reflected that it was better to continue my work, even at the risk of never publishing it, in case my learned friends should think it unworthy, than abandon a labour which would then be labour lost, and for which no one would

give me credit.

What occasions still further embarrassment to a translator of Cicero's Laws, is the use of certain terms referring to certain customs, which being exceedingly remote from our own, have no equivalents in our language, and which cannot be well expressed in the technical phrases of scholars, whose erudition and researches have not yet precisely determined the ideas we should attach to some of the words in the original.

A man's life is by no means long enough to read all the books, essays, and dissertations that have been composed on these points of criticism. But I thought that though many of these difficult passages occur, especially in the Second and Third Books, there yet remain so many pieces of eloquence, so many grand sentiments, so many fine maxims, which may benefit persons of all ranks and orders, both in respect of public laws and private manners, that after having won the recommendations of those whose opinions I most prized, I might risk the imprimatur.

As respects this study of Public Law, the time we take in learning it is well spent, and no good reason can be alleged to excuse us from attending to it. We know that in the commerce of civil life, in the management of military affairs, at the bar, the court, and the mart, whether we play an active part on the stage of life, or whether we are mere spectators, this knowledge of public law is pre-eminently important and serviceable.

The most casual glance at society will convince us that the majority of false measures and mistaken points of honour, without reckoning the erroneous ideas and reasonings which disgrace those who use them, and fatigue those who listen to them, are owing to voluntary ignorance of those great principles of law, which belong not merely to one particular profession, but affect the interests of all.

Imperfect therefore as this Treatise of Cicero on the Laws may seem, I am persuaded that it is still a very important work, which may give rise to the most seasonable reflections.

The First Book, which is full of the sublimest religion and morality, treats of the origin and essence of law, its causes, its objects, and its operations. It demonstrates the obligation which is imposed on every individual, to obey its injunctions, and to contribute his appropriate part to the general good of the society of which he is a member. Cicero tells him that the respect he owes to law, is not a mere human decency, but that the Author of nature has invested just laws with so much of his divine authority, that we cannot neglect or violate them without injuring and insulting the Deity, nor without contradicting our moral conscience, which no good man can fail to consult, and which no bad man can oppose without feeling remorse and compunction. He shows us that all the virtues which we ought to cultivate, always tend to our own happiness, and that the best means of promoting them consists in living with men in that perfect union and charity which are cemented by mutual benefits. Lastly, he informs us that penal laws have been invented only to restrain those whose love of justice is not sufficient to keep them within reasonable bounds. And he concludes, by depicting the character of the wise man, who illustrates these propositions in his life and conduct.

In the Second Book, which treats of religious worship, he discovers an infinity of facts, which serve to undeceive us on the false ideas which are entertained respecting the religion of the ancients. Cicero proves that they also believed and worshipped one true God in all his wonderful Theophanies and developements, and that the astonishing multiplicity of divinities which they venerated, was originally the product of a pious fear, but augmented and often corrupted by the interest of certain parties. The religion therefore of the ancient philosophers and sages, was only one form of the true theology, and it excites our admiration by showing us how frequently the grand doctrines of revelation are confirmed by the mythology of the heathens. Thus the great chain of divine truth, was preserved entire, even in the midst of that confusion of gods, sacrifices, festivals, and religious ceremonials, so generally idle, ridiculous, or profane.

The translation of the Third Book, is rather a disappointing task, owing to the great lacune which has deprived us of the explanations of a part of the laws which relate to public order.

Notwithstanding these defects, we conceive that Cicero's Treatise on Laws may be advantageously placed in the hands of young students. Those who conduct the education of young people have often been censured for not more extensively instructing them in those practical sciences which hold the closest connection with real life and business. For want of this, as Petronius Arbiter justly observes, "our students think themselves transported into another planet, when they draw their first breath in the world we live in."

We shall add to this preface of Morabin's the critical notice of this work on Laws, contained in the "Cyclopædia Metropolitana:" "In Cicero's Treatise de Legibus (say the editors), which was written two years later than his Commonwealth, and shortly after the murder of Clodius, he represents himself as explaining to his brother Quintus and Atticus, in their walks through the woods of Arpinum, the nature and origin of the laws, and their actual state in Rome and other countries. Law, he pronounces to be the perfection of reason, the eternal mind, the divine energy, which, while it pervades and unites the whole universe, associates gods and men by the most intimate resemblance of reason and virtue; and still more closely men with men, by the participation of common faculties and affections. He then proves at length that justice is not merely created by civil institutions from the power of conscience, the imperfections of human law, the moral sense, and the disinterestedness of virtue. He next proceeds to unfold the principles, first of religious law, under the heads of divine worship, the observance of festivals and games, the office of priests, augurs, and heralds, the punishment of sacrilege and perjury, the consecration of lands and the rights of sepulchres. Secondly, he proceeds to the investigation of the civil law, which gives him an opportunity of noticing the respective relations of magistrates and citizens.

The splendid panegyrics which Cicero has here pronounced on divine law and universal justice, have given rise to many eulogies, scarcely less eloquent, with which the greatest divines, philosophers, and lawyers have adorned their works. A few of these are worth quoting, as they may serve to elevate our ideas of the importance of the subject, and induce us to study the topics of jurisprudence with more ardour and perseverance.

Thus, from one brilliant passage in this book of Laws, has Hooker derived that well-known exordium in his Ecclesiastical Polity, which is indisputably the finest specimen of his eloquence. "Of Law no less can be said, than that her seat is the bosom of God, and her voice the harmony of the universe. All things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power. Both angels and men, and creatures of what creation soever, though each in different sort and manner, yet all with uniform consent, admiring her as the Mother of their common peace and joy." Similar panegyrics on Law, are found in Cumberland's Law of Nature and Nations, Cudworth's Treatise on Eternal and Immutable Morality, and in the imperishable works of the immortal Selden.

This subject (says Williams) has been treated with much dignity by a writer who is admired by all mankind for his eloquence, but who is, if possible, still more admired by all competent judges for his philosophy. I allude to Burke, of whom I may justly say that he was "gravissimus et dicendi et intelligendi auctor et magister;" and I cannot refuse myself the gratification of quoting his words. "The science of jurisprudence (says he) is the pride of the human intellect; for, with all its defects, redundancies, and errors, it is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns." Dr. Johnson's reply to a person who was foolishly abusing the profession of the law, was, "Do you presume, sir, to find fault with that study which is the last effort of human intelligence acting upon human experience?"

"Law (says Sir W. Blackstone) is a science which distinguishes the criterions of right and wrong; which teaches us to establish the one, and prevent, punish, and redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart. A science which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community."

"The science of jurisprudence (says Sir James Mackintosh, in his discourse on the study of the law of Nature and Nations) is certainly the most honourable occupation of the understanding, because it is most immediately subservient to the general safety and comfort. There is not, in my opinion, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence; where we contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages, withdrawing every case as it arises from the dangerous power of discretion, and subjecting it to inflexible rules; extending the dominion of justice and reason, and gradually contracting, within the narrowest possible limits, the domain of brutal force and arbitrary will."

Granting the justice of these remarks, we cannot help lamenting that the science of jurisprudence or universal law, properly so called, should be so little studied in our British state at present. When we look into the history of literature, we find the times have been, in which men of the most consummate genius devoted that genius with the most ardent perseverance and the most mathematical precision, to the study of jurisprudence in its very loftiest and widest bearings. They hesitated not, through many years of incessant labour, like Grotius abroad and Selden at home, to study the vast system of moral obligations. In order to make

themselves jurisconsults worthy of the name, they studied the divine laws handed down in Scripture, and developed in the ecclesiastical policy, ancient and modern. They studied the law of nature and nations, as explained by its oriental and classical commentators. They studied the civil laws of all states and commonwealths, and by a kind of comparative analysis, elicited the *spirit of laws* among all peoples, and confirmed just regulations by examples derived from the catholic experience of men in all ages and countries, and defeated the blunders of legislation, by showing their pernicious consequences, under every variety of circumstance.

Such men still appear occasionally in Europe and America. A few such may still grace the colleges, and the inns of court, or the open walks of literature; but their number has certainly become deplorably limited. We scarcely ever can find the man, now-a-days, who has studied jurisprudence in its loftier and broader relations,—a man who, like Grotius, Selden, Montesquieu, or Sir W. Jones, can establish the doctrines of a sage and philosophical legislation, by an overwhelming accumulation of testimonies and facts, calculated to inspire confidence and ensure success. In consequence we meet with few who rise to those syncretic and universal maxims of equity and law, which throw a moral radiance through the long current of decisions, simplify the legal economy in its most important branches, and disperse the technical abuses that profane the sanctuary of Themis.

Such men are valuable in proportion to their rarity. They deserve the best patronage and promotion that the state can give them; for they are the true prophets and oracles of jurisprudence—and they can speak with the force and precision of science, while others are proceeding through the perilous bye-paths of quackery, pretence, and hap-hazard.

But such men are not encouraged, and consequently their number is insignificant. Legal philosophy is slighted and unrewarded; while legal practice, however erroneous, is profusely paid for. The consequence is so plain and palpable that it has struck most of the Italian, German, and French writers on the subject. They say "Britain has no jurists, but she has lawyers in abundance." (See Filangieri, Savigny, Pastoret, Constant, Guizot, Sismondi, and Chateaubriand, &c.)

This dangerous tendency of the age to sacrifice the higher doctrines of political and legal philosophy,—such as most tend to develop the national mind and national resources,—to a merely secular practice, which will take any form and impression for the sake of interest and emolument, is too much noted. These lower studies (says the author of the *Natural History of Enthusiasm*) fall in marvellously well with the frigid timidity of the times, and the love of practical utility. But that kind of discretion which can sacrifice truth for the sake of lucre, is always short-sighted and fraught with peril.

We do sincerely believe that a sound knowledge of jurisprudence is quite as necessary as a familiarity with the practice of our courts, for all those who would truly deserve the name of legal reformers. And we more strenuously insist on this indispensable combination of theory and practice in relation to legal reforms, because it affords us the only hope of those ameliorations which have become of the utmost importance to the welfare of the British empire.

## **INTRODUCTION TO THE FIRST BOOK OF CICERO'S TREATISE ON LAWS.**

MARCUS TULLIUS CICERO has composed this Treatise in the form of a dialogue, in which himself, his brother Quintus, and Atticus are the interlocutors. Cicero supposes this dialogue to take place near his villa at Arpinum, on the banks of the river Liris, and beneath the shade of a grove, in the midst of which grew an ancient oak. The sight of this tree reminds Atticus of the oak which Cicero had described in a poem which he once composed in honour of Marius. From this circumstance he takes occasion to compliment Cicero on his poetry. The conversation then turns upon history; and Quintus observes, that he knew no one better able than his brother to write the history of his country, and presses him to undertake it. This Cicero declines, and turns the discourse to the subject of universal justice, and the law of nature and nations.

### **CICERO'S TREATISE ON THE LAWS.**

#### ***BOOK I.***

*Atticus.*

—This is the very grove, and this the oak of Arpinum, whose description in your poem on Marius, I have often read. If, my Marcus, that oak is still in being, this must certainly be it, but it appears extremely old.

*Quintus Cicero.*

—Yes, my Atticus, my brother's oak tree still exists, and will ever flourish, for it is a nurseling of genius. No plant can owe such longevity to the care of the agriculturist as this derives from the verse of the poet.

*Atticus.*

—How can that happen, my Quintus? How can poets bestow immortality on trees? It seems to me that in eulogizing your brother, you flatter your own vanity.

*Quintus.*

—You may rally me as much as you please, but as long as the Latin language is spoken, this oak of Marius will not lose its reputation; and as Scaevola said of my brother's poem on Marius, it will

*"Extend its hoary age, through countless years."*

Do not your Athenians maintain that the olive near their citadel is immortal, and that tall and slender palm tree which Homer's Ulysses says he beheld at Delos, do they not make an exhibition of it to this very day? and so with regard to other things, in many places, whose memorial endures beyond the term of their natural life. Therefore this acorn-bearing oak, on

which once lighted

*"Jove's golden Eagle, dazzling as the sun,"*

still flourishes before us. And when the storms of centuries shall have wasted it, there will still be found a relic on this sacred spot, which shall be called the Oak of Marius [\(Note I.\)](#)

*Atticus.*

—I don't doubt it, my Quintus; but there is one question I would ask, not of you, but of the poet Marcus himself, whether the tree is indebted for its celebrity to his verses alone, or whether the circumstance they record really happened in the history of Marius?

*Marcus Cicero.*

—I will answer you frankly, my Atticus. But you must first inform me what you think of the tradition which asserts, that not far from your house at Rome, Proculus Julius beheld our first king Romulus walking after his decease, and that he heard him declare his desire of being invoked as a God, of being entitled Quirinus, and of having a temple there dedicated to his memory? Tell me also what you think of the tradition of the Athenians, who maintain that not far from your Athenian villa, Boreas made a stolen match with Orithya, for so runs the story.

*Atticus.*

—For what purpose do you ask me such questions as these?

*Marcus.*

—For no purpose at all, unless it be to convince you that we had better not enquire too critically into those remarkable accounts which are thus handed down by tradition.

*Atticus.*

—But this ingenious apology will not deter some from enquiring whether many of the statements in your Marius are true or false; and some will expect the greater accuracy from you, since Arpinum was your own birth place as well as that of Marius, and the events of his life must be fresh in your memory.

*Marcus.*

—I have certainly no ambition to gain the reputation of a liar. But some of these inquisitors, my Atticus, are really too severe. It is preposterous to expect an exact statement of matters of fact in a poem of this nature, as if I had written it not as a poet, but as an eye witness upon oath. I doubt not the same critics would make the same objections if I were to versify on Numa's intercourse with Egeria, and the Eagle which dropped a coronet in the head of the first Tarquin.

*Quintus.*

—I understand you, my brother; you think that the historian must maintain a closer adherence to fact than the poet.

*Marcus.*

—Certainly. History has its laws, and poetry its privileges. The main object of the former is truth in all its relations: the main object of the latter is delight and pleasure of every description. Yet even in Herodotus, the father of Greek history, and in Theopompus, we find fables scarcely less numerous than those which appear in the works of the poets.

*Atticus.*

—Stop there; I have found the occasion I wanted, and I shall not hesitate to urge my suit.

*Marcus.*

—What suit, Atticus?

*Atticus.*

—We asked you, long ago, or rather implored you, to write a History of the Roman empire, for we conceive if you undertook this literary enterprise, even in the historical department, we should yield no palms or laurels to Greece. And if you will listen to my opinion, it seems to me that you owe this gift, not only to the affection of those who are delighted with your writings, but you likewise owe it to your country, that since you have saved her constitution, you should endeavour to adorn her annals, A good history of our country is a desideratum in our national literature, as I know by my own experience, and as I have often heard you declare. Now there is no man more likely than yourself to give general satisfaction in a work of this kind, since by your own avowal, it is of all the forms of composition that which most demands the eloquence of the orator. You would therefore be doing us a great favour if you would undertake this work, and devote your time to a complete history of Rome, which is unknown to most of our fellow-citizens, or at least neglected by them. For after the annals of the chief Pontiffs, which are very contracted, if we come to the book of Fabius, or Cato, whom you are always eulogizing, or the treatises of Piso, Fannius, and Venonius, though one of them may excel another, are they not all extremely defective? The cotemporary of Fannius, Cœlius Antipater, adopted a bolder style of expression. His energy was indeed somewhat rude and rough, without polish or point, but he did what he could to recommend a manly and truthful eloquence. But unfortunately he had for his successors a Claudius, an Asellio, who, far from improving on him, relapsed into the former dullness and insipidity.

I scarcely need to mention Attius. His loquacity is not without its fine points, though he has derived them not so much from the great Grecian authors, as from the Latin scribblers. His style is full of littlenesses and atrocious conceits. His friend Sisenna, far surpasses all our historical writers whose compositions have yet been published, for of the rest we cannot judge.

He has, however, never gained a name among the orators of your rank; and in his history he betrays a sort of puerility. He seems to have read no Greek author but Clitarchus, and him he imitates without reserve, but even when he succeeds in his imitation, he is still far enough from the best style. Therefore the task of historian of right belongs to you, and we shall expect you to accomplish it, unless Quintus can bring forward any reasonable objections.

*Quintus.*

—I have nothing to say against it. Indeed we have often talked over the subject together, and I have made the same request as yourself; but we could never quite agree in our views of the subject.

*Atticus.*

—How so?

*Quintus.*

—Why we differed respecting the epoch from whence such a history should commence its narrative. In my opinion, it ought to begin with the origin of our state and nation, for the accounts that have hitherto been published respecting our primitive antiquities are so written as never to be read. My brother, on the other hand, wishes to confine himself to the events that have happened in our own times, so as only to describe those public affairs in which he himself bore a part.

*Atticus.*

—In this respect I rather agree with him. For the grandest events in Roman history are probably those that have taken place within our own recollection. He would then be able to illustrate the praises of our noble friend Pompey, and describe the memorable year of his own consulship. These memoirs, I imagine, would be far more interesting than any thing he could tell us respecting Romulus and Remus.

*Marcus.*

—I know, my Atticus, that you and other friends have long urged me to this undertaking, nor should I be at all unwilling to attempt it, if I could find more free and leisure time. But it is vain to enter on so extensive a work while my mind is harassed with cares, and my hands are full of business. Such literary enterprises demand a perfect freedom from anxieties and political embarrassments.

*Atticus.*

—How then did you find leisure and vacation enough to compose more books than any of our Roman authors?

*Marcus.*

—Why certain spare times (*subcisiva tempora*) occur to every man, and these I was unwilling to lose. For instance, if I spent a few days in rustication at my country seat, I employed them in composing a part of the essays I had determined to write. But for an historical work, it is impossible to do it justice unless one can procure a regular vacation for a considerable period. My mind is thrown into a miserable state of suspense, when after fairly commencing a literary task, I am obliged to defer its conclusion to a future occasion; nor can I so easily recover the train of ideas in works so interrupted, as bring my essays to their appropriate conclusion, without rest or intermission.

*Atticus.*

—You therefore require a prolonged vacation for the historical treatise we propose, and a full allowance of holidays, with all their freedom and tranquility.

*Marcus.*

—I conceive myself the better entitled to such vacations as I advance in life, since I am desirous, after the method of our ancestors, to continue the custom of giving magisterial advice to my clients, and thus to discharge the offices of old age gracefully and honourably. In such a situation, I should be able to compose not only the historical work you require, but others, still more extensive and diversified, with all desirable accuracy.

*Atticus.*

—I fear that few will accept such an apology for your retirement, and that you will be obliged to speak in public as long as you live. I regret this the more, as the lapse of years will compel you to change your manner of delivery, and your style of eloquence. Thus, your friend Roscius the actor, in his old age, was forced to give up his most brilliant modulations, and to adapt the instrumental accompaniments to a slower measure. Thus you also, my Cicero, will find it necessary daily to relax from those lofty conflicts of oratory to which you have been accustomed, till your eloquence gradually assimilates to the bland garulity of the philosophers. Since, however, the extremest old age is still capable of executing some duties of patriotism, I see that your retirement will not hinder you from advising your clients.

*Quintus.*

—I think that the citizens of Rome would readily grant you this kind of secession from public affairs, if you still consented to advise in legal matters. It is at your own option to try the experiment whenever you please.

*Marcus.*

—Your advice, my Quintus, would be excellent if there were no danger in taking such a step. But I fear in thus seeking to diminish my labours I should rather increase them. I have an objection to thus aggravating the toil of public causes and prosecutions (which I never attempt to plead without full and mature study) by the addition of this professional interpretation of the

laws, which would not distress me so much by its wearisomeness as by its tendency to deprive me of that preparation for speaking, without which I never dared to enter on any considerable pleadings.

*Atticus.*

—Whichever course, you resolve on, my Cicero, we have some *spare time*, as you call it, at present, and I should be very glad if you would employ it in enlightening us respecting the laws of the state. On this subject I am sure you can give us something better than has hitherto been published. For even from your earliest youth, I remember, you have studied the laws, when I went like yourself to hear the lectures of Scœvola, nor did I ever find you so addicted to oratorical pursuits as to neglect your legal ones.

*Marcus.*

—You seek to engage me in a long discussion, my Atticus. However, I will not hesitate to undertake it unless Quintus prefers some other subject. If not, I will frankly tell you all I know about it, since at present we seem to be at leisure.

*Quintus.*

—I shall listen to you with the greatest pleasure, for what better subject can be discussed, or how can the day be spent more profitably?

*Marcus.*

—Let us go then to our accustomed promenade, where they have placed the benches on which we may recline after we have had sufficient exercise. I flatter myself that our discussion will be agreeable enough, since we shall be able each of us to throw light on the several topics with which we are personally most familiar..

*Atticus.*

—Let us go then, and enter on our investigations, as we walk along the bank of the river under the shadow of its foliage. And to begin with the beginning, let me ask I pray you, what is your opinion respecting the nature of Law?

*Marcus.*

—What is my opinion?—I hardly dare to deliver it, lest it should appear presumptuous. For we have had many great men in Rome, who have made it their profession to expound it to the people, and explain its doctrines and practice. But though they professed to be acquainted with its majestic theory, they were rather familiar with its minuter technicalities. What can be grander or nobler than jurisprudence? or what can be more insignificant and quibbling than the practice of lawyers?—necessary as it is for the people. Not that I think that those who adopt this profession are altogether ignorant of the principles of universal legislation; but they are far more attentive to the civil law, which gives them a hold on the interests of the people. Are then

the sublime and recondite principles of jurisprudence less necessary or less useful? Certainly not. It is these you wish me to elucidate and illustrate, and not the formal regulations of our civic economy. You ask me not to write treatises on the rights (*stillicidiorum ac parietum*) of common sewers and partition walls; and to compose forms of stipulations and judgments. These have been already most diligently prepared by clerks in office, and are decidedly lower than the topics which, I suppose, you expect me to discuss. ([Note II.](#))

*Atticus.*

—For my part, if you ask my opinion, I should reply, that after having given us a treatise on the Commonwealth, you cannot consistently refuse us one on the Laws. In doing so, you will imitate the example of your favorite Plato, the philosopher whom you chiefly admire and love with an especial affection.

*Marcus.*

—Do you wish then, that we should emulate that conversation which Plato held with Clinias of Crete, and Megillus of Lacedæmon, which he describes as taking place one summer day under the cypress trees of Cnossus, and in its sylvan avenues: where, after discoursing and arguing respecting the best kind of commonwealths and their appropriate laws, he sauntered with his *delightful* friends?—Do you wish that thus we also, walking beneath these lofty poplars, along these green and umbrageous banks, and sometimes reposing, should investigate the same subjects somewhat more profoundly than is usual among barristers?

*Atticus.*

—I am delighted with your proposal.

*Marcus.*

—But what says my brother Quintus?

*Quintus.*

—I can imagine nothing more agreeable.

*Marcus.*

—I admire your choice. For in no kind of discussion can we more advantageously investigate the facilities which man owes to nature, and the capacity of the human mind for the noblest enterprises. We will discuss the true objects of thought and action, for which we were born and sent into the world, and the beautiful association and fellowship which bind men together by reciprocal charities: when we have fathomed these grand and universal principles of morals, we shall discover the true fountain of laws and rights.

*Atticus.*

—In your opinion, then, it is not in the edict of the magistrate, as the majority of our modern lawyers pretend, nor in the rules of the Twelve Tables of our Statutes, as the ancient Romans maintained, but in the sublimest doctrines of philosophy, we must seek the true source and obligation of jurisprudence.

*Marcus.*

—It is for this reason, my Atticus, that you do not ask me to explain to you the formalities of legal practice, and the technical replications and rejoinders of our professional pleadings. These, indeed, deserve much study and respect, inasmuch as they have occupied the attention of many great men, and are at present expounded by a most eminent lawyer (Servicius Sulpitius Rufus) with admirable ability and skill.

But the subject of our present discussion soars far higher, and comprehends the universal principles of equity and law. In such a discussion therefore on the great moral law of nature, the practice of the civil law can occupy but an insignificant and subordinate station. For according to our idea, we shall have to explain the true nature of moral justice, which is congenial and correspondent with the true nature of man. We shall have to examine those principles of legislation by which all political states should be governed. And last of all, shall we have to speak of those laws and customs which are framed for the use and convenience of particular peoples, which regulate the civic and municipal affairs of the citizens, and which are known by the title of civil laws.

*Quintus.*

—You take a noble view of the subject, my brother, and go to the fountain-head of moral truth, in order to throw light on the whole science of jurisprudence: while those who confine their legal studies to the civil law too often grow less familiar with the arts of justice than with those of litigation.

*Marcus.*

—Your observation, my Quintus, is not quite correct. It is not so much the science of law that produces litigation, as the ignorance of it, (*potius ignoratio juris litigiosa est quam scientia*). But more of this bye-and-bye.

With respect to the true principle of justice, many learned men have maintained that it springs from Law. I hardly know if their opinion be not correct, at least, according to their own definition; for "Law (say they) is the highest reason, implanted in nature, which prescribes those things which ought to be done, and forbids the contrary." This, they think, is apparent from the converse of the proposition; because this same reason, when it is confirmed and established in men's minds, is the law of all their actions.

They therefore conceive that the voice of conscience is a law, that moral prudence is a law, whose operation is to urge us to good actions, and restrain us from evil ones. They think, too, that the Greek name for law (*νομος*), which is derived from *νεμω*, to distribute, implies the very

nature of the thing, that is, to give every man his due. For my part, I imagine that the moral essence of law is better expressed by its Latin name, (*lex*), which conveys the idea of selection or discrimination. According to the Greeks, therefore, the name of law implies an equitable distribution of goods: according to the Romans, an equitable discrimination between good and evil.

The true definition of law should, however, include both these characteristics. And this being granted as an almost self-evident proposition, the origin of justice is to be sought in the divine law of eternal and immutable morality. This indeed is the true energy of nature, the very soul and essence of wisdom, the test of virtue and vice. But since every discussion must relate to some subject, whose terms are of frequent occurrence in the popular language of the citizens, we shall be sometimes obliged to use the same terms as the vulgar, and to conform to that common idiom which signifies by the word law, all the arbitrary regulations which are found in our statute books, either commanding or forbidding certain actions.

*Atticus.*

—Let us begin, then, to establish the principles of justice on that eternal and universal law, whose origin precedes the immeasurable course of ages, before legislative enactments were in being, or political governments constituted.

*Quintus.*

—By thus ascending to first principles, the order of our discourse will be more methodical, so as to conduct us by agreeable gradations to the practical bearings of the subject.

*Marcus.*

—You wish, then, that we should seek for justice in its native source, which being discovered, we shall afterwards be able to speak with more authority and precision respecting our civil laws, that come home to the affairs of our citizens?

*Quintus.*

—Such is the course I would advise.

*Atticus.*

—I also subscribe to your brother's opinion.

*Marcus.*

—Well then, I shall endeavour to describe a system of Laws adapted to that Commonwealth, which Scipio declares to be most desirable in those Six Books which I have written under that title. All our laws, therefore, are to be accommodated to that mixed kind of political government there recommended. We shall also treat of the general principles of morals and manners, which appear most appropriate to such a constitution of society, but without descending to particular

details.

*Quintus.*

—You therefore derive the principles of justice from the principles of nature, to investigate which is the main object of all our discussions.

*Atticus.*

—Certainly, and when she is our guide, we are not very likely to err.

*Marcus.*

—Grant me, then, my Atticus, (for I know my brother's opinion already),—grant me that the entire universe is overruled by the power of God, that by his nature, reason, energy, mind, divinity, or some other word of clearer signification, all things are governed and directed; for if you will not grant me this, I must proceed to prove it.

*Atticus.*

—Respecting the existence of God, and the superintendence of divine providence, I grant you all you can desire. But owing to this singing of birds and babbling of waters, I fear my friends can scarcely hear me.

*Marcus.*

—You are quite right to be on your guard, my Atticus; for even the best men occasionally fall into a passion, and what would your fellow-students, the Epicureans, say, if they heard you denying the first article of that notable book, entitled the Chief Doctrines of Epicurus, in which he says "that God takes care of nothing, neither of himself nor of any other being?"

*Atticus.*

—Pray proceed, for I am waiting to know what advantage you mean to take of the concession I have made you.

*Marcus.*

—I will not detain you long. Since you grant me the existence of God, and the superintendence of Providence, I maintain that he has been especially beneficent to man. This human animal—prescient, sagacious, complex, acute, full of memory, reason and counsel, which we call man,—is generated by the supreme God in a more transcendent condition than most of his fellow-creatures. For he is the only creature among the earthly races of animated beings endued with superior reason and thought, in which the rest are deficient. And what is there, I do not say in man alone, but in all heaven and earth, more divine than reason, which, when it becomes ripe and perfect, is justly termed wisdom?

There exists, therefore, since nothing is better than reason, and since this is the common

property of God and man, a certain aboriginal rational intercourse between divine and human natures. This reason, which is common to both, therefore, can be none other than right reason; and since this *right reason* is what we call *Law*, God and men are said by Law to be consociated. Between whom, since there is a communion of law, there must be also a communication of Justice.

Law and Justice being thus the common rule of immortals and mortals, it follows that they are both the fellow-citizens of one city and commonwealth. And if they are obedient to the same rule, the same authority and denomination, they may with still closer propriety be termed fellow-citizens, since one celestial regency, one divine mind, one omnipotent Deity then regulates all their thoughts and actions.

This universe, therefore, forms one immeasurable Commonwealth and city, common alike to gods and mortals. And as in earthly states, certain particular laws, which we shall hereafter describe, govern the particular relationships of kindred tribes; so in the nature of things doth an universal law, far more magnificent and resplendent, regulate the affairs of that universal city where gods and men compose one vast association.

When we thus reason on universal nature, we are accustomed to reason after this method. We believe that in the long course of ages and the uninterrupted succession of celestial revolutions, the seed of the human race was sown on our planet, and being scattered over the earth, was animated by the divine gift of souls. Thus men retained from their terrestrial origin, their perishable and mortal bodies, while their immortal spirits were ingenerated by Deity. From which consideration we are bold to say that we possess a certain consanguinity and kindred fellowship with the celestials. And so far as we know, among all the varieties of animals, man alone retains the idea of the Divinity. And among men there is no nation so savage and ferocious as to deny the necessity of worshipping God, however ignorant it may be respecting the nature of his attributes. From whence we conclude that every man must recognize a Deity, who considers the origin of his nature and the progress of his life.

Now the law of virtue is the same in God and man, and cannot possibly be diverse. This virtue is nothing else than a nature perfect in itself, and developed in all its excellence. There exists therefore a similitude between God and man; nor can any knowledge be more appropriate and sterling than what relates to this divine similitude.

Nature, attentive to our wants, offers us her treasures with the most graceful profusion. And it is easy to perceive that the benefits which flow from her are true and veritable gifts, which Providence has provided on purpose for human enjoyment, and not the fortuitous productions of her exuberant fecundity. Her liberality appears, not only in the fruits and vegetables which gush from the bosom of the earth, but likewise in cattle and the beasts of the field. It is clear that some of these are intended for the advantage of mankind, a part for propagation, and a part for food. Innumerable arts have likewise been discovered by the teaching of nature; for her doth reason imitate, and skilfully discover all things necessary to the happiness of life.

With respect to man this same bountiful nature hath not merely allotted him a subtle and active

spirit, but moreover favoured him with physical senses, like so many guardians and messengers. Thus has she improved our understanding in relation to many obscure principles, and laid the foundation of practical knowledge; and in all respects moulded our corporeal faculties to the service of our intellectual genius. For while she has debased the forms of other animals, who live to eat rather than eat to live, she has bestowed on man an erect stature, and an open countenance, and thus prompted him to the contemplation of heaven, the ancient home of his kindred immortals. So exquisitely, too, hath she fashioned the features of the human face, as to make them symbolic of the most recondite thoughts and sentiments. As for our two eloquent eyes (*oculi nimis arguti*), do they not speak forth every impulse and passion of our souls? And that which we call *expression*, in which we infinitely excel all the inferior animals, how marvellously it delineates all our speculations and feelings! Of this the Greeks well knew the meaning, though they had no word for it.

I will not enlarge on the wonderful faculties and qualities of the rest of the body, the modulation of the voice, and the power of oratory, which is perhaps the greatest instrument of our influence over human society. These matters do not belong to the occasion of our present discourse, and I think that Scipio has already sufficiently explained them in those books of mine which you have read.

As the Deity, therefore, was pleased to create man as the chief and president of all terrestrial creatures, so it is evident, without further argument, that human nature has made the greatest advances by its intrinsic energy; that nature, which without any other instruction than her own, has developed the first rude principles of the understanding, and strengthened and perfected reason to all the appliances of science and art.

*Atticus.*

—Good heavens, my Cicero! from what a tremendous distance are you deducing the principles of justice! However, I wont hurry too eagerly to what I expect you to say on the Civil Law. But I will listen patiently, even if you spend the whole day in this kind of discourse, for assuredly these are grander topics which you introduce as a preamble than those to which they prepare the way.

*Marcus.*

—You may well describe these topics as grand, which we are now briefly discussing. For of all the questions on which our philosophers argue, there is none which it is more important thoroughly to understand than this, *that man is born for justice, and that law and equity are not a mere establishment of opinion, but an institution of nature*. This truth will become still more apparent if we investigate the nature of human association and society.

There is no one thing more like to another, more homogeneous and analogous, than man is to man. And if the corruption of customs, and the variation of opinions, had not induced an imbecility of minds, and turned them aside from the course of nature, no one would more nearly resemble himself than all men would resemble all men. Therefore whatever definition we

give of man, it must include the whole human race. And this is a good argument, that no portion of mankind can be heterogeneous or dissimilar from the rest; because, if this were the case, one definition could not include all men.

In fact, reason, which alone gives us so many advantages over beasts, by means of which we conjecture, argue, refute, discourse, and accomplish and conclude our designs, is assuredly common to all men; for the faculty of acquiring knowledge is similar in all human minds, though the knowledge itself may be endlessly diversified. By the same senses we all perceive the same objects, and that which strikes the sensibilities of the few, cannot be indifferent to those of the many. Those first rude elements of intelligence which, as I before observed, are the earliest developments of thought, are similarly exhibited by all men; and that faculty of speech which is the soul's interpreter, agrees in the ideas it conveys, though it may differ in the syllables that express them. And therefore there exists not a man in any nation, who, adopting his true nature for his true guide, may not improve in virtue.

Nor is this resemblance which all men bear to each other remarkable in those things only which accord to right reason. For it is scarcely less conspicuous in those corrupt practices by which right reason is most cruelly violated. For all men alike are captivated by voluptuousness, which is in reality no better than disgraceful vice, though it may seem to bear some natural relations to goodness; for by its delicious delicacy and luxury it insinuates error into the mind, and leads us to cultivate it as something salutary, forgetful of its poisonous qualities.

An error, scarcely less universal, induces us to shun death, as if it were annihilation; and to cling to life, because it keeps us in our present stage of existence, which is perhaps rather a misfortune than a desideratum. Thus, likewise, we erroneously consider pain as one of the greatest evils, not only on account of its present asperity, but also because it seems the precursor of mortality. Another common delusion obtains, which induces all mankind to associate renown with honesty, as if we are necessarily happy when we are renowned, and miserable when we happen to be inglorious.

In short, our minds are all similarly susceptible of inquietudes, joys, desires and fears; and if opinions are not the same in all men, it does not follow, for example, that the people of Egypt who deify dogs and cats, do not labour under superstition in the same way as other nations, though they may differ from them in the forms of its manifestation.

But in nothing is the uniformity of human nature more conspicuous than in its respect for virtue. What nation is there, in which kindness, benignity, gratitude, and mindfulness of benefits are not recommended? What nation in which arrogance, malice, cruelty, and unthankfulness, are not reprobated and detested! This uniformity of opinions, invincibly demonstrates that mankind was intended to compose one fraternal association. And to affect this, the faculty of reason must be improved till it instructs us in all the arts of well-living. If what I have said meets your approbation, I will proceed; or if any of my argument appears defective, I will endeavour to explain it.

*Atticus.*

—We see nothing to object to, if I may reply for both of us.

*Marcus.*

—It follows, then, in the line of our argument, *that nature made us just that we might participate our goods with each other, and supply each others' wants* You observe in this discussion whenever I speak of nature, I mean *nature in its genuine purity*, and not in the corrupt state which is displayed by the depravity of evil custom, which is so great, that the natural and innate flame of virtue is often almost extinguished and stifled by the antagonist vices, which are accumulated around it.

But if our true nature would assert her rights, and teach men the noble lesson of the poet, who says, "I am a man, therefore no human interest can be indifferent to me,"—then would justice be administered equally by all and to all. For nature hath not merely given us reason, but right reason, and consequently that law, which is nothing else than right reason enjoining what is good, and forbidding what is evil.

Now if nature hath given us law, she hath also given us justice,—for as she has bestowed reason on all, she has equally bestowed the sense of justice on all. And therefore did Socrates deservedly execrate the man who first drew a distinction between the law of nature and the law of morals, for he justly conceived that this error is the source of most human vices.

It is to this essential union between the naturally honorable, and the politically expedient, that this sentence of Pythagoras refers:—"Love is universal: let its benefits be universal likewise." From whence it appears that when a wise man is attached to a good man by that friendship whose rights are so extensive, that phenomenon takes place which is altogether incredible to worldlings, and yet it is a necessary consequence, that he loves himself not more dearly than he loves his friend. For how can a difference of interests arise where all interests are similar? If there could be such a difference of interests, however minute, it would be no longer a true friendship, which vanishes immediately when, for the sake of our own benefit, we would sacrifice that of our friend.

I have made these preliminary remarks, to prepare you the better for the main subject of our discourse, in order that you may more easily understand the principle, that nature herself is the foundation of justice. When I have explained this a little more at large, I shall come to the consideration of that civil law to which all my arguments refer.

*Quintus.*

—Then you have not much to add, my brother, for the arguments you have already used have sufficiently proved to Atticus and myself that nature is the fountain of justice.

*Atticus.*

—How could I maintain any other opinion, since you have proved to us, first, that the gods

have been pleased to enrich and adorn us with their gifts, on purpose that we might administer them justly. Secondly, that all mankind bear a fraternal resemblance and relationship to each other. And lastly, that these natural brethren are bound together by the reciprocal obligations of friendship and affection, as well as social rights. Since we are agreed, therefore, that these principles are correct, how can we, with any consistency, separate from nature that law and justice, which are her moral developements?

*Marcus.*

—You are quite right, my Atticus; the argument is pretty well established. A few considerations, however, I will add, in conformity with the method of the philosophers. I do not mean the older sages of philosophy, but those modern philosophers who keep a magazine of arguments in reserve, on every imaginable topic, and who, instead of discussing questions freely and unconstrainedly, will permit us to speak only in accordance with their logical arrangements and dialectical distinctions. These gentlemen will never allow that we have done justice to our subject, unless we demonstrate that nature is just, and justice is natural, in a distinct and scientific disputation.

*Atticus.*

—You seem to have renounced your liberty in debate, my Cicero, and resemble a schoolman, who rather follows the authority of his predecessors, than develops his individual sentiments.

*Marcus.*

—I am not always in this humour, Atticus. But I wish to avail myself of authorities on the present occasion, because, as you see, the main object of this whole discussion is to strengthen the foundations of our Commonwealth, to establish its forces, and to benefit its population in all their relations. I am therefore particularly anxious to avoid any inconsiderate statements or unsound arguments. Not that I expect to demonstrate my doctrine to all men, for that is impossible; but I would make my pleadings as perfect as may be, for those who maintain that justice and honour are worthy to be cultivated even for their own sake, that nothing can be properly called a good, which is not morally estimable, and that there can exist no great good whatever, which is not desirable mainly on its own account, without reference to points of interest or emolument.

All the philosophers who flourished in the old academy with Speusippus, Xenocrates, and Polemon, or those that followed Aristotle, and Theophrastus, agreeing with them in doctrine, though they might differ in their method of explaining it—whether, like Zeno, they preserved the same principles, while they changed the terms of exposition,—or whether like Ariston, they supported that difficult and arduous sect now generally scattered and confuted, which supposed, that saving virtue and vice, all things were equal and indifferent—all these have favoured the moral theory I now unfold.

For the rest, who indulged their appetites and pampered their passions, pursuing some objects

and avoiding others, for no other reason than their amount of gratification or annoyance, though they sometimes speak truth, as we candidly allow,—let them talk in their own gardens, and let them retire from all the political debates respecting the interests of the state, of which they know nothing, nor, indeed, care to know. As to that new academy of which Arcesilas and Carneades are the leaders, and who attack all sects and parties, we implore them not to interrupt us in our present discussion; for if they invade us on these subjects in which our minds are thoroughly familiar and resolved, they will seek their own ruin. But I, who wish rather to please, dare not excite their resentment; for in questions of this nature, we would fain proceed without any mixture of sophistry or anger; and any defects in our arguments, may surely be expiated without such fumigations as the invectives of criticism.

*Atticus.*

—As you use the word 'expiation,' permit me to enquire what views you entertain respecting the justice of punishment, where laws have been broken and violated. Do you think such offences against laws can be expiated without enforcing the penalty, either directly or indirectly?

*Marcus.*

—I think not. I conceive there is no other expiation for the crimes and impieties of men. The guilty therefore must pay the penalty, and bear the punishment. The retributions they undergo are not so much those inflicted by courts of justice, which were not always in being, do not exist at present in many places, and even where established, are frequently biased and partial; but the retributions I principally intend are those of *conscience*. The furies pursue and torment them, not with their burning torches, as the poets feign, but by remorse and the tortures arising from guilt.

Was it the fear of punishment, and not the nature of the thing itself that ought to restrain mankind from wickedness, what, I would ask, could give villains the least uneasiness, abstracting from all fears of this kind? And yet none of them was ever so audaciously impudent, but he endeavoured to justify what he had done by some law of nature, denied the fact, or else pretended a just sorrow for it. Now if the wicked have the confidence to appeal to these laws, with what profound respect ought good men to treat them?

There is the greater need, therefore, of insisting on the natural and unavoidable penalties of conscience. For if either direct punishment, or the fear of it, was what deterred from a vicious course of life, and not the turpitude of the thing itself, then none could be guilty of injustice, in a moral sense, and the greatest offenders ought rather to be called imprudent than wicked.

On the other hand, if we are determined to the practice of goodness, not by its own intrinsic excellence, but for the sake of some private advantage, we are cunning, rather than good men. What will not that man do in the dark who fears nothing but a witness and a judge? Should he meet a solitary individual in a desert place, with a large sum of money about him, and altogether unable to defend himself from being robbed, how would he behave? In such a case the man whom we have represented to be honest from principle, and the nature of the thing

itself, would converse with the stranger, assist him, and show him the way. But as to the man who does nothing for the sake of another, and measures every thing by the advantage it brings to himself, it is obvious, I suppose, how such a one would act; and should he deny that he would kill the man or rob him of his treasure, his reason for this cannot be that he apprehends there is any moral turpitude in such actions, but only because he is afraid of a discovery, and the bad consequences that would thence ensue. A sentiment this, at which not only learned men, but even clowns must blush.

It is therefore an absurd extravagance in some philosophers to assert that all things are necessarily just, which are established by the civil laws and the institutions of the people. Are then the laws of tyrants just, simply because they are laws? If the thirty tyrants of Athens imposed certain laws on the Athenians, and if these Athenians were delighted with these tyrannical laws, are we therefore bound to consider these laws as just? For my own part, I do not think such laws deserve any greater estimation than that past during our own interregnum, which ordained, that the dictator should be empowered to put to death with impunity, whatever citizens he pleased, without hearing them in their own defence.

There can be but one essential justice, which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked.

But if justice consists in submission to written laws and national customs, and if, as the Epicureans persist in affirming, every thing must be measured by utility alone, he who wishes to find an occasion of breaking such laws and customs, will be sure to discover it. So that real justice remains powerless if not supported by nature, and this pretended justice is overturned by that very utility which they call its foundation.

But this is not all. If nature does not ratify law, all the virtues lose their sway. What becomes of generosity, patriotism, or friendship? Where should we find the desire of benefitting our neighbours, or the gratitude that acknowledges kindness? For all these virtues proceed from our natural inclination to love and cherish our associates. This is the true basis of justice, and without this, not only the mutual charities of men, but the religious services of the gods, would become obsolete; for these are preserved, as I imagine, rather by the natural sympathy which subsists between divine and human beings, than by mere fear and timidity.

If the will of the people, the decrees of the senate, the adjudications of magistrates, were sufficient to establish justice, the only question would be how to gain suffrages, and to win over the votes of the majority, in order that corruption and spoliation, and the falsification of wills, should become lawful. But if the opinions and suffrages of foolish men had sufficient weight to outbalance the nature of things, might they not determine among them, that what is essentially bad and pernicious should henceforth pass for good and beneficial? Or why should not a law able to enforce injustice, take the place of equity? Would not this same law be able to change evil into good, and good into evil?

As far as we are concerned, we have no other rule capable of distinguishing between a good or a bad law, than our natural conscience and reason. These, however, enable us to separate justice from injustice, and to discriminate between the honest and the scandalous. For common sense has impressed in our minds the first principles of things, and has given us a general acquaintance with them, by which we connect with Virtue every honourable and excellent quality, and with Vice all that is abominable and disgraceful.

Now we must entirely take leave of our senses, ere we can suppose that law and justice have no foundation in nature, and rely merely on the transient opinions of men. We should not venture to praise the virtue of a tree or a horse, in which expression there is an abuse of terms, were we not convinced that this virtue was in their nature, rather than in our opinion. For a stronger reason, it is mainly with respect to the moral nature of things, that we ought to speak of honour and shame among men.

If opinion could determine respecting the character of universal virtue, it might also decide respecting particular or partial virtues. But who will dare to determine that a man is prudent and cautious in his moral disposition, from any external appearances. For virtue evidently lies in perfect rationality, and this resides in the inmost depths of our nature. The same remark applies to all honour and honesty, for we judge of true and false, creditable and discreditable, rather by their essential qualities, than their external relations. Thus we judge according to their intrinsic nature, that rationality of life, which is virtue, must be ever constant and perpetual, and that inconstancy must necessarily be vicious.

We form an estimate of the opinions of youths, but not by their opinions. Those virtues and vices which reside in their moral natures, must not be measured by opinions. And so of all moral qualities, we must discriminate between honourable and dishonourable by reference to the essential nature of the things themselves.

The good we commend, must needs contain in itself something commendable. For as I before stated, goodness is not a mode of opinion: it is what it is, by the force of its very essence. If it were otherwise, opinion alone might constitute virtue and happiness, which is the most absurd of suppositions. And since we judge of good and evil by their nature, and since good and evil are the true constituents of honour and shame, we should judge in the same manner all honourable and all shameful qualities, testing them by the law of nature, without prejudice or passion. But our steady attention to this moral law of nature is often too much disturbed by the dissention of men and the variation of opinions. We might perhaps obey this law of nature more exactly, if we attended more accurately to the evidence of our senses, which being absolutely natural, are less likely to be deceived by artificial objects. Those objects, indeed, which sometimes present to us one appearance, sometimes another, we term fictions of the senses; but it is far otherwise. For neither parent, nor nurse, nor master, nor poet, nor drama, deceive our senses; nor do popular prejudices seduce them. But our delusions are connected with corruption of our mental opinions. And this corruption is either superinduced by those causes of error I have enumerated, which, taking possession of the young and uneducated, betray them into a thousand perversities, or by that voluptuousness which is the mimic of goodness,

implicated and interfused through all our senses—the prolific mother of all human disasters. For she so corrupts us by her bewitching blandishments that we no longer perceive that things may be essentially excellent, though they have none of this deliciousness and pruriency. (*Quæ natura bona sunt quia, dulcedine hac et scabie carent.*)

From what I have said on this subject, it may then easily be concluded, that Justice and Equity are desirable for their own sake. For all virtuous men love Justice and Equity, for what they are in themselves; and we cannot believe that such virtuous men should delude themselves by loving something which does not deserve their affection. Justice and Right are therefore desirable and amiable in themselves; and if this is true of Right, it must be true of all the moral virtues with which it is connected. What then shall we say of liberality? Is it to be exercised gratuitously, or does it covet some reward and recompense? If a man does good without expecting any recompense for his kindness, then it is gratuitous: if he does expect compensation, it is a mere matter of traffic. Doubtless, he who truly deserves the reputation of a generous and good-natured man, performs his philanthropical duties without consulting his secular interests. In the same way the virtue of justice demands neither emolument nor salary, and therefore we desire it for its own sake, because it is its own reward. And for this reason we should entertain the same estimate of all moral virtues.

Besides this, if we weigh virtue by the mere utility and profit that attend it, and not by its own merit, the virtue which results will be in fact a species of vice (*malitia rectissime dicitur.*) For the more a man's views are self-interested, the further he recedes from probity. It therefore necessarily happens, that those who measure virtue by profit, acknowledge no other virtue than this usurious vice. For who could he called benevolent, if none endeavoured to do good for the love of others? Where could we find the grateful person, if those who are disposed to gratitude could meet no benefactor disinterested enough to deserve it? What would become of sacred friendship, if we were not to love our friends for their own sake with all our heart and soul? In pursuance of this pseudo-benevolence, we must desert our friend, as soon as we can derive no further assistance from him. What can be more inhuman! But if friendship ought rather to be cultivated on its own account, for the same reason are society, equality, and justice, desirable for themselves. If this were not so, there could be no justice at all, since nothing is more opposite to the very essence of virtue than selfish interest.

What then shall we say of temperance, sobriety, continence, modesty, bashfulness, and chastity? Is it the fear of laws, or the dread of judgments and penalties, which restrain intemperance and dissoluteness? Do we then live in innocence and moderation, only to acquire a certain secular reputation? And when we blush at licentious discourse, is it only through a squeamish prudery, lest our reputation should be stained? How I am ashamed at those philosophers, who assert that there are no vices to be avoided but those which the laws have branded with infamy. Can it be said that those are truly chaste, who abstain from adultery, merely for the fear of public exposure, and that disgrace which is only one of its many evil consequences? Indeed, my dear Atticus, what can you praise or blame with reason, if you depart from that great law and rule of nature, which makes the difference between right and wrong? Shall corporal defects, if they are remarkable, shock our sensibilities, and shall those of

the soul make no impression on us?—Of the soul, I say, whose turpitude is so evidently proved by its vices. For what is there more hideous than avarice, more ferocious than lust, more contemptible than cowardice, more base than stupidity and folly? Well, therefore, may we style unhappy, those persons in whom any one of these vices is conspicuous, not on account of the disgraces or losses to which they are exposed, but on account of the moral baseness of their sins.

We may apply the same ethical test to those who are distinguished for their virtue. For if virtue be not the highest excellence to which we aspire, it necessarily follows that there is something better than virtue. Is it money, fame, beauty, health? All these appear of little value to us when we possess them, especially when we consider that the duration of their enjoyment is altogether uncertain. Is it that basest of all things, voluptuousness? Certainly not; for nothing gives so much dignity to virtue, as its capacity of overruling and despising all the gratifications of secular and sensual life.

You see the long series of facts and arguments I have brought forward. Such is the connection between one doctrine of truth and another,—I should have proceeded further still, if I had not kept myself in check.

*Quintus.*

—To what point do your arguments tend, my brother?—for I would willingly go hand in hand with you through this discussion.

*Marcus.*

—The point they bear on, is the *moral end* of our actions, (ad finem bonorum) to which all things are to be referred, and for the sake of which all things are to be undertaken. This subject is, however, one of great controversy, and full of debate among the learned; yet I shall some day venture to publish my opinions respecting it.

*Atticus.*

—How can you think of such a thing, since Gellius is no longer alive?

*Quintus.*

—What difference does that make?

*Atticus.*

—More than you imagine,—since by his death your brother has lost an excellent advocate of his benevolent design of conciliating your wrangling disputants. When I was at Athens, I recollect Phædrus told me that your friend Gellius, when he came as a Consul into Greece, after his prætorship, assembled all the Athenian philosophers in one spot, and very learnedly favoured them with his advice that they should endeavour to come to some unanimous agreement in their controversies; that if they were so disposed, and wished to spend their lives in peace

rather than discord, such an agreement might be formed; at the same time promising them his best assistance, if this scheme of mutual conciliation and concession met their views.

*Marcus.*

—Your story is amusing enough, my Atticus, and it excited much merriment at the time; but raillery apart, I do not see so much difficulty in harmonizing the views of the ancient Academy and the Stoics,—at least, on this point.

*Atticus.*

—How can you form such an opinion?

*Marcus.*

—Because they differ on one point only, and agree to admiration in all the rest.

*Atticus.*

—What! do they contend on one point of debate only?

*Marcus.*

—Yes. I think they have only a single issue, so far as concerns this question of morals. For the ancient Academicians are unanimously agreed that true good consists in *accordance with nature*, and natural order. The Stoics, on the other hand, allow of no good but honor and virtue.

*Atticus.*

—This is indeed a very insignificant controversy, and not sufficient to account for their general opposition.

*Marcus.*

—That is true, but it was the thing itself on which they differed, rather than the terms.

*Atticus.*

—You seem rather to agree with my friend Antiochus; I will not call him my master, since I lived with him so sociably. It was he who at one time almost persuaded me to desert my Epicurean gardens, and betake myself to those of the Academy.

*Marcus.*

—This Antiochus was a wise and clever man, and highly accomplished in his way. He was, as you know, a friend of mine; and if I could agree with him in all those respects which I shall hereafter investigate, the whole controversy might easily be settled.

*Atticus.*

—Why do you prosecute this enquiry?

*Marcus.*

—Because if, as Ariston of Chios pretended, there is no other good than the honourable, no other evil than the dishonourable; that all other things are altogether indifferent, and that their presence or absence are of no kind of consequence, then Zeno has departed very far from Xenocrates, Aristotle, and all the school of Plato, and there is an entire difference between them respecting a principle which influences the whole course of life. But, as Antiochus observes, though the ancients assert that honour is the sovereign good, and its antagonist the sovereign evil,—the one being according to Zeno and the Stoics, the only good, the other the only evil—they likewise account riches, health and beauty, among the advantages, commodities and conveniences of life; and poverty, grief, and pain, among its inconveniences. And therefore they in fact agree in opinion with Xenocrates and Aristotle, though they express it by different terms. From this difference, not respecting things, but words, the controversy concerning *moral ends* arose. In relation to which, inasmuch as our Roman Law of the Twelve Tables granted a neutral space of five feet wide between the territories of different landlords, we will not allow the venerable estate of the Academy to be trespassed on by this crafty Stoic: and though the Mamilian law appointed but one surveyor to determine the rights of these neutral spaces, in this ethical question all three of us will undertake to arbitrate respecting the moral ends of philosophy.

*Quintus.*

—What then shall be our decision?

*Marcus.*

—I think we should seek the boundaries which Socrates has laid down in relation to this question, and abide by them.

*Quintus.*

—There cannot be a better proposal my brother. And now I pray you let us proceed to the consideration of civil Justice and Laws, on which topics we expect you will give us some useful information, for the subject is particularly important, as I have often heard you say. And certainly we have sufficiently established the principle we have been discussing, and proved that to live according to nature, is the highest good; that is to lead a life regulated by conscience, and conformed to virtue and temperance. Thus to follow nature, and to live according to her law, and to obey all her just commands; this surely is the most lawful and virtuous mode of living. As to the discussions of philosophers, I know not whether we shall ever arrive at a decision, but we certainly shall not do so in our present conference, at least, if we prosecute our original design, and come to the practical investigation of the civil law, as established in our country.

*Atticus.*

—I shall most willingly proceed to that part of our disquisition!

*Quintus.*

—Then let us defer this dispute on moral ends to some future occasion; and let us proceed to a more practical view of laws, especially since these dialectics respecting the sovereign good and evil have but little reference to our national legislation.

*Marcus.*

—What you say, my Quintus, is most wise and excellent, but I should not have kept you so long in these preliminary doctrines, had I not thought they would throw more light than you seem to imagine on the affairs of Jurisprudence.

*Quintus.*

—And when you treat of this Jurisprudence, my brother, we are not so anxious to hear of the laws of Lycurgus, and Solon, and Charondas, and Galencus, nor our Roman Twelve Tables, and popular degrees; but I wish you to describe, in this familiar conversation, not only the laws fitted for all nations, but also the rules and maxims of conduct that may apply to individuals.

*Marcus.*

—I would to heaven, my Quintus, that what you desire were so commensurate to my ability, that it might gracefully harmonize with the subjects I discuss. But you must allow me, that since it was necessary there should be a Law, which by censuring vice and advocating virtue, becomes the source of the precepts we most need to direct us in our conduct; it is also necessary that there should be a wisdom from the love of which, the Greeks have composed the word Philosophy, which is the parent of all the fine arts; for it is beyond contradiction the richest, the brightest, and the loveliest of the gifts the gods have bestowed on us. She has taught us, among other things, the most difficult of all lessons, namely, *to know ourselves*, a precept so forcible and so comprehensive, that it has been attributed not to a man, but to the God of Delphos himself, and that not without reason.

For he who knows himself must be conscious that he is inspired by a divine principle. He will look upon his rational part as a resemblance to some divinity consecrated within him, and will always be careful that his sentiments, as well as his external behaviour, be worthy of this inestimable gift of God. A serious and thorough examination of all his powers, will inform him what signal advantages he has received from nature, and with what infinite help he is furnished for the attainment of wisdom. For, from his first entrance into the world, he has, as it were, the intelligible principles of things delineated on his mind, by the enlightening assistance of which, and the guidance of wisdom, he may become a good, and, consequently, a happy man.

And what can be conceived more truly happy, than the state of that man, who, having attained

to an exact knowledge of virtue, throws off all the indulgences of sensual appetite, and tramples on voluptuousness as a thing unbecoming the dignity of his nature—the man who is not terrified at the approach of affliction, or even at death itself—who maintains a benevolent intercourse with his friends, and under that endearing name includes the whole race of mankind, as being united together by one common nature; who preserves, in short, an unfeigned piety and reverence towards the gods, and exerts the utmost force of his rational powers to distinguish good from evil, just as we strain our eyes, in order to view a beautiful object with greater attention.

When this man shall have surveyed the heavens, the earth, and the seas, studied the nature of all things, and informed himself whence they were generated, to what state they return, the time and manner of their dissolution, what parts of them are mortal and perishable, and what divine and eternal?—when he shall have attained in a great measure, the knowledge of that Being who superintends and governs them, and shall look on himself as not confined within the walls of one city, or as the member of any particular community, but as a citizen of the universe, considered as a single Commonwealth:—on such a grand representation of things as this, and on such a prospect and knowledge of nature, how well, O heavens! would such a one understand the precepts of the Pythian Apollo by knowing himself? How insignificant would he then esteem, how thoroughly would he contemn and despise, those things which by vulgar minds are held in the highest admiration.

All these acquirements he would secure and guard as with a fence, by the science of distinguishing truth from falsehood, and that logical art of reasoning which teaches him to know what consequences follow from premises, and how far one proposition clashes with another. When such a person was convinced that nature designed him for society, he would not rest contented with these subtle disquisitions, but would put in practice that comprehensive eloquence, which is necessary for governing nations, enacting laws, punishing malefactors, defending the honest part of mankind, and publishing the praises of great men. He would likewise use his persuasive eloquence to recommend salutary maxims to his countrymen, to rouse them to the practice of virtue, and turn them from wickedness, to comfort the afflicted, and, in fine, by his writings, to immortalize the wise consultations and noble actions of the prudent and brave, and to punish the shame and infamy of wicked men. So many excellent capacities will be found in man, by those who desire to know themselves, of all which Wisdom is the parent and director.

*Atticus.*

—You have made a very sublime and just eulogium on self-knowledge. But how do you mean your remarks to bear?

*Marcus.*

—In the first place, my Atticus, I mean them to bear on those jurisprudential topics which we shall hereafter discuss, which are well nigh as important as the preceding. For these moral principles we have already developed, would not be so grand and so interesting, if their

practical consequences were not full of sublimity and beauty. And for the rest, I prosecute this enquiry with pleasure, and I trust with fairness; for law is my favourite study, and since it has made me all that I am, I cannot with any conscience pass it by without due panegyrics.

*Atticus.*

—So indeed it seems, if I may judge by your practice. And I commend you for it,—it is but proper to bestow all the praises we can on the topics under discussion.

END OF THE FIRST BOOK OF LAWS.

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## **INTRODUCTION TO THE SECOND BOOK OF CICERO'S TREATISE ON LAWS.**

IN this Second Book, Cicero treats of hierarchical and ecclesiastical Laws, and lays down a number of ecclesiastical canons or maxims, which he subsequently expounds at large.

### **CICERO'S TREATISE ON LAWS.**

#### ***BOOK II.***

*Atticus.*

—Do you feel inclined, since we have had walking enough for the present, and have arrived at a new period of our discussion, to vary our situation. If you do, let us pass over to the island which is surrounded by the Fibrenus, for such, I believe, is the name of the other river, and sit down while we prosecute the remainder of our discourse?

*Marcus.*

—I like your proposal. That is the very spot I generally select when I want a place for undisturbed meditation, or uninterrupted reading or writing.

*Atticus.*

—In truth, now I am come to this delicious retreat, I cannot see too much of it. Would you believe, that the pleasure I find here makes me almost despise the magnificent villas, the marble pavements, and the sculptured palaces? Who would not smile at the artificial canals which our great folks call their Niles and Euripi, after he had seen these beautiful streams? Just as you referred all things to Nature in our recent conversation on Justice and Law, you seek to preserve her domination, even in those things which are constructed to recreate and amuse the mind. I was therefore most agreeably surprised, since your letters and your verses had led me to expect nothing better in this neighbourhood than hills and rocks, to find it so delightfully ornamented by all the decorations of art. My present wonder is, how, when you retire from Rome, you condescend to rusticate in any other spot.

*Marcus.*

—I acknowledge that when I can escape for a few days, especially in this delectable season, I usually come here, on account of the beauty of the scenery, and the salubrity of the air; but these vacations occur not very often. There is one reason, however, why I am so fond of this Arpinum, which does not apply to you.

*Atticus*

—Prithee, what reason is that?

*Marcus.*

—Because, to confess the truth, it is my native place, and my brother's, for here indeed, descended from a very ancient race, we first saw the day. Here was our altar, here our ancestry, and here still remains many vestiges of our family. Besides, this villa which you behold in its present form, was originally constructed under my father's superintendence; for having very infirm health, he spent the later years of his life here, engaged in literary pursuits. At the time of my birth, my grandfather also lived here, and resided according to the olden custom, in that little villa, like another Curius on his Sabine farm. There is, therefore, an indiscribable sympathy which attaches me to the spot; it pervades my soul and sense with a peculiar fascination, whenever I reside here. Even the wisest Ulysses was not wholly exempt from a similar weakness, for Homer tells us that he renounced immortality, that he might once more re-visit his beloved Ithaca.

*Atticus.*

—I would not condemn a sentiment which appears so rational; I myself have caught the same infection, and I feel that my love for this house and neighbourhood increases, when I remember that you were born here. I cannot tell you how this affection arises, but certainly we cannot behold, without emotion, the spots where we find traces of those who possess our esteem or admiration. For my own part, if any thing attaches me to Athens, it is not so much the accumulation of a multitude of invaluable antiques, as the remembrance of great men, whom I represent to myself as living, reposing there, and discoursing there. Even their very tombs attract my deepest attention. I therefore leave you to imagine how warm is the affection you have imparted to me for your native country.

*Marcus.*

—That being the case, I am very glad that I have brought you here, and shown you my cradle.

*Atticus.*

—And I am still more pleased at having seen it. But what were you going to say just now, when you called this Arpinum the true country of yourself and your brother Quintus? Have you more than one country, or any other than that Roman Commonwealth in which we have a similar

interest? In that sense, the true country of the philosophic Cato would not have been Rome, but Tusculum.

*Marcus.*

—In reply to your question, I should say, that Cato, and municipal citizens like him, have two countries, one, that of their birth, and the other, that of their choice. Cato being born at Tusculum, was elected a citizen of Rome, so that a Tusculan by extraction, and a Roman by election, he had, besides his native country, a rightful one. So among your Athenians, before Theseus urged them to quit their rural territories, and assembled them at Athens, those that were natives of Sunium, were reckoned as Sunians and Athenians at the same time. In the same way, we may justly entitle as our country, both the place from where we originated, and that to which we have been associated. It is necessary, however, that we should attach ourselves by a preference of affection to the latter, which, under the name of the Commonwealth, is the common country of us all. For this country it is, that we ought to sacrifice our lives; it is to her that we ought to devote ourselves without reserve; and it is for her that we ought to risk and hazard all our riches and our hopes. Yet this universal patriotism does not prohibit us from preserving a very tender affection for the native soil that was the cradle of our infancy and our youth.

Therefore I will never disown Arpinum as my country, at the same time acknowledging that Rome will always secure my preference, and that Arpinum can only deserve the second place in my heart.

*Atticus.*

—It was not then without reason, that Pompey said, when he pleaded conjointly with you the cause of Ambius, that the Commonwealth owed great gratitude to this village for having given it two of its preservers. For my part, I quite agree with you, that your native place may be called your country, no less correctly than the Commonwealth of Rome. But here we are, arrived in your favourite island. How beautiful it appears! How bravely it stems the waves of the Fibrenus, whose divided waters lave its verdant sides, and soon rejoin their rapid currents! The river just embraces space enough for a moderate walk, and having discharged this good-natured office, and secured us an arena for disputation, it hastily precipitates itself into the Liris; where, like those who ally themselves to patrician families, it loses its obscure name, and gives the waters of the Liris a greater degree of coolness. For I have never found water much colder than this, although I have seen a great number of rivers;—and I can hardly bear my foot in it when I wish to do what Socrates did in Plato's Phædrus.

*Marcus.*

—You justly commend the Liris, but my brother Quintus often tells me that your river Thyamis in Epirus is nothing inferior to it in beauty.

*Quintus.*

—Doubtless you will acknowledge that nothing on earth equals the beauties of Atticus's Amaltheum and its plane trees. But will it be agreeable to you, that we should repose here in the shade, and renew the subject which has been interrupted?

*Marcus.*

—You have a wonderful knack of interrogation, my Quintus!—I thought that we had done with the question; but you are not a man to waive your claims.

*Quintus.*

—Pray begin, then; for all this day is devoted to hearing you.

*Marcus.*

—“Let us begin, then, with great Jupiter,” as I said in my translation of Aratus.

*Atticus.*

—Wherefore this exordium?

*Marcus.*

—Because we cannot do better than commence, by invoking Him and the other gods.

*Quintus.*

—There can be no objection to this: it is but decent and proper.

*Marcus.*

—Let us, then, once more examine, before we descend to particulars, what is the essence and moral obligation of law; lest, when we come to apply it to its subordinate relations, we should not exactly understand each other for want of explanation; and lest we should be ignorant of the force of those terms which are usually employed in jurisprudence.

*Quintus.*

—This is a very necessary caution, and the proper method of seeking truth.

*Marcus.*

—This, then, as it appears to me, hath been the decision of the wisest philosophers; that law, was neither excogitated by the genius of men, nor is it any thing discovered in the progress of society; but a certain eternal principle, which governs the entire universe; wisely commanding what is right, and prohibiting what is wrong. Therefore, that aboriginal and supreme law is the Spirit of God himself; enjoining virtue, and restraining vice. For this reason it is, that this law, which the gods have bestowed on the human race, is so justly applauded. For it is the reason and mind of Wisdom, urging us to good, and deterring us from evil.

*Quintus.*

—You have already touched on this topic. But before you come to treat of civil laws, endeavour to explain the force and power of this divine and celestial law, lest the torrent of custom should overwhelm our understanding, and betray us into the vulgar method of expression.

*Marcus.*

—From little children have we learned, my Quintus, such phrases as this, “that a man appeals to justice, and goes to law;” and a great many municipal laws have we heard mentioned; but we should not understand that such commandments and prohibitions have sufficient moral power to make us practise virtue and avoid vice.

The moral power of law, is not only far more ancient than these legal institutions of states and peoples, but it is coeval with God himself, who beholds and governs both heaven and earth. For it is impossible that the divine mind should exist without reason; and divine reason must necessarily be possessed of a power to determine what is virtuous and what is vicious. Nor, because it was no where written, that one man should maintain the pass of a bridge against the enemy’s whole army, and that he should order the bridge behind him to be cut down, are we therefore to imagine that the valiant Cocles did not perform this great exploit, agreeably to the laws of nature and the dictates of true bravery. Again, though in the reign of Tarquin there was no written law concerning adultery, it does not therefore follow that Sextus Tarquinius did not offend against the eternal law when he committed a rape on Lucretia, daughter of Tuccipitinus. For, even then he had the light of reason deduced from the nature of things, that incites to good actions and dissuades from evil ones. And this has the force of a law, not from the time it was written, but from the first moment it began to exist. Now, this existence of moral obligation is coeternal with that of the divine mind. Therefore the true and supreme law, whose commands and prohibitions are equally infallible, is the right reason of the Sovereign Deity.

*Quintus.*

—I grant you, my brother, that whatever is the just is always the true law; nor can this true law either be originated or abrogated by any written enactments.

*Marcus.*

—Therefore, as the Divine Mind, or reason, is the supreme law, so it exists in the mind of the sage, so far as it can be perfected in man. With respect to civil laws, which differ in all ages and nations, the name of law belongs to them not so much by right as by the favour of the people. For every law which deserves the name of a law ought to be morally good and laudable, as we might demonstrate by the following arguments. It is clear, that laws were originally made for the security of the people, for the preservation of cities, for the peace and benefit of society. Doubtless, the first legislators persuaded the people that they would write and publish such laws only as should conduce to the general morality and happiness, if they

would receive and obey them. Such were the regulations, which being settled and sanctioned, they justly entitled *Laws*. From which we may reasonably conclude, that those who made unjustifiable and pernicious enactments for the people, counteracted their own promises and professions; and established any thing rather than *laws*, properly so called, since it is evident that the very signification of the word *law*, comprehends the essence and energy of justice and equity.

I would therefore interrogate you on this point, my Quintus, like our inquisitive philosophers. If a state wants something, wanting which it is reckoned no state, must not that something be something good? (Quæro igitur a te Quinte, sicut illi solent,—quo si civitas careat, ob eam ipsam causam quod eo careat, pro nihilo habenda sit, id est ne numerandum in bonis?)

*Quintus.*

—A very great good.

*Marcus.*

—Now a state which has no law, is it not for that reason to be reckoned no state?

*Quintus.*

—We must needs say so.

*Marcus.*

—We must therefore reckon law among the very best things.

*Quintus.*

—I entirely agree with you.

*Marcus.*

—If then in the majority of nations, many pernicious and mischievous enactments are made, as far removed from the law of justice we have defined as the mutual engagements of robbers, are we bound to call them laws? For as we cannot call the recipes of ignorant empirics, who give poisons instead of medicines, the prescriptions of a physician, we cannot call that the true law of the people, whatever be its name, if it enjoins what is injurious, let the people receive it as they will. For law is the just distinction between right and wrong, conformable to nature, the original and principal regulator of all things, by which the laws of men should be measured, whether they punish the guilty or protect the innocent.

*Quintus.*

—I quite agree with you, and think that no law but that of justice should either be proclaimed as a law or enforced as a law.

*Marcus.*

—Then you regard as nullable and voidable the laws of Titius and Apuleius, because they are unjust.

*Quintus.*

—You may say the same of the laws of Livius.

*Marcus.*

—You are right, and so much the more, since a single vote of the senate would be sufficient to abrogate them in an instant. But that law of justice, which I have explained can never be rendered obsolete or inefficacious.

*Quintus.*

—And, therefore, you require those laws of justice the more ardently, because they would be durable and permanent, and would not require those perpetual alterations which all injudicious enactments demand.

*Marcus.*

—Certainly, if I could get you both to agree with me. But Plato, that wisest philosopher, that gravest prince of literature, who first composed his Commonwealth, and afterwards his Treatise on the Laws, induces me to follow his illustrious example, and to proclaim the praises of law, before I begin to recite its regulations. Such likewise, was the practice of Galencus and Charendas, when they wrote their laws, not for literary amusement, but for the benefit of their country and their fellow-citizens. And in this conduct, they were emulated by Plato, who considered that it was the property of law, to persuade as well as compel.

*Quintus.*

—What, do you venture to cite Galencus, when Timæus denies that he ever existed?

*Marcus.*

—But Theophrastus, an author quite as respectable, and many think more so, corroborates my opinion. His fellow-citizens too, my clients, the Locrians, commemorate him; but whether he was or was not, is of no great consequence to our argument: we only speak from tradition.

Let this, therefore, be a fundamental principle in all societies, that the gods are the supreme lords and governors of all things,—that all events are directed by their influence and wisdom, and that they are loving and benevolent to mankind. They likewise know what every person really is; they observe his actions, whether good or bad; they discern whether our religious professions are sincere and heart-felt, and are sure to make a difference between good men and the wicked.

When once our minds are confirmed in these views, it will not be difficult to inspire them with true and useful sentiments,—such as this, that no man should be so madly presumptuous as to believe that he has either reason or intelligence, if he does not believe that the heaven and the world possess them likewise, or in other words, that there is no Supreme Mind which keeps the universe in motion. The presumption is the more excessive in man, who with his best philosophy, can hardly understand what the universe means.

In truth, we can scarcely reckon him a man, whom neither the regular courses of the stars, nor the alternations of day and night, nor the temperature of the seasons, nor the productions that nature displays for his use, do not urge to gratitude towards heaven.

As the beings furnished with reason are incomparably superior to those who want it, and we cannot say, without impiety, that any thing transcends the universal Nature, we must therefore confess that divine reason is contained within her. Who will dispute the utility of these sentiments, when he shall reflect how many cases of the greatest importance are decided by oaths; how much the sacred rites performed in making treaties tend to assure peace and tranquility; also, what numbers the fear of divine punishment has reclaimed from a vicious course of life; and how sacred the social rights must be in a society where a firm persuasion obtains of the immediate intervention of the immortal gods, both as witnesses and judges of our actions? Such is the “preamble of the law,” to use the expression of Plato.

*Quintus.*

—You are right, my brother; I am pleased to find, however, that you take an original view of the subject, and often correct the mistakes of this philosopher, for nothing can less resemble his opinions, than what you have just now asserted, even in this preamble. I see little conformity between you, excepting in the style, which you imitate exactly.

*Marcus.*

—I should be very glad of it, if such imitation were possible. As to his sentiments, it would be easy enough to explain them by means of paraphrases and illustrations—surely this would not be difficult to any scholar who would undertake such a task. But with regard to the thought, whatever I compose, unless it be an acknowledged quotation, I would wish it to be my own, for what merit is there in saying nearly the same thing, in nearly the same words?

*Quintus.*

—I entirely agree with you; for as you have justly remarked, your discourse ought to be your own. Begin, then, if you will do us the favour, and expound the Laws of Religion.

*Marcus.*

—I will explain them as well as I can; and since this place imposes no constraint, and our conversation is familiar, I shall begin by describing the Laws of Laws.

*Quintus.*

—What laws be they?

*Marcus.*

—There are certain maxims of laws, my Quintus, not so ancient as the primitive sacred laws, but still possessing greater authority, and greater antiquity too, than the common parlance of the people. These legal maxims, I shall mention with as much brevity as possible; and I shall endeavour to expound the laws, not indeed in their whole extent, for this would be infinitely laborious, but those which involve the principles and contain the sum and substance of the rest.

*Quintus.*

—This appears a most desirable method: let us therefore hear the *Maxims of Laws*.

*Marcus.*

—Such are the following;—Approach the gods with purity—appear before them in the spirit of devotion—remove riches from their temples; whoever doth otherwise shall suffer the vengeance of heaven—let no one have private gods—neither new gods nor strange gods, unless publicly acknowledged, are to be worshiped privately—let the temples which the fathers have constructed in the cities, be upheld—let the sacred chapels and consecrated groves in country places be protected—let the customs of the fathers be preserved in the families—let the gods who have always been accounted celestial be worshipped, and those gods likewise who have merited celestial honours by their illustrious actions, as Hercules, Bacchus, Æsculapius, Castor, Pollux and Quirinus. Let due honour be likewise paid to those virtues, by which man is exalted to heaven,—as intelligence, valour, piety, fidelity; and let temples be consecrated to them. But with regard to the vices, let no sacred sacrifices be paid to them.

Let all contentions of every kind cease on the sacred festivals, and let servants enjoy them, their toils being remitted, for therefore they were appointed at certain seasons.—Let the priests duly render the public thank—offerings to heaven, with herbs and fruits, on the sacrificial days. Also, on the appointed holidays, let them offer up the cream of milk, and the sucklings; and lest the priests should commit any mistakes in these sacrifices, or the reason of these sacrifices, let them carefully observe the calendar, and the revolutions of the stars.—Let them provide those particular sacrifices which are most appropriate and agreeable to the particular deities: the Priests directing the service of some gods, the Flamins regulating the rites of others, and the Pontiffs superinding the worship of all.

Let the Vestal Virgins in the city carefully keep the sempiternal fire always burning on the public altar, and let those who are not instructed in the order of the ceremonials in these private and public ministrations, learn them from the priests. Let there be two classes of these priests, one to preside over ceremonials and sacrifices, and another to interpret the obscure predictions of the prophets, diviners, and sibyls, whenever the senate or the people require it. —Let the public Augurs, who are the interpreters of Jupiter, the best and greatest, likewise

examine the presages and auspices, according to the discipline of their art. Let the priests who are conversant in auguries implore the prosperity of the vineyards and gardens, and the general welfare of the people.—Let those who give counsel in military or civic affairs, attend to the auspices, and take their measures accordingly.—Let them observe from what parts of heaven the lightnings burst forth.—Let them declare what lands, cities, and temples, are to be held free and consecrated.—Whatever things the augur declares to be unjust, wicked, vicious, and accursed, let them be forsaken as prohibited and disastrous, and whoever will not obey these divine indications, let him suffer capital punishment.

As to alliances, peace, war, truces, and the rights of ambassadors, the *Feciales* priests are the appropriate judges, who determine all questions relating to military affairs. The interpretation of all prodigies and portents, belongs to the Etruscans and Haruspices, if the senate seeks their advice, and these shall inform the patricians respecting the line of conduct they should pursue. Then will they learn what deities it behoves them to propitiate, and deprecate the fury of the thunderbolt against the object of its vengeance. (*Quibus divis creverint, procuranto; iidemque fulgura, atque obstita pianto*).

Let nocturnal sacrifices be interdicted to women, except those they offer according to popular custom—and let none be initiated in the mysteries except by the usual forms consecrated to Ceres, according to the Grecian ceremonies. (*Neve quem initiant, nisi ut assolet Cereri, Græco sacro*.)

Let there be sacrifice made, (by the criminal) for crimes which cannot be expiated (by the priest), being acts of impiety,—the faults which can be expiated by the public priests, let them expiate. (*Sacrum commissum, quod neque expiari poterit, impie commissum esto—quod expiari poterit, publici sacerdotes expiant*.)

With regard to public spectacles, excepting those of the race-course and the ring, let them restrain the violence of the people, by the soothing influence of vocal and instrumental music; and let the honours of the gods be inseparable from the amusements of these diversions. Let them retain whatever is best and purest in the ancient form of worship. Except the devotees of Cybele (*ideæ matris famulos*), to whom this privilege is allowed on certain days, let no one presume to levy rates for private emolument. Whoever purloins or robs the sacred property of the temples, let the sacrilegious wretch be accounted as no better than a parricide. The divine punishment of perjury is destruction: the human penalty is infamy. With regard to incest, let the chief priests sentence it to the extremest penalty of the law.

Let not the impious man, who should render sacrifice, attempt to appease the gods by gifts and offerings. Let vows be piously performed. Wherever law is violated, let its punishments be executed. Let no private person presume to consecrate his land; and let his consecration of gold, silver and ivory, be made within the limits of moderation. Let private devotions be perpetually practised. Let the rights of the deities of the dead be punctually discharged. Let those who have past into the world of souls be considered as divinified; thus unnecessary expense and sorrow with regard to our departed friends will be reduced and diminished. (*Hos*

letho datos divos habento—sumptum in illos luctumque minuunto.)

*Atticus.*

—You have managed to include a great deal of law in a very small compass; but it seems to me, that this class of legal maxims does not much differ from the laws of Numa and our national regulations.

*Marcus.*

—That is true enough. For since in my Treatise on the Commonwealth, Scipio argues that our ancient Roman constitution was the best of all governments, I could not but ordain similar laws for that excellent constitution which I imagine to myself.

*Atticus.*

—Certainly not.

*Marcus.*

—Such then are the laws which a first-rate constitution should enforce. And if I add a few, which are not to be found in our Roman Commonwealth, yet even these formed a portion of the customs of our ancestors; customs which were maintained as religiously as the laws themselves.

*Atticus.*

—Proceed, then, if you please, to propose these laws, that I may have the pleasure of ratifying them by a *uti rogas*, (so be it).

*Marcus.*

—Perhaps, my Atticus, when you hear them, you will say something very different.

*Atticus.*

—I do not think so! I believe I shall entirely agree with you respecting the greater laws. And as for the minor ones, I shall concede them to you, and pass sentence accordingly.

*Marcus.*

—Let us lose no time then.

*Atticus.*

—Go on,—propose such laws as you think advisable.

*Marcus.*

—One of the legal maxims I have mentioned, states, *that we should approach the gods with purity*,—that is to say, with purity of mind; for this is every thing. Not that the law dispenses with purity of body,—but that we should understand the superiority of the mind over the body; and if we are attentive to the purity of our persons, we ought to be still more so to the purity of our souls. The pollutions of the body may indeed be removed by a few ablutions in a few days; but the stains of the conscience cannot be obliterated by any lapse of time, and all the rivers in the world cannot wash them out.

The next legal maxim commands us to *cultivate piety, and to banish costliness from our temples*. It signifies that piety is grateful to God, and all conceit of worldly wealth is displeasing to him. For if in our social relations we desire that distinctions of wealth and poverty should not induce us to forget the fraternal equality of men; why should we throw a stumbling block in the approaches of mortals to their Maker, by requiring costly sacrifices and offerings. Especially since nothing is more agreeable to the deity than to see the gates of worship flung open to all who would adore him, and serve him in his temples.

When the latter part of this legal maxim is added, which declares that *God is not merely the judge, but the avenger of ecclesiastical abuses*, the sense of religion is strengthened by the fear of immediate punishment which awaits the offender.

The next law forbids individuals from *worshipping private gods, or new gods, or strange gods*, as this would introduce a confusion of religions, and ceremonies not known to the priesthood, and not acknowledged by the senate. Thus should the worship of the gods be conducted, if they approve of such regulations.

I think *the temples of our ancestors should be maintained in our cities*. In this respect I do not agree with the doctrine of the Persian Magi, by whose advice they say Xerxes set fire to the temples of the Greeks, because they enclosed between walls the gods, to whom all things are free and open, and whose appropriate temple and dwelling place is the boundless universe. The Greeks, and the Romans after them, have adopted a more rational opinion, since in order to confirm the devotion we entertain for the gods, we have allotted to them fixed mansions in our cities, no less than to our fellow-citizens. This opinion promotes religion, and has a useful moral influence on society. For according to the noble sentence of Pythagoras, “then chiefly do piety and religion flourish in our souls, when we are occupied in divine services.” And according to Thales, the most renowned of the seven sages of Greece, “men should be persuaded that the gods behold all things, and inform all things.” And therefore are all men the more pure and holy when they frequent the temples of the gods, for there, in a certain sense, they have the divine images, not only impressed on their minds, but actually presented before their eyes. The same argument applies to the preservation of the *sylvan fanes* and *sacred groves*.

The religious honours, which, according to ancestral custom, masters and servants pay to the *lares*, or *guardian angels* and *genii*, in the courts of our villas and farms, are not to be abated, —(*neque ea quæ a majoribus prodita est, cum dominis tum famulis posita in fundi villæque conspectu, religio larum repudianda est*).

The rites of *ancestors are likewise to be preserved in their families*, for since the ancients approached nearest to the gods, that religion which the gods handed down to them is a tradition most worthy of memorial.

When the law commands us to render divine honours to *deities that are consecrated, as having partaken of humanity*, as Hercules and the rest of the demi-gods, it indicates, that while the souls of all men are immortal, those of saints and heroes are divine.

It is right also, that *Intelligence, Piety, Valour, and Fidelity*, should possess the temples which are publicly dedicated to them at Rome, so that those who cultivate these admirable virtues, which are dear to all worthy men, should regard them as divine principles animating their souls.

But what is scarcely to be tolerated, is, that at Athens, they should have raised a temple to Vice, Ignominy, and Imprudence, as they did at the instigation of Epimenides of Crete, after the expiation of the crime of Cylon. For if it is pious to consecrate the Virtues, it is impious to bestow the same honour on the Vices. Thus the ancient altar which stands in the temple of *Fever*, and another on Mount Esquiline to *Misfortune*, are detestable, and all things of this kind should be repudiated.

But when we forge titles according to the fancy of the poets, and call Jove the defender, the invincible, from the idea we conceive of his strength and power, and extol as divine principles, Safety, Honour, Wealth and Victory, we perhaps do little harm, since our minds are supported by the expectation of these excellent things. It was not amiss therefore, that Calatinus consecrated Hope.

Nor is it wrong to celebrate Daily Fortune, for she embraces all days, helping us through all. Nor even to extol Luck, which presides over irregular accidents; or her companion, Prosperity, which crowns us with unnumbered blessings.

Then comes the order of *Festivals and Holidays*, in which all men should be free, and spend their time without strife or litigation, and which afford the lower orders periods of rest and cessation from labour. We must appoint such holidays with a just reference to the seasons of the year, so that their distribution may rather facilitate than interrupt the useful labours of agriculture. And with respect to the time when the rites of sacrifice are to be offered, with the young animals appointed by law, the exact intervals of intercalation are to be accurately observed, an institution which, originating with Numa, was impaired by the negligence of subsequent pontiffs.

It is not desirable to change the regulations which the pontiffs and haruspices have made respecting the *appropriate sacrifices* due to each god, in respect of age and sex.

With respect to the priests, their great number and their attachment to the services of the several divinities, should enable them to explain all the ordinances and duties of religion.

Now as Vesta, according to the meaning of the Greek word, which the Latins have retained, is symbolized by the perpetual fire of the city, the *vestal virgins* preside over it with the greatest

propriety, that they may keep the sacred flame ever burning and inviolable, and that women may learn that the purest chastity constitutes the perfection of their nature.—(Etsentiant mulieres in natura fœminarum, omnem castitatem peti.)

What follows, concerns not Religion only, but the general order of the state; namely, the prohibition which restrains private individuals from *offering sacrifices* without the superintendence of the public ministers of religion. For under a sound government, it always behoves the people to ask the counsel and authority of their chief functionaries; and the order of priests should take cognizance of every kind of orthodox religion.

Some of these priests are appointed to *propitiate the gods*, when offended, who preside over solemn sacrifices; and others are ordained to interpret the predictions of the prophets,—not indeed of all the prophets; for then their task would be infinite, and the secret purposes of the government would be divulged; so that those without the cabinet would become too familiar with political proceedings.

One of the greatest and most important offices in the Commonwealth is that of the Augurs, conjoined as it is with the highest authority. I do not speak this from any motive of personal vanity, since I am an augur myself, but because it is an actual matter of fact. For what can be more important in respect of official dignities, than the power of dismissing the assembly of the Commons, though convoked by the chief rulers, and thus annulling their counsels and enactments? What, I say, can be more absolute domination than that by which even a single augur can adjourn any political proceeding to another day! What can be more transcendent than that authority of the augurs, by which they may command even consuls to lay down their office! What more sacred than their power of granting or refusing permission to form treaties and compacts! or their power of abrogating laws, which have not been legitimately enacted, as in the case of the Titian law, which was annulled by a decree of the pontifical college; and the Livian law, which was likewise annulled by the advice of Phillipus, who was at once consul and augur. Indeed there is no edict of the magistrates relating either to domestic or foreign affairs which can be ratified without the augur's authority.

*Atticus.*

—I confess that their authority is very great; but there is a warm dispute between Marcellus and Appius, two of the best augurs in our college. I have met with the books of both, and I find that one of them affirms that auspices are merely *got up* for the interests of the state, and the other seems to think that they really are supernatural divinations. Will you favour us with your opinion on this point?

*Marcus.*

—For myself, I sincerely believe that there exists an art which the Greeks call Mantikè, or magic; and that the flight of birds and other signs, which the augurs profess to observe, form a part of this magic. For when we grant the existence of the supreme gods, and their intellectual government of the universe, and their benignant dealings with the human race, and their power

of granting us intimations of future events, I know not why we should deny the art of divination.

Besides this, the history of our Commonwealth affords us an infinite number of examples, which confirm this truth, and all kingdoms, peoples, and nations bear testimony that the predictions of augurs are wonderfully fulfilled. Thus the traditions of Polyidus, Melampus, Mopsus, Amphiaraus, Calchas, and Helenus, would not have made so much noise in the world, nor would they at this time be accredited by so many nations,—Arabians, Phrygians, Lycaonians, Cilicians and Pisidians,—unless antiquity had handed them down as true and indisputable. Nor would our Romulus have consulted the auspices before he founded Rome, nor would the name of Accius Navius have so long flourished in the memory of our citizens, if events had not justified their wonderful predictions. But doubtless this science and art of augury may vanish away by age and negligence. Therefore, for my part, I neither agree with Marcellus, who maintains that our college of augurs never was in possession of this science; nor do I agree with Claudius, who asserts that we still preserve it. For that kind of augury which prevailed among our ancestors, I think that it was sometimes used for mere political convenience; but far more often as a bona fide guide and director in critical emergencies. (Quæ mihi videtur apud majores fuisse, ut ad Reipublicæ tempus nonnunquam, ad agendi consilium sæpissime pertineret.)

*Atticus.*

—Well, it might be so, and most probably was so,—but proceed.

*Marcus.*

—I will, and as concisely as possible. What follows relates to the *rights of peace and war*; in commencing, conducting, and concluding which, justice and good faith are especially necessary. By our law we have therefore appointed the Feacial priests as public interpreters of these rights.

[\(Note I.\)](#)

As to the religious duties of the Haruspices, concerning expiations and sacrifices, I think I have already said enough.

*Atticus.*

—I think so too, since that branch of the law relates exclusively to religious ceremonials.

*Marcus.*

—As to what follows, my Atticus, I scarcely know in what terms it becomes me to animadvert, or you to assent.

*Atticus.*

—What is it?

*Marcus.*

—The law respecting the nocturnal sacrifices of women.

*Atticus.*

—Oh! I assent to their suppression by all means, excepting those solemn and public sacrifices which your legal maxim permits.

*Marcus.*

—But if we suppress the nocturnal sacrifices, what will become of the august mysteries of Iacchus, and the Eumolpidæ? For we are constructing laws, not for the Romans only, but for all just and valiant nations.

*Atticus.*

—I think it is but courteous to except these mysteries likewise, especially as we ourselves happen to have been initiated in them.

*Marcus.*

—With all my heart, let us except them. For it seems to me that among the many admirable and divine things your Athenians have established to the advantage of human society, there is nothing better than the mysteries by which we are polished and softened into politeness, from the rude austerities of barbarism. Justly indeed are they called *initiations*, for by them we especially learn the grand principles of philosophic life, and gain, not only the art of living agreeably, but of dying with a better hope.

But what displeases me in the nocturnal mysteries, is what the comic poets hold up to ridicule. If such licence was allowed at Rome, what abominations might be committed by the man who should carry premeditated debauchery into the mysteries, in which even a stolen glance was in ancient times a crime?

*Atticus.*

—Content yourself with proposing this law for Rome: do not rob the Greeks of their customs.

*Marcus.*

—Well then, let us return to our legal maxims, by which it is most diligently ordained that the clear daylight should be the safeguard of female virtue in the eyes of the multitude; and *that they should only be initiated in the mysteries of Ceres, according to the Roman custom.* ([Note II.](#))

In reference to this topic, we have an extraordinary instance of the severity of our ancestors in the public indictment and prosecution of the Bacchanals by the senate, supported by the

Consular armies. And this severity of the Roman government is not singular, since Diagondas of Thebes, in the middle of Greece, suppressed all nocturnal mysteries by a perpetual prohibition. And Aristophanes, the most facetious of the old Greek comedians, so satirized the new gods and the nocturnal rites of their worship, that he represents Sabazius and other foreign deities condemned as aliens, and obliged to pack off from the city.

The public priest shall acquit by his counsel those irregularities committed by imprudence in the sacrifices, for this is pardonable. But he shall judge as scandalous and impious the audacity which would introduce new religions.

With respect to public shows and amusements, they are generally exhibited either in the circus or the theatre. Let therefore corporeal contests, such as racing, boxing, wrestling, and charioteering for the palm of victory, be confined to the circus. And let dramatic recitations, with vocal and instrumental music within due limits, be practised in the theatre as by law prescribed. For I think with Plato that nothing more readily influences sentimental and susceptible minds, than the varied melodies of music; whose power of raising both good and evil passions is almost incalculable; for music can excite the depressed, and depress the excited, and augment our energies, or contract them. It would have been well for many of the Greek cities, if they had maintained the spirited and invigorating character of their ancient music; for since their music has been changed, their morals and manners have lapsed into voluptuousness and effeminacy. Whether their dispositions have been depraved by this seducing and enervating music, or whether their heroism has yielded to the temptation of other vices, certainly both their sense of honour and their sense of hearing must have been corrupt enough ere they could find pleasure in their newfangled concertos.

Therefore it was, that Plato, that wisest and learnedest philosopher of Greece, so much dreaded the effects of music on his fellow-countrymen. He denied that it was possible to change the laws of music, without likewise changing the laws of manners. If I am not quite so timid as Plato with respect to the influence of music, I by no means believe that this influence is to be slighted or overlooked by the moralist or the lawyer. Without going further, let me observe the effect of that influence among our Romans. The verses of Livius and Nævius, which used to be sung with a manly simplicity and energy, are now chaunted forth with all sorts of grimaces and contorsions of the eyes and head, according to the variation of the airs. Ancient Greece never permitted such abuses, wisely foreseeing, that if this kind of effeminacy got possession of the citizens, it would ruin all their cities with false arts and luxurious indulgences. And therefore the stern Lacedæmon ordained that the harp of Timotheus should possess but seven chords, and that the rest should be taken away.

Our next legal maxim is, *that we should be conservatives, and retain whatever is best in our ancient customs*, (ut de ritibus patriis colantur optimi): respecting which conservative principles, when the Athenians consulted the Pythian Apollo what religions they should chiefly cultivate, the oracle answered, "those which were sanctioned by their ancestors." (Eas quæ essent in more majorum). And when the Athenians came to consult the oracle again, alleging that the customs of their ancestors were various, and they desired to know which custom they should select from

the variety, the oracle replied, *the best*, (optimum). And truly may we assert, that for the most part the best is the most ancient and nearest the gods.

We have by another legal maxim prohibited the levy of rates for private emoluments, with the exception of those that are made during a few days in honour of Cybele. Such a custom fills men's minds with superstition, and impoverishes their families. (Stipem sustulimus, nisi eam quam ad paucos dies propriam, Idææ matris excepimus, implet enim superstitione animos, et exhaurit domos.)

We have awarded a due punishment for all sacriligious persons, not those only who rob a temple, but also those who rob property intrusted to a temple, which exists to a larger amount in many churches. Thus, Alexander is said to have consigned a sum of money in the temple of Soloe in Cilicia, and Clisthenes the Athenian, a very worthy citizen, when he thought his fortune was in danger, consigned his daughters' doweries to the care of Juno, in her temple at Samos.

Respecting the law against perjury, I have nothing more to add; and with regard to the laws against incest, this is not the place to dispute.

The next legal maxim is, that reprobates should not attempt to appease the gods by offerings, till they have repented of their sins. Let such impious criminals listen to Plato, who forbids us to doubt that God must abhor the wicked, since even a good man will not receive presents from the apostate.

The next legal maxim enforces the necessity of a careful discharge of our vows towards God.

As to the punishments of those who violate the sacred rites of religion, no one will deny the propriety of such penalties.

In order to confirm the execution of justice on such offenders, I need not cite the examples of those impious wretches, whose crimes and punishments are represented in the tragedies. Let us rather speak of those things which pass under our own observation. And though, in comemorating my private history, it may seem to have surpass the usual fortune of men, yet as our present conversation is so familiar and confidential between ourselves, I will hide nothing, and I trust that what I shall say will be agreeable to the immortal gods rather than offensive.

You are too well aware that all the laws of religion were infringed by certain wicked men during the period of my banishment. My domestic gods and guardian genii were violated, and a temple to licentiousness built on the ruins of their edifice, while he who alone could defend them was driven from their altars. Consider then, a moment, (for I need not mention names,) what was the termination of such proceedings. I, who suffered not the statue of Minerva, the guardian of our city, to be polluted by impious hands during the universal ruin of my house and property, and carried her safely from my home to the capitol, which is the home of Jupiter himself; was I not thus acting, celebrated by the judgment of the senate, Italy, and all nations as the preserver of my country?—than which nothing more glorious could happen to a mortal man.

My enemies, on the other hand, who had abominably violated the sacred rites of religion, were for the most part banished and exiled; while those who headed them in all their crimes and impieties, not only suffered degradation during life, but were denied the privilege of sepulture and funeral ceremonies.

*Quintus.*

—Yes, my brother, you have described these events as they occurred, and we cannot feel too grateful to the gods; but we sometimes see virtue apparently unrewarded, and vice triumphant.

*Marcus.*

—This is, because we judge not as we ought to judge, respecting divine justice. We are carried by the tide of public opinion into error, and cease to discern the true nature of things. We talk as if all the miseries of man were comprehended in death, pain of body, sorrow of mind, or judicial punishments; which, I grant, are calamitous accidents which have befallen many good men; but the sting of conscience, the remorse of guilt, is in itself an infinitely greater evil, even exclusive of the external punishments which attend it. I have seen those, who, had they not been enemies to their country, would never have been foes to me, tormented beyond description by their own bad passions; burning with concupiscence, and shuddering with terror and regret. Whatever they did they did it timorously, contemning religion, as if by so doing they could escape its penalties; and as if by corrupting men they could corrupt the gods. But I must restrain myself, and go no further in invective; for my vengeance has already been carried beyond my desire. I would only indicate, that the divine punishment of the impious is double their legal penalties; for it consists in the pang of conscience while they live, and the reported anguish of the dead; so that their chastisement may become manifest, both to the judgment and the satisfaction of the living.

I agree with Plato, that private estates ought not to be consecrated. Here are his words on this subject, if I can but interpret them correctly. "The earth is consecrated to all the gods, as a grand altar of worship. Therefore private individuals should not consecrate to the gods those territories which belong to them already. As to gold and silver in the cities, whether in houses or temples, this sort of property may very properly be consecrated. As to ivory, which is extracted from a dead elephant, it is an offering scarcely pure enough for the gods. Brass and iron, the instruments of war, ought not to be consecrated in temples. With regard to wood, if any one wishes to dedicate a statute of wood to a divinity, let it be formed from a single tree. The same remark applies to the statues of stone, so common in churches, which should be constructed of one material. As to the dress of a statue, let it not be more elaborate than a woman can make it in a month. Let its colour be white, for this is most pleasing to God, as a general emblem of purity, and pecuniary appropriate for sacred vestments. Let there be no colours, therefore, excepting on military decorations. With regard to offerings, the most pleasing ones we can render to the gods are birds, and other simple figures, which a painter may draw in a day; and let the other gifts have the same character of simplicity."

Such is the opinion of Plato. For my part, I am not quite so strict in my limitations, for we have

to consider the present tone of public morals, and the abundance of wealth in all the articles of commerce. Besides, I suspect that agricultural industry would languish, if superstitious ceremonials were allowed unduly to interfere with the cultivation of the ground by the instruments of husbandry.

*Atticus.*

—I understand you; it remains for you to speak on the perpetual sacrifices and the rights of the Manes.

*Marcus.*

—What a wonderful memory you possess, my Atticus. I had forgotten that point.

*Atticus.*

—Very likely. I recollect these legal maxims the better, because they are associated both with the pontifical and civil law.

*Marcus.*

—On these points, our statutes and decisions are very clear and distinct. And for my part, in this familiar conversation, whatever kind of law we have to discuss, I will treat of our civil jurisprudence with as much simplicity as possible,—in such a manner, that you may easily distinguish on what principle every legal case depends. Thus it will not be difficult for any one possessed of a moderate share of intelligence to find the rights of the question, whatever new cause of consultation shall arise, when he shall know how to refer the points of debate to their appropriate maxim.

But, unhappily, our lawyers, whether for the sake of raising casuistry (*erroris objiciendi causâ*) in order that they may seem to know more difficult points than they really understand—or whether, as most likely, through ignorance of the art of teaching and conveying instruction (for it is one thing to know an art, and another to teach it) our lawyers, I say, often divide a legal doctrine, which is essentially simple, into an infinite variety of technical distinctions, (*sæpe quod positum est in unâ cognitione, id in infinita dispartuntur*). With relation to our present topic, for instance, what a wonderful cloud of sophistries has been raised by the two *Scævolas*, pontiffs both equally skilful in law! “Often,” says Publius the son, “have I heard from my father, that no one can make a good pontiff, unless he understands the civil law. What, the whole of it? Why so? What in the world has a pontiff to do with the rights of partition walls, aqueducts, &c.? Or does he mean only that part of the civil law which is connected with ecclesiastical polity? But how inconsiderable is this, with the exception of certain sacrifices, vows, holidays, burials, and things of that kind. Why then should we make these of so much importance, when the others are so insignificant?”

Concerning those sacrifices, however, which have a more extensive relation to jurisprudence, we may pronounce this sentence: let them be preserved perpetually,—and let them pass by

succession through families, so that, as I have stated in my maxim, the *sacred rites may be constant*. On this principle, the pontiffs have decided that these rites should be handed down through all generations, so that their memorial should not fail with the lives of the ancestor, and that their obligations should devolve on those who inherit the family estates. On this principle alone, which might suffice for the regulation of all relative cases, have our lawyers raised innumerable quibbles, which fill their books. They demand, forsooth, who are bound to administer these sacred rites? Common justice evidently points out the heir of the deceased; for there is no other person who more appropriately occupies the position of the departed progenitor. Next to the heir, stands the legatee, who by the death of the deceased, or by virtue of his will, sometimes takes as much as all the heirs. All this is implied in the maxim, and perfectly corresponds to its design. Thirdly, if there be no heir, the obligation attaches to him who takes the largest share of the goods of the deceased. Fourthly, if there be no heir or legatee who receives any thing, it binds the chief creditor who gains the largest share of the estate. The last person on whom the obligation of discharging the sacred rites can fall, is the debtor of the defunct, who not having discharged the debts he owed him, will stand in the same position as if he had received a legacy to an equivalent amount.

It is thus, that Scævola instructed us in many points of law, which were not so defined by our forefathers. For they regulated the whole business in the following simple terms:—"A person may become liable to the obligation of discharging the sacred rites of the deceased in three ways; first, as the heir; secondly, as the legatee, who takes the greater part of the property; thirdly, as the largest creditor, in case the estate is incumbered. But we learn one thing from Scævola the pontiff, namely, that all the new arrangements depend on a single principle, which is the wish of the priests to attach the money to the sacred rites, and they judge all festivals and ceremonies by the same rule.

The Scævolas likewise establish this regulation, which is one of their distinctions: namely, that if a due allowance is not set down in the legacy, and the legatees receive less than all the heirs, they should not be bound to discharge the sacred rites. In donations, however, they interpret the same thing in quite a different manner, and ratify whatever the ancestor shall approve in the donation of a person under his superintendence; and do not ratify whatever has been done without his approbation and participation.

On such topics, a thousand little questions arise, which any one may solve by referring them to their proper maxim and principle. For instance,—if through fear of being charged with the sacred rites, a legatee took less than his legacy, and afterwards one of the heirs of this legatee claimed on his own account that portion which the legatee had relinquished, and these two sums, joined together, equal that which was bequeathed to all the heirs; then he who claimed this relinquished portion would be bound to perform the sacred rites, without encumbering his co-heirs. They determine, however, with regard to the legatee, that where the legacy is greater than can be exempted, from these rites, he may pay a part by weight and balance to the testamentary heir, so that in this case, the heir being charged, the money of the legatee is no further liable.

On this point, as on many others, I should be glad if you pontiffs Scævolas, great and talented men, as I confess you to be, would inform me why you seek to perplex the pontifical law with the subtleties of the civil law? For thus, you, in fact, supersede the simple maxims of ecclesiastical jurisprudence, by the endless technicalities of the municipal legislation. If the sacred rites are thus conjoined with pecuniary interests, they are so by your authority as pontiffs, rather than by any law of national obligation. So long, indeed, as you remain pontiffs, your pontifical jurisdiction will continue, but as you happen to be exceedingly knowing in the civil law, you may be able to elude the plainest maxims of the ecclesiastical. For instance, Publius Scævola, Coruncanus, and other chief priests, have determined that those legatees who take only as much as all the heirs, should be bound to discharge the sacred rites.

Such is the pontifical law. Now what has been added to it by the civil law?—a rule of distributions, composed with the utmost caution, in favour of the legatee, for by the deduction of a hundred sesterces, they have discovered a method of delivering the legatee from this troublesome duty. If, however, the testator omitted to make this proviso for the legatee, Mucius the pontiff and jurisconsult, has contrived a new expedient in his favour: he has but to take less than all the heirs, and he gets his acquittal. Our forefathers had stated, with admirable good sense, that those to whom the property came should discharge the sacred rites; but these pontifical gentlemen have rid them of all such obligations.

As to the other quibble, it had no place in the pontifical law, and existed only in the civil code. I mean the sale by weight and balance, in order to charge the testamentary heirs, and place the business in the same condition as if the legacy had not been granted, the legatee stipulating with respect to his legacy, that he should pay over a certain sum by stipulation and so get acquitted of the sacred rights.

I now come to the rights of the Manes, or ghosts of the dead—which our ancestors most wisely instituted, and most religiously observed. They therefore ordained that the people should sacrifice for the ghosts of the dead, in the month of February, then the last month in the year by the ecclesiastical calendar. Decius Brutus, however, according to the writings of Sisenna, usually discharged these ceremonials in December. When I consult my own knowledge for the reason of this proceeding, I think I discover the cause which induced Brutus to depart from the ancestral custom. The cause that Sisenna assigns for Brutus's non-observance of this ancient institution, was his ignorance of its obligation; but it does not seem to me likely that Brutus would have so rashly neglected an institution of our ancestors, for he was a learned man, and very familiar with Accius. I therefore conclude that Brutus considered December to be the last month in the year, rather than February, which was so called when the institution was originated. He, likewise, conceived that it was a part of piety to offer very considerable sacrifices.

With regard to the rite of sepulture, it is so sacred a thing that all confess it should be discharged in consecrated ground, and if possible in the country where the family of the deceased resides. Thus, in ancient times, Torquatus adjudicated respecting the Popilian family. And certainly the Denicale feasts, so called from the Latin words *de nece*, (implying deliverance

from death) would not have been appointed as holidays in honour of the dead, as well as other celestials, unless our ancestors who have departed this life, were believed to have past into the great assembly of divinified minds. The order of solemnizing these days, which is different from that of other public festivals, declares the ecclesiastical character of this institution, and its great sanctity and importance.

It is unnecessary for us at present to explain the proceedings of families in funeral ceremonies, what kind of sacrifice should be offered to the lares, or guardian genii, from the rams of the flock—how the bone which remains unconsumed must be covered with earth—how in some cases it is necessary to sacrifice a sow, when the sepulchre is to be considered as consecrated, and such minute details.

It appears to me, however, that the kind of sepulture which Cyrus, according to Xenophon, solicited for himself, is the most ancient of all, for it is a kind of restitution which we make to the earth of a body, which, as a mother, she produced, and as a mother takes back to her protecting bosom. In the same manner we believe our ancient king Numa was interred in his sepulchre, near the altar of the fountain. The Cornelian family likewise used this form of burial, till a period within our own recollection. The conqueror Sylla, however, ordered the corpse of Marius to be disinterred from his grave on the banks of the Anio, impelled to this barbarous brutality by an implacable resentment, which he would not have indulged if he had been as wise as he was vehement. Perhaps it was through fear that the same accident might happen to himself, that he ordered that his body should be burned after his death,—a custom he was the first to introduce in the patrician family of the Cornelii. For in the epitaph on Scipio Africanus, Ennius says,

*"Here lies the body, &c."*

And the word *lies*, is only applied in this way to them who are buried in sepulchres; though perhaps tombs should not be entitled sepulchres till the last rites have been consummated, and the corpse consumed by fire.

The verb to *inhume*, which is now commonly applied to the burial of the deceased, is most appropriate to those corpses that are interred after being burned. The pontifical law proves this usage, for before the ground is thrown over them, the spot where the body is burned is not consecrated. When the earth is thrown over the corpse, then it is inhumed, and the tomb is called a sepulchre, and many religious rites are performed in order to consecrate it. So Publius Mucius determined with regard to a person killed in a ship, and then cast into the sea, that his family was pure from any charge of neglect to the deceased, inasmuch as no bone remained on the earth, in which case his heir must have sacrificed a sow to his manes. If, on the contrary, a bone had remained on the earth, he considered that fasts should be appointed during three days, and that a sow should likewise be sacrificed, if the deceased had died in the sea.

*Atticus.*

—I am well aware of these rules of the pontifical statutes; but what do our civil laws say?

*Marcus.*

—Little enough on this subject, my Atticus, and I expect you are acquainted with it already. The civil regulation has less regard to the religious ceremonials than to the rights of sepulchres. A law of the Twelve Tables determines that *a dead person shall neither be buried nor burned within the city*, I suppose on account of the danger of fire. But the addition of this disjunctive *nor burned*, indicates, that the corpse which is burned is not so appropriately consigned to burial as to inhumation.

*Atticus.*

—How is it, that notwithstanding this law of the Twelve Tables, so many of our great men have been buried in the city?

*Marcus.*

—I believe, my Atticus, that this privilege was granted before this law was made, to certain heroic worthies, as Publicola and Tubertus, on account of their virtue, and that their descendents have succeeded to this privilege, though it is an exception to the law. Some others may since have gained this privilege, like Caius Fabricius, whose virtue has in some sense made them free of the laws. The civil law, in all other cases, forbids burials in the city, and the Pontifical College has decreed that it is unlawful to raise a sepulchre in the public places.

You know the Temple of Honour, outside the Collinian gate. We learn from tradition, that there was in ancient times an altar on the spot; and it appears from a medal discovered there, on which was inscribed, “the medal of Honour,” that this was the reason why that temple was so dedicated. But since there were many sepulchres in the neighbourhood, they were ploughed up when the city was enlarged. For the Pontifical College ordained that public places could not be bound by private consecrations.

Another provision we find in the Twelve Tables, intended to obviate the superfluous expences and extravagant ceremonials of funerals, almost literally translated from the laws of Solon. “*Ne facito rogum ascia ne polito.*” *Never carve and polish a funeral pile.* You recollect what follows, for we learned the Twelve Tables when schoolboys, as an indispensable lesson, which, by-the-by, no one attends to now-a-days. Let extravagance, therefore, be diminished to three suits of mourning, with purple bands, and ten flute players. Excessive lamentations are also to be prohibited by this rule,—*Let not the women tear their cheeks or make the lessus or funeral wailings.*

Those ancient interpreters of our laws, Sextus, Ælius, and Lucius Accilius, have said they could not understand this regulation, but that they suspected it referred to some peculiar funeral ceremonials. Ælius defines the word ‘lessus’ to be a kind of lugubrious ejaculation, or shriek, which I think likely enough, since Solon’s law likewise forbids such lamentations. These rules are very commendable, and equally practicable by the rich and poor, and they are eminently conformable to nature, who sweeps away by mortality all the distinctions of fortune.

The Twelve Tables, have likewise abridged those other funeral pomps, which tend to augment a vain and unavailing sorrow. For they thus declare,—*Do not collect the bones of the dead, when their funerals are over.* An exception is made with regard to those who die in battle, or in a foreign land.

Besides these laws, there are others with regard to unction, which forbid a servile embalment of the corpse, and funeral banquets and wakes. These abuses are justly abrogated, which would not have been abrogated had they not been abuses.

Among the prohibitions are likewise comprised expensive respersions, large crowns, and censers of perfume.

It is certain, however, that the ornament of merit may sometimes belong to the dead, because the law enjoins that such a crown should be placed without fraud on the deceased, who has deserved it by his virtue, and on his nearest relation.

I believe there was also a rule that many obsequies should not be celebrated, or many funeral processions arranged for any one deceased.

And since, there was a general law, *that gold should not be buried with the dead*—another regulation contained this humane exception; if the teeth of the deceased were fastened with gold, the corpse should be buried or burned without taking it away. From which expression we might deduce another argument, that burial and burning were often quite unconnected.

Beside these, there are two laws respecting sepulchres, one of which relates to the houses that have family vaults attached, and the other to the family vaults themselves. One prohibits the erection of a funeral pile or pyre nearer than sixty feet to a neighbour's house, without its proprietor's consent, for fear of conflagration. The other ordained, that the sepulchre and its vestibule should not be subject to usucaption, and thus defends the rights of sepulchres.

These regulations we find in the Twelve Tables, and indeed they are very conformable to nature, which is the rule of law. The other portion relates to customs—how funerals should be announced; whether games should be allowed; whether the master of the ceremonies shall employ a herald and lictors; whether the praises of the honorable dead shall be commemorated in a panegyric; whether the elegiac songs shall be accompanied by flutes, so as to form dirges, by which name Gracchus designated funeral lamentations.

*Quintus.*

—I am delighted that our laws are so far conformable to nature, and above measure pleased with the wisdom of our ancestors.

*Marcus.*

—Yet I believe, my Quintus, that some further limitation should be made to the funeral pomps and ceremonials. You may see in the funeral of Figulus to what an excess these vanities were

carried.

*Quintus.*

—I think there was formerly far less ambition for this kind of extravagance than at present prevails, as many examples of funeral frugality and simplicity are extant in the records of our ancestors.

*Marcus.*

—At least our legal interpreters inform us, that the chapter of the law which forbids profuse and excessive ceremonials in the funeral rites of the dead, likewise condemns the superfluous magnificence of sepulchres. And we cannot believe that this important subject should have escaped the attention of our wisest legislators. They say that the custom of interring the dead in the Greek mode, began at Athens in the time of Cecrops. And that immediately after such interments, the next relatives, when they had cast the earth over the dead, scattered the seeds of vegetables over the spot; that, having like a benignant mother, taken her lifeless son to her bosom, by the expiation of the seed she should again bear fruit for the living. Then followed the festivals, which the relatives attended, crowned with flowers; and in these festivals they pronounced the eulogiums on the deceased, if his virtues were worthy of commendation; for it was reckoned impious to lie on such occasions, and thus the ceremony terminated.

In process of time, as Demetrius Phalereus assures us, the funerals became sumptuous, and the elegiac lamentations were extravagantly multiplied. These abuses were prohibited by Solon's law, which our Decemvirs have translated almost word for word in our Twelve Tables. Our rule respecting the three suits of mourning, and other customs were thus derived from Solon's regulation; and that edict respecting the dirges is expressed in his precise phrases.—Let not the women tear their cheeks, nor indulge their wailing at funerals. (*Mulieres genas ne radunto, neve lessum funeris ergo habento*).

There is nothing more to be remarked in Solon's law respecting funerals, except, that he forbids the injury of sepulchres, or the disturbance of the dead. He makes it penal for any one to violate, dilapidate, or impair any grave, which he calls a tomb, or funeral monument or column. Afterwards, the extravagance of the mausoleums they built in the ceramicus and cemetery, gave occasion to that law which prohibits private persons from erecting any sepulchre more elaborate than ten men can construct in three days. Nor was it permitted to adorn them with sculpture, nor to place the statues they call Mercuries around them; nor to pronounce the panegyrics of the dead, excepting when the obsequies were public, and the constituted officer was duly employed. The eulogiums of men and women were likewise forbidden, that the lamentations might be diminished; for such convocations on melancholy occasions tend to augment unavailing sorrow. Therefore Pittacus expressly forbade any from attending the funerals of those that were strangers to them.

But as the same Demetrius informs us, the magnificence of funeral processions and ceremonials revived anew, so as nearly to equal our present Roman extravagancies; these, Demetrius

restrained by a wholesome law; for he was not only, as you are aware, a very learned man, but a most experienced citizen, devoted to the preservation of the state. He therefore diminished the sumptuosity of funerals, not only by penalties, but by a limitation of time; as he commanded that they should be performed before sun-rise. He also established a rule of moderation for all new sepulchres—for he would not allow any edifice over the dead, save a little column, three cubits high, or a tomb-stone, or tablet; and he appointed a regular magistrate to superintend these observances.

Such, my Atticus, were the laws enforced among your Athenians. But let us see what says Plato, who allots to the ministers of religion the charge of regulating funerals, of which we sometimes take cognizance in our civil courts. These are his words respecting sepulchres:—

“Do not use, as a burial place, any portion of land which is either cultivated, or which may be so; but such a soil as nature has adapted for receiving the bodies of the dead, without detriment to the interests of the living. As to the field, which is capable of bearing fruit, and nourishing us with its maternal exuberance of vegetable stores, let us by no means injure it either living or dead. And let no sepulchre be built to a greater elevation than five men can raise in five days; nor let a tablet be made any larger than is required for the reception of an epitaph on the deceased, in four heroic verses,” (which, our Ennius says, is quite long enough.)

We have therefore the authority of the illustrious Plato in our favour. He likewise limits the funeral expenses by the fortune of the family, from one mina to five. He then repeats what he had before said respecting the immortality of the soul, and the tranquility of the good after death, and the punishment of the wicked.

I have now, I believe, sufficiently explained all the laws which relate to religious rites.

*Quintus.*

—You have, my brother, and most copiously too; but prithee proceed to the other branch of our subject.

*Marcus.*

—It is my intention to do so; and since you urge me to these discussions, I will endeavour to bring our argument to a conclusion, and if possible, in the course of the day. For I find my predecessor Plato did the same, and got through each legal disquisition in a summer day's conference. I will, therefore, try to imitate him, and will next speak of magisterial laws; for after those of religion, the state hath nothing more important.

*Atticus.*

—Proceed, then, and in the same order and method you have discussed the sacred laws, endeavour to illustrate our civil regulations.

## **INTRODUCTION TO THE THIRD BOOK OF CICERO'S TREATISE ON LAWS.**

IN this Third Book, Cicero treats of the Civil Laws, and the offices and duties of the civil magistrates by whom they are enforced. On these topics he lays down a series of legal maxims, and then proceeds to give an ample exposition of their several provisions.

### **CICERO'S TREATISE ON LAWS**

#### ***BOOK III.***

*Marcus.*

—I shall, therefore, emulate that divine man who has inspired me with such admiration, that I eulogize him perhaps oftener than is necessary.

*Atticus.*

—You mean Plato.

*Marcus.*

—The very man, my Atticus.

*Atticus.*

—Indeed you do not exaggerate your compliments, nor bestow them too frequently, for even my Epicurean friends, who lavish all their praises on Epicurus, still allow me to love Plato as much as I like.

*Marcus.*

—They do well to grant you this indulgence, for what can be so suitable to the elegance of your taste as the writings of Plato?—who in his life and manners effected that most difficult combination of gravity and politeness.

*Atticus.*

—I am glad I interrupted you, since you have availed yourself of an opportunity of giving this splendid testimonial of your esteem; but let us pursue our subject.

*Marcus.*

—Let us begin, then, with praising our civil laws, with all the commendations they truly and appropriately deserve.

*Atticus.*

—It is but fair, since you paid the same preliminary compliment to our ecclesiastical

jurisprudence.

*Marcus.*

—You are aware, then, that the proper characteristic and duty of magistrates, is to superintend and prescribe all the just and useful regulations of the law. For as the law is set over the magistrate, even so are the magistrates set over the people. And, therefore, it may be said *“that the magistrate is a speaking law, and the law a silent magistrate.”*

Now it is self-evident, that nothing can be more conformable to justice and natural conscience, which to me appear perfectly congenial, than that legal authority, without which, neither house, nor commonwealth, nor nation, nor mankind itself, nor the entire nature of things in this immeasurable universe, could consist. For this universe is obedient to God, and land and sea are submissive to the universe; and human life depends on the just administration of the laws of order.

But to come to considerations nearer home, and more familiar to us, all ancient nations have been under the dominion of kings (*omnes antiquæ gentes regibus quondam paruerunt*). Which kind of authority was at first conferred on the wisest and justest men. And this rule mainly prevailed in our own Commonwealth, as long as the regal power lasted. Afterward, the authority of kings was handed down to their descendants, which remains to this day, in those that reign over nations. And even among those to whom the regal domination was distasteful, though they desired to disclaim their submission to the laws of a monarch, they by no means sought to be emancipated from all laws.

For ourselves, then, as we propose laws for a free people, such as we approved in that best kind of Commonwealth, concerning which we wrote our Six Books, we shall now endeavour to accommodate our laws to that constitutional government we there set forth and illustrated.

It is clear, then, that magistrates are absolutely necessary to a state, since, without their prudence and diligence, there would be nothing but confusion and anarchy. Their lawful authority is therefore to be determined in the legislation of every Commonwealth. But it is not enough to prescribe them a rule of domination, unless we likewise prescribe the citizens a rule of obedience. For in order to command well, we should know how to submit; and he who submits with a good grace will some time become worthy of commanding. It is desirable therefore, that he who obeys may hope that some day he will be capacitated for command, and that he who commands should bear in mind that ere long he may be called to the duty of submission.

We would not, however, limit ourselves to requiring from the citizens submission and obedience towards their magistrates; we would also enjoin them by all means to honour and love their rulers, as Charondas prescribes in his code. Our Plato likewise declares that they are of the race of the apostate Titans, exiled from heaven for their seditions, who oppose their legitimate magistrates. These points being granted, we will, with your permission, advance to the examination of the magisterial laws.

*Atticus.*

—There cannot be a better arrangement of your topics.

*Marcus.*

—I will, therefore, cite a few of the *legal maxims* that bear on this branch of laws. “Let all authorities be just, and let them be honestly obeyed by the people without hesitation. Let the magistrate restrain disobedience and sedition in citizens, by fine, imprisonment, and corporal chastisement. If there be an equal or greater power, and the people think the adjudication unjust, let them lawfully appeal thereto. If the magistrate shall have decided, and past sentence illegally, let there be a public appeal in a higher Court respecting the penalty and fine imposed.

With respect to the army, and the generals that command it by martial law, there should be no appeal from their authority. For the will of the general should have the force of absolute law, at least in time of war.

As to the minor magistrates, let there be such a distribution of their legal duties, that each may more effectively superintend his own department of justice. In the army let some, as military tribunes, command those that are subject to them. In the city, let others be appointed as superintendents of the public treasury. Let some devote their attention to the prison discipline, and capital punishments. Let others supervise the public mintage of gold, and silver, and copper. Let others judge of suits and arbitrations; and let others carry the orders of the senate into execution.

Let there likewise be *Ædiles*, curators of the city, the provisions, and the public games, and let these offices be the first steps to higher promotions of honour.

Let the censors take a census of the people, according to age, race, family, and property. Let them have the inspection of the temples, the streets, the aqueducts, the rates, and the customs. Let them distribute the citizens, according to their tribes, fortunes, ages, and ranks. Let them keep a register of the equestrian and plebeian orders. Let them impose a tax on celibates. Let them guard the morals of the people. Let them permit no scandal in the senate. Let the number of such censors be two. Let their magistracy continue five years. Let the other magistrates be annual, but their offices themselves should be perpetual.

Let the *prætor* be judge of the law in private actions, with power of passing sentence—he is the proper guardian of civil jurisprudence. Let him have as many colleagues, of equal power, as the senate think necessary, and the commons allow him.

Let two magistrates be invested with sovereign authority, and be entitled *prætors*, judges, or consuls, in respect of presiding, judging, or counselling, according to the nature of the case. Let them have absolute authority over the army, for the safety of the people is the supreme law. This magistracy should not be determined in less than ten years—regulating the duration by the

annual law.

When a considerable war is undertaken, and discord is likely to ensue among the citizens, let a single supreme magistrate be appointed, who shall unite in his own person the authority of both consuls, if the senate so decrees, for six months only. When such a magistrate has been proclaimed under favourable auspices, let him be as a prince of the people. Let him have for a colleague, a prætorial patrician, as a judge of the law. But when such dictators are created over the consuls, let not the other magistracies be suppressed or vacated.

Let the auspices be observed by the senate, and let those they authorize to elect the consuls in the comitia, proceed according to the established ceremonials.

Let the governors, generals, and lieutenants, leave the city whenever the senate or the people decree their retirement. Let all wars be just, and justly prosecuted. Let allies be spared, and our armies restrained from all unnecessary violence, that the glory of our country may be augmented. Then shall our soldiers return home with honour. Let ambassadors also direct their efforts to the service of the state, rather than their selfish interests.

Let ten tribunes be elected as magistrates of the people, to protect them against oppression; let their prohibitions and their adjudications be established, and their persons considered inviolable, so that tribunes may never be wanting to the people.

Let all magistrates possess their auspices and jurisdictions, and let the senate be composed of these legitimate authorities. Let its ordinances be absolute, and let its enactments be written and enrolled, unless an equal or greater authority disannul them. Let the order of the senators be free from reproach and scandal, and let them be an example of virtue to all.

In the creation of magistrates, the judgment of the accused, and the reception or rejection of laws, when suffrages are employed, *let the suffrages be at once notorious to the nobles, and free to the people (optimatibus nota plebi libera sunt)*.

If any question occur out of the established jurisdiction of the magistrates, let another magistrate be appointed by the people, whose jurisdiction shall expressly extend thereto. Let the consul, the prætor, the censor, and he to whom the senate has committed the election of consuls, have full liberty to treat both with the senate and the people, and endeavour to reconcile the interests of all parties. Let the tribunes of the people likewise have free access to the senate, and advocate the interests of the people in all their deliberations. Let a just moderation predominate in the opinions and declarations of those who would thus act as mediators between the senate and the people. Let a senator who does not attend the senate, either shew cause of his non-attendance, or submit to an appropriate fine. Let a senator speak in his turn, with all moderation, and let him be thoroughly acquainted with the interests of the people (senatori qui nec aderit aut causa aut culpa esto—loco senator et modo orato, causas populi teneto.)

By all means avoid violence in politics. Let the greatest authority have the greatest weight in

decisions. If any one shall disturb the public harmony, and foment party quarrels, let him be punished as a criminal. To act the intercessor in cases of offence, is the part of a good citizen. Let those who would prosper in their treaties and engagements, duly observe the offices of religion. Let all proclamations be exhibited in the treasury, and published as extensively as possible. Let the public consultations be concentrated in one point at a time, let the people be instructed in the nature of the question, and let all the magistrates and the people be permitted to advise on the subject.

Permit no monopolies, or unfair privileges of one class, at the expense of others. With respect to the capital punishment of any citizen, let it not take place, unless by the adjudication of the high courts of justice, and the ministry of those whom the censors have placed over the popular orders. Let no bribes be given or received, either in soliciting, discharging, or resigning an official situation (*donum ne capiunto, neve danto, neve petenda, neve gerenda, neve gesta potestate*).

If any one shall infringe any of these laws, let him bear the penalty. Let these regulations be committed to the charge of the censors. Let public officers, on their retiring from their posts, give these censors an account of their conduct, but let them not by this means escape from legal prosecution if they have been guilty of corruption.

My code of laws is finished; now, gentlemen, you may retire, and give your votes as you please.

*Quintus.*

—With what conciseness, my brother, have you delineated the duties and offices of magistrates! But I find the system of laws you would propose for your beau-ideal Commonwealth, very similar to those which prevail in our Roman constitution.

*Marcus.*

—Your observation is very just, my Quintus. It is the very system which Scipio eulogizes in our treatise on the Commonwealth, and which he mainly approves—and it is only by a successive order of magistrates, such as we have described, that the true discipline of the state can be maintained. For you may take for granted that it is the establishment of magistrates, that gives its form to a Commonwealth, and it is exactly by their distribution and subordination, that we must determine the nature of the constitution. Which establishment being very wisely and discreetly settled by our ancestors, I have little or nothing to do with innovation in the laws I propose.

*Atticus.*

—Will you be so obliging as to favour us, as you did at my request respecting the ecclesiastical laws, so also now in regard to these magisterial and civil laws,—with the reasons why you prefer the maxims you have stated.

*Marcus.*

—I will do as you desire, my Atticus, and I will explain how far the subject has been illustrated by the disputations of the Greek philosophers, and then prosecute our investigations in jurisprudence.

*Atticus.*

—I am impatient to hear your dissertation.

*Marcus.*

—I have already stated a large part of the doctrines relating to this enquiry, in the books which I composed respecting the best state of the Commonwealth. In this place, however, we may cite a few of the Greek politicians on the duties and offices of magistrates, which have been treated with considerable subtlety, first by Theophrastus, and next by Diogenes, the Stoic.

*Atticus.*

—A Stoic, say you; were such questions ever discussed by the Stoics?

*Marcus.*

—Certainly not, with the exception of the philosopher I have just cited, and after him Panætius, whom I take to have been a great man and singularly erudite. Indeed, the ancient Stoics were not so deficient in their speculative dissertations respecting politics and laws, as they were in the practical application of them to the service of the people. From the Platonic school, however, the greatest light was cast over politics and laws. Afterwards, Aristotle illustrated all matters of civil jurisprudence in his elaborate essays, as did also Heraclides of Pontus, another of Plato's disciples. As for Theophrastus, who was instructed by Aristotle, he abounded, as you are aware, in disquisitions of this kind; and Dicæarchus, a disciple of the same master, was by no means deficient in jurisprudential science. After these, Demetrius Phalereus, before mentioned, drew legal learning by his admirable talents from the shades and sequestrations of the schools, into the open daylight of civil life, and gave it a practical point and efficacy, which are of the greatest service in all critical emergencies and conflicts. This combination of legal theory and practice is the more valuable, since we often find that men distinguished in politics are deficient in philosophy, and those celebrated for philosophy are remarkably ignorant in legal affairs. I hardly know where we could find another man of genius, who excels in the theory and practice of jurisprudence, so as to be at once a prince of learning and of political economy. (Qui vero utraque re excelleret, ut et doctrinæ studiis et regenda civitate princeps esset quis facile nunc inveniri protest?

*Atticus.*

—I think I could show you such a man, if I were to point to one of us three; but pray continue your discourse.

*Marcus.*

—These Greek philosophers make it a grand point of enquiry whether a monarch should be appointed in each commonwealth, that is, one chief magistrate, to whom all the rest should be subordinate. This monarchical system, I understand, was very agreeable to our ancestors, even after the expulsion of the Tarquins. But since the monarchy which was at first preferred was changed, not so much through any fault in the monarchy, as through the vices of a monarch, it should seem, that the monarchy itself should still subsist, if one magistrate commanded all the rest, and nothing but the name of king would be lost.

It was not without reason, therefore, that Theopompus in Lacedæmon, qualified the power of the Spartan kings by the Ephori, or that we Romans qualify the power of our consuls by tribunes. For our consuls are invested with such authority by law, that they command all the other magistrates, except the tribunes, who were created some time after, in order to hinder the abuse of tyranny from being again revived. For the first diminution of the power of the consuls, was the creation of a magistrate who did not hold under them. The next was, when this new magistrate gave his aid not only to other magistrates, but even to private citizens, against any unconstitutional edicts of the consuls.

*Quintus.*

—Ah, my brother, you speak of a great evil; for since the office of the tribunes of the people was established, the authority of the nobles has declined, and the rule of the mob gained strength.

*Marcus.*

—The case is not quite so bad as you think, my Quintus. For that consular power when unlimited, would not only appear despotic, but even violent to the people, whereas now by a wise and moderate limitation, it diffuses law and justice to all the citizens.

*Let us now come to the exposition of our legal maxims, before stated; and to pass over that earlier portion whose propriety is almost self-evident, let us notice that maxim which declares, that soldiers should endeavour to return home with unblemished honour.* For to good and innocent men, no prize so valuable as stainless reputation can be derived either from our enemies or our friends.

That maxim is also plainly just, that nothing can be baser than for a man to sue for an appointment as ambassador, for any other interest than that of his country. I speak not merely of the conduct of those who would figure as ambassadors and legates and *charges d'affairs*, in order to sequester estates and inheritances in the provinces; for there exist men by no means unfamiliar with this kind of corruption; but I ask, if any thing can be more scandalous than to see senatorial commissioners without commissions, deputies without instructions, or any public business of a patriotic kind? This sort of legation I should have abolished when consul, with the approbation of a full senate, though apparently against the interest of many nobles, had not a

certain blundering tribune of the people opposed me. I succeeded, however, in shortening the term of this official abomination, which was before unlimited, and made such appointments merely annual, and thus this scandal still remains, though it has lost its perpetuity.

But now, with your permission, we will wish the provinces good-bye, and once more return to Rome.

*Atticus.*

—With all my heart, though such a proposition would appear remarkably disagreeable to many gentlemen in the provinces, I could name if I would.

*Marcus.*

—But if these nameless gentlemen, my Atticus, were content to obey the just laws of their country, they would like nothing better than Rome and their Roman villas; and would hold nothing more laborious and troublesome than their provincial appointments.

The subsequent legal maxim confirms to the tribunes of the people, the power they possess in our commonwealth, on which I need not enlarge.

*Quintus.*

—I beg your pardon, my brother, but I particularly wish to know your opinion of this power of the tribunes. To me it appears extremely mischievous, at once the child and the parent of endless seditions. If we look back to the origin of the tribunate, we find that it originally sprung from a hubbub of civil disturbances, and that in process of time, a mutinous populace gave it the ascendancy over all magisterial authorities of Rome. After this, being stifled, as one of those monstrous abortions which, by a law of the Twelve Tables, are not suffered to live, it again recovered its existence in a very inexplicable manner, only to become baser and viler than ever. It then committed every kind of atrocity. Its first act was a piece of villainy well worthy of its impious violence, namely, the abrogation of the honours of the senate and patricians. By an infernal system of levelling, it reduced the highest dignities to an equality with the meanest degradations, agitating and confounding all things. When it had thus insulted and violated the gravity of our nobles, it was still as insane and insensate as before. Not to mention a Flaminius and others, which you may call antiquated instances, what laws or rights did the tribune Tiberius Gracchus leave to the best and worthiest citizens? And, five years before, did not the tribune Curatius, the basest and foulest of mortals, cast into prison with unheard-of insolence and barbarity, the consuls Brutus and Scipio, patriots of the most effulgent renown? And did not C. Gracchus, another tribune of the people, endeavour to overturn and revolutionize our Commonwealth, by throwing darts and daggers into the forum, in order to excite the citizens to mutual slaughter, as if they were so many gladiators. What shall I say of the crimes of Saturninus and others, whose violences the Commonwealth could scarcely repel without civil war? But why should we mention these antique and unfamiliar instances of evil tribunes, when so many occur within our own memory! Who was ever so audacious and so inimical to us, that

he ever thought of destroying our state, except through the agency of the tribunes? For when infamous and profligate men found no other means of compassing their evil projects at home or abroad, they endeavoured to rouse the people by the secret instruments of sedition.

Therefore what does us infinite honour, and secures us immortal renown, is the fact, that none of the tribunes could be engaged to appear against us at any bribe, except Clodius, who used the tribunate as a cloak of villainy. As for this monster, what crimes did he not perpetrate—crimes which, without reason or plausible hope, he committed with the fury of some savage beast, maddened with the violence of the brutal mob. I therefore highly approve of the conduct of Scylla in this particular, inasmuch as by his law he rendered the tribunes of the people comparatively impotent for mischief, though he left them the power of doing as much good as they please. As for our friend Pompey, though in most respects I yield him the warmest commendation, I say nothing of his views relating to the power of the tribunes; for here I cannot praise him, and yet I would not censure him.

*Marcus.*

—You have very clearly unfolded, my Quintus, the defects and abuses of the tribunate; but it is rather unfair thus to state all its faults and omit its merits, and thus to make an enumeration of grievances, a catalogue of blemishes, without any allusion to the redeeming qualities. In this way, you might show up the consulate itself as a very culpable and objectionable institution, if you choose to reckon up all the sins of all the consuls, which I am willing to pass in silence. Even in this power, I confess there are many stains of abuse; but we can never obtain the good we derive from it without some particles of evil. That the authority of the tribunes of the people is too great, none will deny; but the power of the people themselves is much harsher and crueller. It is by having a leader therefore, such as a tribune, that the people behave more temperately than if they had no leader at all. For a leader remembers that he is advancing at his own risk, whereas the violence of the people has no consciousness of its own danger. Sometimes it is suddenly excited, and sometimes suddenly depressed. But what assembly of tribunes is so insane that not one in ten of its members preserves his senses? As to T. Gracchus, you ask, was it not through him that his colleague was dismissed and destroyed? Yes:—but was not this owing to his excessive ambition. What was his reason for this violence, if it were not to get rid of his colleague's power of opposition? In this matter, however, you observe the wisdom of our ancestors. When this office of tribuneship was granted by the senate to the people, wars ceased, seditions were extinguished, and that wholesome liberty was secured, by which meritorious commoners may expect through their labours to rise into the patrician rank, which is one great principle of political welfare. But there were two Gracchi. Yes, and as many more as you will—for though ten tribunes were created, you will find none within our memory very mischievous, though you may discover many who were capricious and immoral. And you will allow me that this high rank is above envy, and that the people no longer enter into perilous contentions concerning their rights.

Therefore we must acknowledge either that the expulsion of our kings was unnecessary, or that liberty of the people must be guaranteed in fact as well as in profession—and as it is, their

liberty is such that they have been obliged to sue the protection of many great patriots, for fear of being oppressed by the senate.

In regard to our private cause, my best and dearest brother, though it fell under the tribunitial power, we had no contention with the tribuneship. For it was not the indignant people that wished to injure us, but a pack of miscreants, whom they let out of prison on purpose to attack us, and reprobate slaves, who live on plunder. Besides this, the alarm which the approach of the troops occasioned, aggravated our disaster. And to confess the truth, we had less to struggle against our private enemies, than with the greivous disorders of the state; and if I had not yielded in some measure to the tempest, my country would not now enjoy the perpetual benefit of my services. And this the event testified,—for what freeman is there, or what bondman worthy of emancipation, to whom our escape is not a subject of congratulation?

If I was so unfortunate, that my efforts on behalf of the Commonwealth did not give universal satisfaction—if the rage of an infuriated mob drove me away by the hurricane of their evil passions; if the tribune Clodius stirred up the populace against me—as Gracchus against Lenas and Saturninus against Metellus,—we bore it, my Quintus, with fortitude, and the consolation of an honest heart. Nor were we less comforted by the counsel of the philosophers of Athens, whose reflections so much alleviate misfortune, than by the example of the illustrious men, who, expelled from their country, were more prompt to desert an ungrateful city, than to remain in a corrupt one.

As to the exception, which you just now made in your panegyric on Pompey, with regard to his treatment of ourselves, you scarcely seem to me sufficiently to recollect, that this great man did what he honestly believed was best in the circumstances of the case, and what he felt necessary at that particular crisis of politics. He knew that a certain share of civic authority must needs be granted to the citizens, which, as the people so ardently desired before they attained it, they would be especially loath to relinquish, when once acquired. It was therefore the part of a wise statesman not to refuse a privilege to the people, which was essentially patriotic, and so highly popular that its denial had been dangerous. If these remarks, my Quintus, shall have modified your opinion, tell me so—for you know, my brother, that in discourses of this kind, an acknowledgement of assent is the very main—spring of the dialogue. (Scis solere frater in hujus modi sermone, ut transiliri alio possit, admodum dici).

*Atticus.*

—Exactly so.

*Quintus.*

—I am sorry I can't agree with you respecting Pompey; but this is no reason why you should not go on with our legal maxims.

*Marcus.*

—Then you still persist in your former opinion?

*Quintus.*

—I do.

*Atticus.*

—Well, then, my Quintus, we must here agree to differ. But let us, by all means, hear more of your brother's expositions of the maxims of law.

*Marcus.*

—The following maxim allots to all magistrates their auspices and jurisdictions. Their jurisdictions, I say, in such a manner that there should still be a supreme court of justice, to which appeals may be made by the people. And the auspices, because they furnish a plausible method of adjourning useless or mischievous assemblies. For in this way it has often happened that the gods have suppressed by means of auspices the unjust impetuosity of the mob.

Another legal maxim is this,—Let the senate be composed of those who have exercised magistracies. This provision is evidently popular, since it permits none to arrive at high authority without the approbation of the people, leaving the *ipse dixit* of the censors of little effect. But lest this should seem to favour democratic ascendancy, another provision immediately follows, by which the authority of the senate is confirmed.

It is thus expressed: Let the decrees of the senate have the force of laws. For if it so happen that the senate becomes master of public politics, and all men defend its decrees; and if the inferior orders agree that the Commonwealth shall be governed by this superior order, there will arise from this amalgamation of rights, namely, the authority of the senate and the power of the people, the modified and harmonic kind of constitution which I have so highly extolled.

This will be especially the case, if the following legal maxim be observed: "*Let the senatorial order be free from corruption, and let it be a pattern to others.*"

*Quintus.*

—This is an admirable maxim, my brother. It is of the utmost importance that this order be free from corruption; but a censor would have enough to do to enforce such a regulation.

*Atticus.*

—He would indeed, and although the senatorial order is devoted to your interests, my Marcus, and retains a most grateful memorial of your consulship, I would, with your permission, suggest, that not only all censors, but all judges might well grow weary of so painful a task.

*Marcus.*

—I am sadly afraid of it, my Atticus; but let us leave this question for the present, for our business is not so much with the senate of today, or our contemporary statesmen, as with

future politicians, if any of them shall be complaisant enough to attend to our legal maxims. If such a law were carried, that the senator should be exempt from all corruption, the vicious candidate would not dare to present himself in parliamentary elections. An event, indeed most devoutly to be wished, but most difficultly to be realized, unless perhaps by a certain education and discipline, on which we might speak more at large, if time and occasion permitted.

*Atticus.*

—Why, you can't have a better occasion than the present, since you are now laying down a system of laws. And as to time, the length of this summer holiday will ensure you a hearing. But if you choose to omit this topic now, I shall not forget to demand your views on education and discipline on the first opportunity.

*Marcus.*

—I cannot refuse, my Atticus, to grant any request that comes from you. I will therefore enlarge a little on this legal maxim before cited, *let the senator be a pattern to others*. If this is observed, all will go well. For as a whole city is infected by the licentious passions and vices of great men, so it is often reformed by their virtue and moderation. L. Lucullus, a man of the first rank, being rallied for the magnificence of his seat at Tusculum, is said to have made the following extremely suitable answer—that he had two neighbours, the greater of whom was only a Roman knight, and the other, the son of one who had been once a slave; and as each of them had magnificent villas, that could not be thought extravagance in himself, a consul, which was lawful for those of inferior rank. Alas! Lucullus; you little thought that it was you that gave rise to their ambition. Were it not for your example, such an action in them would have been looked on as criminal. Who could bear that people of this sort should have their villas crowded with statues and pictures, relating either to public, or what is more, to sacred and religious subjects? Who would not join in demolishing the monuments of their vanity and pride, if those who ought to exert themselves on such occasions were not guilty of the same extravagance? For the mischief immediately attending the vices of the great, though that must be allowed to be very considerable, is but small compared with the ill consequences which arise from the multitude of those who will certainly follow their example.

Would you but look into the history of former ages, you might plainly see that the manners of the people were always regulated by those of the leading men of a state; and that whatever change took place in the latter, the same always happened in the former. Now this observation is much more certain than that of Plato, who pretends that a change in the songs of musicians is able to alter the manners of a nation—whereas my opinion is, that the manners of mankind change with those of their superiors. Hence, great men of a vicious life are doubly pernicious to the state, as being not only guilty of immoral practices themselves, but likewise of spreading them far and wide among their fellow-citizens. The mischief they do, is owing not only to their being debauched themselves, but also to their debauching a crowd of their foolish imitators. In a word, they do more harm by their example than by the crimes they commit.

This maxim, though we would wish to extend its influence to the whole body of senators, would

be of great service, even if it were observed by a few of them. For even a few noblemen, aye, even a very few, illustrious in fame and fortune, may correct the morals or manners of the state, or cast them into grievous corruptions. But we have said enough on this topic, which we discussed at large in our treatise on the Commonwealth. Let us therefore proceed.

The next legal maxim treats of *suffrages and votes, which, as I have said, should be notorious to the nobles, and free to the people* (nota optimatibus, populo libera).

*Atticus.*

—I have given much attention to this maxim, but I do not well understand its spirit or its sense.

*Marcus.*

—I confess, my Atticus, we have now to treat on a very difficult question, and one already much discussed,—that question is, whether, in case of suffrages at the election of magistrates, or in the formation of laws, or in the judgment of criminals, the votes should be given *openly by poll, or secretly by ballot*.

*Quintus.*

—Is it indeed a doubtful question? I fear we shall again differ in opinion.

*Marcus.*

—I do not think so, my Quintus, for here I hold that doctrine, which I know you always maintained, that in *giving suffrages and votes, nothing can be better than an open vivâ voce declaration*, (nihil ut fuerit in suffragiis voce melius).—But let us examine how far it is attainable.

*Quintus.*

—With your permission, my brother, I should say that the distinction you take between the propriety and the practicability of any measure, is fraught with mischief to the inexperienced. It is often hurtful to the state, when a regulation is said to be true and proper in itself, but at the same time, that it cannot be obtained, because it cannot be carried without opposing the people. Now, I say, the people are to be opposed whenever they act amiss, and it is better for patriotic lawyers to suffer in a good cause, than yield to a bad one. Now, who does not perceive that all authority is taken away from our nobility and gentry by the present Roman *law of balloting*. (Quis autem non sensit auctoritatem omnem optimatum tabellariam legem abstulisse). A law which the people, when free, never desired, but which they claimed when oppressed by the domination and power of certain aristocrats. It is no wonder, therefore, that the system of open polling and *vivâ voce* votes, presents us with more severe judgments against the grandees, than the present plan of ballots. Therefore it had been far better to restrain the excessive influence of the great for unjustifiable objects in elective suffrages, than

to give the people a mask and veil, by which they may keep the more honourable citizens in ignorance of their individual sentiments, and thus make the ballot a mere cover for corrupt and hypocritical votes. (Quamobrem suffragandi nimia libido in non bonis causis eripienda fuit potentibus, non latebra dando populo in quâ bonis ignorantibus quid quisque sentiret tabella vitiorum occultaret suffragium.)

For this reason, it is that no good man was ever a proposer or supporter of the system of balloting. (Itaque isti rationi neque lator quisquam est inventus neque auctor unquam bonus).

There are four laws of ballots: the first, concerning the election of magistrates, was proposed by a certain Gabinius, an unknown and sordid agitator. The second, respecting the adjudications of the people, was proposed two years afterwards by Cassius, who was a nobleman,—but with his family's permission, I venture to say, a nobleman opposed to all goodness, driven to and fro by the idlest rumours of the populace. The third, regarding the ratification or nullification of laws, was carried by Carbo, a seditious and profligate citizen, whose return to the better classes of society never secured him the approbation of the aristocracy.

There remained only the crime of treason, which Cassius himself excepted, in the judgment of which, open *vivâ voce* votes were permitted. But Cælius soon after thought proper to give traitors also the chance of the ballot, and manifested as long as he lived, that, provided he could oppress Popilius, he cared little or nothing for the injury of the state.

Our grandfather, a man of singular virtue in this town Arpinum, as long as he lived opposed Gratius, whose sister, our grandmother, he had married. And, therefore, when Gratius wanted to introduce the law of ballot here, he roused as many waves in our family circle as his son Marius afterwards stirred up in the Ægean sea. To such a length did the quarrel proceed, that the consul Scaurus, informed of what past, made this remark to our grandfather: "Would to heaven, Cicero, that a man of your courage and honour, had better loved to live in the capital of our Commonwealth, than to retire into a country villa."

Therefore, since our design is not so much to state the Roman laws now in force, but in order to form a more perfect code of jurisprudence, both to revive those good laws that have become obsolete, and to propose new regulations, suitable to the present conditions of society, I think we are by no means bound to limit ourselves by the caprice of the populace, who cry out for ballot. I conceive you are entitled to take higher ground; for in your treatise on the Commonwealth, your Scipio does not hesitate to condemn the law of Cassius as injudicious, whoever was its author. If you take away the *law of ballot*, you will do still better. For in truth I don't like it at all, nor does our friend Atticus much admire it, if I may judge by his countenance.

*Atticus.*

—For me, I never admired any thing that pleases the mob, and I regard the best state of the Commonwealth, to be that which your brother, when consul, promoted, wherein the power of the aristocracy prevailed over that of the populace. (Mihi vero nihi lun quam populare placuit,

eamque optimam Rempublicam esse duco, quam hic consul constituerat quæ sit in potestate optimorum.

*Marcus.*

—I see, gentlemen, you would repeal my law respecting suffrages, without any ballot whatsoever. For myself, though I have sufficiently justified in my Commonwealth the line of conduct assumed by Scipio, yet I would not practically go quite so far as he.

It is only under the authority of the nobles, which good men will obey, that I concede the right of voting to the people. For these are the very words of my law respecting elections. *Let the votes be notorious to the nobles, and free to the people.* (Optimatibus nota plebi libera sunt). Which legal maxim contains this doctrine, that all those laws should be abrogated which have been so contrived *as in any way to mask or hide a suffrage*; such as those which hinder full inspection of any ballot, or examination and appeal thereupon, and that law of Marius, which makes the passages to the balloting boxes so narrow, should be likewise abolished. (Quæ lex hanc sententiam continet ut omnes leges tollat quæ postea latae sunt, *quæ tegunt omni ratione suffragium* ne quis inspiciat tabellam ne roget ne appellat. Pontes lex maria fecit angustos).

If these rules are opposed, as they generally are, to the ambitious, they are worthy our approval. If the laws indeed could but hinder intrigues, then the people might be allowed the ballot as a vindicator of liberty, provided it were so laid open and freely exposed to all honourable and worthy citizens, that their authority might be blended with this popular privilege, thus leaving the people the power of expressing their deference for the aristocracy.

But why is it, Quintus, as you just now observed, that there were more condemnations past by the open suffrages of the poll, than by the silent secret votes of the ballot? We should explain the anomaly thus. The people are extremely fond of licence; do but save appearances in this respect, and they will abandon their influence to authority or favour. As to the largesses and bribes which are given to obtain corrupt suffrages, do you not see if we could but get rid of bribery, the characters and counsels of the best men would carry the votes? By our legal maxim, therefore, the appearance of liberty is conceded, but as the superintendence of the aristocracy is still retained, the cause of contention is banished. ([Note I.](#))

The following legal maxim relates to those magistrates, whose right it is to treat with the senate and the people, and to reconcile their interests as far as possible.

The next regulation appears to me very notable and important:—viz. that whenever there is any such compromise between the senate and the people, the utmost moderation should be observed, and the speeches on both sides be made with that modesty and fairness, which tend to allay passions and mitigate asperities. Every mob orator, modifies and moulds not merely the opinions and desires, but the very features of his audience. It is not so in the senate, however; for the senator should not permit himself to imitate the fashion of the mob orator, but will rather endeavour to speak with absolute decorum and propriety.

We therefore require three duties from the senator. *First*, that *his attendance in the senate be regular*; for the multitude of senators, lends weight to the arguments of policy.

*Secondly*.—That he should speak in his turn, that is, when his counsel is demanded.

*Thirdly*.—That he should speak concisely, lest he should become infinitely wearisome; for brevity in parliamentary oratory, and all kinds of oratory, is the best recommendation of a speech.

Lengthy speeches therefore are never seasonable, except when the senate is precipitating some rash measure, as it does far too often, through the ambition and corruption of its members. In such a case, it may be desirable for a speaker, not being duly seconded by another representative, to occupy a whole day. The same privilege may be allowed where the subject of debate is so important as to demand all the copiousness of the orator, both hortatory and explanatory, in which our own Cato is remarkably distinguished.

The ensuing legal maxim ordains that magistrates be very studious of the interests of the people. For it is necessary for a senator to be acquainted with politics in general, and this is a science of the greatest importance to the Commonwealth; since it comprehends its military affairs, its commercial statistics and revenue, its foreign alliances, its colonies and stipendiaries. He should be familiar with their regulations, their resources, and their engagements; their customs and modes of life. You therefore see that the science of politics taxes every power of intellect and memory, in order to acquire and maintain that elaborate information, without which no one can be called an accomplished senator.

Then follows a legal maxim, which relates to the public deliberations of the people, in which it is especially enjoined *that all violence be avoided (vis abesto)*. For nothing is more destructive in states, nothing more contrary to law and right, nothing less civil and humane, than to carry any thing by violence and agitation in a sound and constitutional government.

The next maxim relates to the office of comptrollers,—which is an admirable institution, since it is better that a good measure be sometimes impeded than a bad one carried.

When I say, in all cases of fraud, it is necessary to go before a pleader, I follow the opinion of Crassus, one of our wisest men, whose counsel was adopted by the senate, which decreed when the consul Claudius reported Carbo's sedition, that they could not take cognizance of sedition, except through the medium of an official pleader, who should lay the case before the people. Since it was allowable for him who made a proposition to abandon it as soon as it began to occasion disturbance; and if he persisted, when he could do no good, he would be held accessory to a breach of the peace, which we would punish severely.

Then follows that maxim, which states, that he who acts as a comptroller of civil abuses, shall be considered as a good citizen. And who would not promote the interests of the Commonwealth, with all his energy, when stimulated by the hope of acquiring a character so glorious?

Next, succeed certain regulations, which we likewise find in the public institutions and laws—that auspices be observed, and augurs obeyed. It is the duty of a good augur to show himself in the critical periods of the Commonwealth, as Jupiter's minister and prophet; since those to whom he has entrusted the auspices are his instruments of revelation; and he has revealed his celestial influences to them, in order that they may succour the state in her hour of danger and necessity.

Then follows a provision respecting the promulgation of laws, that they ought to be proposed distinctly in their successive counts and clauses, and that the remonstrances and objections not of the magistrates only, but of private individuals, should be duly weighed.

After this, we find two excellent laws selected from the Twelve Tables. One of these forbids unfair privileges and partialities: the other will not permit sentence of death to be past on any citizen except in the high courts of justice. You may think it odd that such decisions were not left to seditious tribunes of the people; but our ancestors provided for posterity, that laws should not be enacted in favour of particular individuals, for that is what we call *privilege*, than which nothing can be more inequitable. Since it is most important that every law should be equally published and enjoined to all, they refused to sanction any particular enactments which were not openly proposed in the assembled commons, (*centuriatis comitiis*). For when the people are summoned by rank, order, and age, they use much more consideration in giving their suffrages, than when they are promiscuously convoked by tribes.

It was therefore very truly observed in my own particular cause, by L. Cotta, a man of vast genius and consummate prudence, that no sentence was legally pronounced against us, since the only body of commons that prosecuted us was an armed mob of slaves. Such *comitia tributa* could neither pass capital sentence nor special adjudications (*privilegia*). There was therefore no need of a law for my recal, since the sentence of my banishment was wholly illegal. But it appeared to you and other illustrious men more proper, seeing these slaves and vagabonds persisted in declaring they had justly condemned me, to manifest as openly as possible what all Italy thought on the subject.

Next follow those laws which relate to pecuniary bribes and intrigues. And since these cannot be so well chastised by censures as by penalties, it is added, let all such abuses be visited with penalty and punishment, so that every one be duly punished for this disgraceful corruption: the avaricious by fines, and the ambitious by ignominy.

The last laws we have cited, are not in use among us, though very necessary to the state. We have no proper registration of laws (*custodiam legum*). Our laws, therefore, are such as the apparitors declare them to be, and we are forced to take the word of their copyists as our security. We want some public legal registry, in which our laws may lie open to the notice of the people. The Greeks are more careful than ourselves in this matter, as they have instituted legal registrars, whom they call *νομο υλακες*. Their office is not only to preserve the original copies of the laws, as was the custom among our ancestors, but also to declare the law, whenever the conduct of the citizens merited animadversion.

This case we might entrust to the censors, since we wish to maintain their function in the state. It is likewise to the censors, according to our legal maxim, that those who retire from magisterial offices should unfold and explain their proceedings when in office, in order to enable the censors to report them fairly.

There existed a very similar institution in Greece, where public examiners were directed to inspect official accounts. But these examiners could never have much weight unless their functions were voluntary and honorary. It is therefore better to state the case, and explain the accounts to the censors. And in case of error, leave the whole suit to the law, the plaintiff, and the judge.

But I presume we have sufficiently discussed the offices and duties of magistrates, unless you demand further information on any point.

*Atticus.*

—Why—if we held our peace, the very subject itself would admonish you what you ought further to say.

*Marcus.*

—On my honour, Atticus, I suppose you want me, since I have treated of judges, next to treat of judgments.

*Atticus.*

—What then, do you think nothing remains to be said on the rights of the Romans, which you proposed to investigate?

*Marcus.*

—What would you have me say on such a topic?

*Atticus.*

—I think you should treat of those regulations, which all who live in our Commonwealth ought to understand. For as you remarked just now, a knowledge of our laws is too much confined to their copyists; and I observe that many of our magistrates are so ignorant of their own laws, that they know no more about them than their clerks choose to tell them. Since therefore, when you had explained the laws of religion, you went on to treat of the observance of religious obligations; so as you have described the laws of our magistrates, you should elucidate their jurisdictions and their judgments.

*Marcus.*

—Well, my Atticus, I will endeavour to do so, as briefly as I can. For your father's friend M. Junius, addressed to him an extensive treatise on this subject, which, in my opinion, is

extremely well and ingeniously written. Of this book, we shall freely avail ourselves. When indeed we discussed the law of nature, we drew from our own souls, and delivered our own opinions; but if we go on to consider the civil rights of the Romans, we will accumulate all the authorities we can procure from the traditions and records of our predecessors.

*Atticus.*

—Such, indeed, appears to me the right method of proceeding, and I shall listen with pleasure to all you may choose to say on these topics.

END OF THE THIRD BOOK.

## **FRAGMENTS.**

As one and the same universal nature unites and corroborates all the parts of the world, so did she unite into one harmonious family all mankind. But men through their depravity disagreed and quarrelled, not recollecting that they are all consanguineous and akin, and equally subject to the same paternal providence. If this fact, indeed, were but kept in mind, all men might live the amiable life of the gods.

It was a very bold and hazardous measure of the Greek government to consecrate the images of Love and Cupid in the public theatres.

Let us congratulate ourselves, since death gives us something better than we enjoy in life, and not a worse condition of things. For that immortality may truly be termed divine, wherein the mind flourishes, emancipated from the body; and being delivered from sensualism, is free from evil. ([Note II](#))

FINIS.

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## **NOTES TO THE FIRST BOOK OF CICERO'S TREATISE ON LAWS.**

### **NOTE I.**

[\*] THIS beautiful passage, in which Cicero conveys to us his idea of the immense power of literary genius, in forming the mind and opinions of the people, gives rise to a very important enquiry respecting the *patronage of the press* at the present day.

Every one seems to grant the truth of Lord Bacon's maxim, "Knowledge is power," and to confess the immense and overwhelming influence of the press in the formation of public opinion and sentiment.

Taking this point, therefore, for granted; allowing the immense influence of the press as an undeniable fact, it becomes a matter of very serious consideration to the philanthropist and the patriot, how that influence shall be directed to good, and turned away from evil.

The most simple method by which the royal, the aristocratic, and the rich have achieved a

wholesome and beneficial direction of the press, is the ancient and venerable system of literary patronage. This was the plan adopted by Augustus, Mecænas, Charlemagne, Medici, Louis XIV, and our own queens, Elizabeth and Anne. It has also been tried repeatedly, by illustrious nobles and wealthy commoners, in more recent periods, and has been generally crowned with success. Perhaps, there is no way in which wealth can be expended in a more noble, patriotic, and philosophic manner, than in this literary patronage, which avails itself of the steady and persevering energies of moral or political genius, and enables the earnest truth-searcher to elaborate the hidden stores of science.

When such a line of conduct is pursued by the great; when their power is thus dedicated to philanthropy, and their wealth to the progress of truth; they illustrate, not merely their own lives by their generosity, but invest their entire century with the splendours of intellectual discovery.

In the British empire, literary patronage is still just kept alive, but it is reduced to a most petty and insignificant scale. Thus the true interests of monarchs and their ministers, and large bodies of wealthy citizens, are often allowed to sink in public estimation, with the literature they should uphold.

And when we consider the profuse riches of many of our principal institutions, and how small a sum, judiciously expended, might procure the honest and steady services of the most learned of our literary men, it is astonishing, that so few attempts have been made to direct the mental energy which sways all things.

The evil consequences of the present deficiency of literary patronage must be apparent to the most casual observer. For want of that fostering care and support, which enables great geniuses to produce great works in theology, philosophy, and politics; works, which being catholic, universal, and impartial, may be little relished by the sects and parties of the day, but which for that very reason, are sure to accumulate honours through all future ages; nothing of the kind is done or even attempted.

As our leading publishers often honestly state, the legitimate leaders of the press, the independent truth-searcher, the profound and multifarious scholar, are therefore holding back. They are too catholic in their views to become the puppets of sect and party; they are too noble to flatter the transitory fashions of the day, and too honest to write what they know to be nonsense.

Now, such authors are always most important to a state, when the people demand them least, —for nothing could have diminished the people's demand for great and truthful works of philosophic wisdom, but their preposterous fondness for party trash, and shallow plausibilities. Yet, unless the reign of literary patronage is restored, we see no end to the mischief. If authors can find no patrons but booksellers and the public, they will merely write for the booksellers; and instead of attempting to lead public opinion, will simply follow it—and by following it, degrade themselves, without exalting their fellow-countrymen.

We therefore cordially agree with Mr. Taylor, the translator of Herodotus, and the author of the *Natural History of Enthusiasm*. "Our literature," says this splendid and independent writer, "is now commanded or controuled by the people, and only in a secondary sense commands them. The reader has grown into an importance that makes him lord of the writer. Authors furnish

(how should they do otherwise?) what readers ask for, or will receive. Mind struggles much against these mighty powers, and writhes under their tyranny; but its resistance is successful only for single instances, or for an hour. Our modern literature has one reason; and of this reason the buyer is the sovereign, and the vendor the interpreter, and the writer the slave. "But the highest fruits of mind are of a constitution far too delicate to be thus produced. Under the present mercantile regimen, the diffusion of knowledge may spread much wider than it has yet done, and at a quicker rate; and a certain amount of intelligence may become the common property of the people; but is there not reason to predict the non-appearance of works, that might descend to distant ages? And as the experiment is new, it remains to be seen whether even general intelligence can long be upheld, while decay is taking place in the higher departments of literature;—whether the *mind* of a people can be kept alive at all on the democratic principle; whether, in a word, the course we are now running on, though crowded with gait and stir, is not leading to the depression of learning, taste, and philosophy. Certainly such works as these of Cicero, we have now translated, and the learned volumes of our immortal Selden, will never be emulated or imitated by those who *get up* books for the trade.

It remains to be seen, how much a monarch or wealthy nobles and commoners can effect by literary patronage, to restore a loftier tone of divine and universal philosophy to our national press. How far they can rally scattered genius and learning round the standard of truth and virtue, and produce another Augustan period in the literature of our country.

If some attempt of the kind is not made, the same process of decline and corruption will go on. Men of talent will be induced, either by ambition or poverty, to throw themselves into the hands of the sects and parties, whose incessant recriminations are undermining the union, and therefore the strength and prosperity, of the nation; or, perhaps, still worse, to prostitute their abilities to that pseudo, fashionable, phantastic, and vicious literature, which is the vanity of vanities.

## **NOTE II.**

[\*] THIS passage is an eloquent exposè of the distinction between law as a science and law as a practice. The one full of moral grandeur and intellectual harmony: the other too often degraded into a mere art of casuistry and chicanery; which our lawyers, as Blackstone observes, "elaborate with a skill the most amazingly artificial, but which serves no other purpose than to show the vast powers of the human intellect, however vainly or preposterously employed." Our present legal condition is extremely similar to that which prevailed in the Roman empire before the reign of Justinian. The overwhelming and often contradictory rules and decisions of ages, adapted to circumstances and occasions transitory and shifting, have come down upon us in accumulated and confused masses. The mind of the honest lawyer vainly struggles to illumine this chaotic jumble of conflicting elements; and the craft of the dishonest strives rather to thicken than alleviate the obscurity, for pretty much the same reason as makes pirates love to fight in a mist. We therefore want another English Justinian, to arrange and codify our laws into something like a scientific system of arrangement. For, as Sir William Jones remarks, "if law be a science, it ought to be composed according to those literary canons

of order, division, and subdivision which are applied to all other sciences." Some of the recent codes of continental nations, especially the code of Napoleon, furnish us with very fair models of such codification. The true method to be adopted, would be the Justinian method: we should rather form a real and classified epitomy of all the good laws that have already been sanctioned in our land, than compose any new set of regulations. The greatest care should be taken to harmonize as far as possible the rules of our equitable and legal courts, and to abolish those startling and absurd contradictions that now subsist between our equitable and legal systems, to the infinite detriment of the public; at the same time the knife should be applied with the most unsparing truculency to those spurious excrescencies, those false and foolish enactments and decisions, which exist only to encumber and perplex the power and efficacy of our jurisprudence. The best method of carrying such a system of codification into execution, would be to constitute a *standing committee* of our most philosophic and learned lawyers, who should act as perpetual curators of the laws, after the plan proposed by Cicero, and superintend all the subordinate branches. If such committee-men were really scientific and industrious, and not mere superficial placemen, their task would be easier than many suppose. Their first care would be to classify one of our best legal abridgments, as Comyn's or Bacon's, according to the subjects, rather than the alphabetical character. They would then have a solid text-book, which they might examine, article after article, augmenting, abridging, and altering as they deemed necessary. In such a proceeding, they might freely avail themselves of our best arranged legal treatises, as Cruise's Digest of the Law of Real Property, and our Digests of Reports. They would derive the greatest assistance in particular branches of law, from those acts of Sir Robert Peel, which have so ably condensed the preceding regulations; and they would avail themselves of the best suggestions of those temporary legal committees which have been already appointed; as well as the suggestions of many able writers on legal reform of recent date, as Miller, Bentham, Humphries, Tyrrell, Coventry, and others. But be it as it will, we feel assured, that the present system of equitable and legal abuses cannot go on. When at worst, all things will mend. The excessive state of corruption into which the British jurisprudence has fallen, will cure itself. The grand rule of Magna Charta, that law shall be neither sold nor delayed to any, cannot much longer consist with a legal practice, in which a client even when fortunate is often ruined; in which, the conveyances of estates often cost as much as the estates themselves: in which a chancery suit is the worst misfortune you can wish your enemy; and the honest creditor is sacrificed to the villany of the fraudulent debtor. And would to God, that under the present reign could be achieved that great national reform of jurisprudence, which Lord Brougham has so eloquently recommended. "Augustus, (said his lordship) was accustomed to boast that he found Rome brick, and left it marble. A far higher eulogy is reserved for your monarch—that she found law dear, that she left it cheap: that she found it a curse, that she left it a blessing: that she found it a sword in the hands of oppression and craft, and that she left it the staff of honesty, and the shield of innocence."

## **NOTES TO THE SECOND BOOK.**

### **NOTE I.**

[\*] CICERO has spared no opportunity of recommending peace, and censuring war. In this respect, we find an almost universal agreement among all religious and moral politicians of all times and nations. All have extolled peace and harmony as inestimable blessings, and war and discord as horrible curses and abominations. We think it desirable to confirm the pacificatory doctrine of Cicero, by a few quotations abstracted from scripture, the fathers, and ancient and modern philosophers, and political economists; since, owing to a strange oblivion of this catholic and universal testimony in favour of peace, there are not wanting some inconsiderate, rash, violent, or corrupt men, that still talk lightly of war, and by an unparralled obliquity of moral vision, even recommend it as a thing desirable and profitable. Against this marvellous hallucination, which still prompts certain politicians to rush into hostilities, we would direct the following testimonials.

First come the declarations of scripture. My sons, maintain discipline in all peacefulness. Have peace among yourselves. Endeavour to preserve the unity of the spirit in the bond of peace. If it be possible, as much as in you lies, live peaceably with all men. God has called us to peace. Let there be peace on earth, and good will towards men. God is a god of peace, not of strife. Maintain peace and the God of peace, and love will be with you. We follow peace with all men, and holiness, without which none shall see God. Blessed are the peace makers, for they shall be called the sons of God.

Next listen to the fathers of the church. "Peace, (says St. Augustin,) is serenity of mind, tranquility of soul, simplicity of heart, the bond of love, the concert of charity. It is she that removes discords, restrains wars, mitigates quarrels; that tramples on the proud and exalts the humble, that allays jealousies, and harmonizes enemies, and promotes universal concord. She knows nothing of vanity, nothing of conceit. He who receives her retains her; he who loses her must seek her again; and he who has forfeited her is miserable till he recovers her. He who is not found in her shall be denounced by the Father, and disinherited by the Son, and be alienated from the Spirit. Nor can any man hope to arrive in the paradise of the saints, who refuses to observe the testimony of peace and concord.—August. de ver Dom.

Agree with thy adversary quickly, for thou knowest not when he shall depart from life. And when his life is ended, nothing remains for his unforgiving enemy but the judge, the jailor, and the prison. But if you maintain good will for your foe, and endeavour to reconcile him, instead of a stern judge you shall meet a benignant father: instead of a savage jailor, an angel who will waft you to the bosom of Abraham; and instead of a prison, Paradise.—Idem. Ibid.

So great a blessing, is the blessing of peace, that her voice is the sweetest of created things, and nothing more delectable can be desired, or more useful possessed.—Idem. de Civitate Dei. If they who make peace are called the sons of God, doubtless they who make war are the children of Satan.—Gregory in Past.

The concord of the wicked is opposed to the good; it is therefore most devoutly to be wished that the good would maintain fellowship with each other, in order by their peace to disconcert the conspiracy of the wicked. For the course of the good is grievously obstructed if the conspiracy of the wicked be not broken.—Isidor de Summo-bono.

To come to Cicero himself, we find him making these panegyrics on peace. Peace is tranquil liberty (*Pax est tranquilla libertas*). The very name of peace is sweet, and the thing itself most

delicious and most salutary. Nothing is more popular than peace: in which, not only all animals to whom nature has given life, rejoice, but our very fields and houses appear to exult and be glad. Let us therefore, ever promote that peace, which is free from all manner of seditious factions. It is by peace that our laws and regulations are best preserved.—Cicero.

Cræsus when he was captured by Cyrus, extolled peace and deprecated war for this reason: that in peace children buried their parents; in war, parents their children.—Erasmus.”

Antoninus Pius was particularly fond of that admirable saying of Scipio: “that he would rather preserve one fellow–citizen than demolish a thousand enemies.—Julius Capitolinus.

The poets are not less eloquent in their recommendations of peace.

Peace cultivates the fields; fair Peace is the first, that leads the heifers under the crooked yoke to the plough. Peace nourishes the vines, and ripens the juices of the grape, so that the casks of the sire pour forth wine for the son. In peace, the harrow and the plough–share glitter, while rust takes possession of the cruel arms of the savage soldier in their dark receptacles.—

Tibullus.

Peace is the best of all things, which man has been permitted to experience. One peace is better than innumerable triumphs. Peace is the guardian of the state, and the preserver of the liberties of the people.—Silius Italicus.

Erasmus also, the glorious pacificator and syncretist, who did so much to restore the reign of literature, embraced every opportunity of recommending peace, in a period in which all sects and parties were maddened with wars. In 1517, he composed his celebrated *Querela Pacis*, or Complaint of Peace; and he treats the same subject again in his instructions for a christian prince. He considered no wars justifiable but those undertaken for self–defence.

In his praise of folly, censuring the ambition of popes, he remarks “Though war be so brutish that it becomes beasts rather than men, so extravagant that the poets feigned it an effect of the furies; so licentious, that it stops the course of all justice and honesty; so desperate, that it is best waged by ruffians and banditti; and so unchristian, that it is contrary to the express commands of the gospel; yet in spite of all this, peace is too quiet, too inactive, and they must be engaged in the storms of war.

And yet some of their crafty, fawning courtiers, will interpret this notorious madness for zeal, and piety, and fortitude; having found out the way how a man may draw his sword and sheath it in his brother’s bowels, and yet not offend against the duty of the second table, whereby we are commanded to love our enemies as ourselves.—Erasmus.

Cyprian says: “View all the terrible forms of war and bloodshed; when a single murder is committed, it shall be deemed perhaps a crime; but that crime shall be called a virtue, when perpetrated under shelter of public authority.

*One murder makes a villain,  
Millions, a hero.”—Porteus.*

Lactantius denies that a good man ought to make war.

Princes must keep within the limits of a just defence, and do as they would be done to. No other war is just but what is defensive.—Taylor’s Rule of Conscience.

But that christians may drive out an invading army; that they may kill them that resist, that

they may by war defend the public rights, in which all private ones are involved,—they may safely take for their warrant the example of Abraham fighting in behalf of the king of Sodom; the act of Melchisedec in blessing God for the success of that battle; the wars of the judges, and of David, because these were just and necessary, by special command or necessary defence.—Jeremy Taylor.

William the Conqueror was extremely alarmed on his deathbed, and intreated the clergy to intercede for mercy, exclaiming: "Being laden with many and grievous sins, Oh Christ, I tremble; and being ready to be taken to the terrible examination of God, I am ignorant what I should do. For I have been brought up in feats of arms, even from my childhood. I am greatly polluted with effusion of much blood. I can by no means number the evils I have done for this sixty-four years, wherein I have lived this troublesome life, for which I am now constrained without stay to render an account to the just Judge." And discoursing of his conquest of England, he observed, "Although man's greediness upon such triumphs rejoiceth, yet inwardly a careful fear pricketh and biteth me, when I consider that in all these cruel rashness hath raged."—Stow's Annals.

Philip of Macedon, having fallen in wrestling, and perceiving the print of his body in the dust, exclaimed, "Good Heaven! what a small portion of earth has nature assigned us, and yet we covet the whole world."

More, describing the Utopians, observes, "They detest war as brutal, though, to the reproach of human nature, it is more practised by man than by any beast. In opposition to the sentiment of almost every other country, they think nothing more inglorious than the glory gained by war. They therefore engage not rashly in war, but only to defend themselves or their friends from aggression, or to assist the oppressed in shaking off the yoke of tyranny."—Utopia.

"The true glory of rulers is not to infuse into the manly breast the ferocity of a tiger, and stimulate the malignant passions, but to appease and humanize them. Who would not rather be called the friend and delight, than the enemy and terror, of mankind? Each state will best secure its solid prosperity, by respecting the rights of others."—Vide Crowther's notes on Erasmus's *Enchiridion*, an admirable edition, from which many of these testimonials are derived. With what energy the illustrious Phocion declaims against the immorality of wars!

"That virtue (says he) which is superior to patriotism or love of one's country, is philanthropy or love of mankind. Extend your view, my dear Aristias, beyond the walls of Athens. Is there anything more opposite to this happiness of society, the principle of which we are seeking, than these hatreds, these jealousies, these competitions which set nations at variance? Has nature made men to torment and devour one another? If she enjoins us mutual love, how wise would politicians be in desiring that the love of one's country should prompt citizens to place the happiness of their republic in the prosperity of their neighbours! Away with frontiers and limits which separate Attica from Greece, and Greece from the provinces of the barbarians!

"How could it be, that men who gave up their independence, and formed societies, because they perceived their need of one another, did not perceive that societies are under an equal necessity of succouring and loving each other; and did not immediately infer that it behoved them mutually to observe among themselves union and benevolence as the inhabitants of a town. How slow is reason in availing itself of experience, and shaking off the yoke of custom,

prejudice, and passion!

"Lycurgus, whose wisdom and abilities can never be sufficiently admired, was the man who first understood how much it concerns a state, that would secure itself against the insults of its neighbours, to make the laws of that eternal union which nature has established between all mankind, the constant rule of deportment towards them. He would have the love of one's country, which till then had been in Lacedæmon unjust, fierce, and ambitious, to be refined by the love of mankind. His humane republic no longer making any use of its forces, but to protect weakness and maintain the rights of justice, soon gained the esteem, friendship, and respect of all Greece, to which these sentiments gave a new taste for virtue.

"Why, my dear Aristias, should we think ourselves foreigners when without the walls of our cities; why these jealousies, these animosities, these cruel wars. Has nature bestowed on mankind such a scanty portion of happiness, that it must be acquired sword in hand?

Knowledge of our real interest would make us all happy."—Phocion Conv.

"That law which natural reason appoints for mankind is called the law of nations, because all nations make use of it. It is common to mankind, for all nations have framed laws through human necessity; but wars arose, and the consequences were captivity and slavery, both of which are contrary to the law of nature."—Justin. Inst.

"That which we call natural right, or the law of nature, is the dictate of conscience and right reason; showing the moral malignity, or the moral necessity that there is in any act, either by its repugnancy or congruity to rational nature, and consequently that such an act is either commanded or forbidden by God, who is the very author of nature."—Grotius' War and Peace.

"This then will appear a fundamental law of nature. Every man ought, as far as in him lies, to promote and preserve a peaceful sociableness with others, agreeable to the main disposition and end of the human race in general.

"By this term sociableness, we would imply such a disposition of one man towards all others, as shall suppose him united to them by benevolence, by *peace*, and charity.

"All actions which necessarily conduce to this mutual sociableness are commanded by the law of nature; and all those, on the contrary, are forbidden, which tend to its disturbance or dissolution."—Grotius

"Those pernicious charms of avarice and of ambition have taken such fast hold on human minds, that even the most mild and gentle doctrine of our Saviour Christ, which is perpetually inculcating the rules of peace, of kindness, of goodwill, of forgiveness, of humility, of contempt of riches and worldly power, hath not been able to extinguish the most unjust oppressions, treacheries, and wars among the professors of that holy religion. Thus Plutarch's description will too exactly hit the character of some christian princes, 'whose desires not seas, nor mountains, nor deserts, can stop and conclude, nor the bounds which separate Europe and Asia can circumscribe.' When such ambitious spirits border on one another's possessions, it is scarce possible that they should live satisfied in their proper shores, and abstain from mutual injuries and invasions. In fact, they are continually engaged against each other, envying and plotting being the necessary consequences of their temper. As for the two names of peace and war, they use them just as they do money, not as they are determined by reason, but according to custom and convenience."—Grotius on Peace and War.

"It is certain, that nothing is more consonant to the law of nature than that no man should offer unjust violence or injury to another; and that on the other hand, all men should show kindness and humanity to one another, and be particularly exact in the observation of agreements and compacts. And when men duly attend and obey these laws, they may be said to enjoy *peace*, which is a state most agreeable to human nature, which tends most to promote its happiness and security, and indeed which the law of nature was given men principally to establish and preserve. Nay, further, peace is a state proper to human nature as such, since it arises from a principle peculiar to mankind above the brutes; whereas war flows from principles common to both.

"Avarice and all extravagant desire of increasing wealth, as also ambition, and the hopes of enlarging the rule and dominion of the great, and purchasing a false fame and glory by the oppression of others, are unjust causes of war."—Puffendorf and Barbeyrac.

"Henceforth be that Machiavelian principle, 'a thing may be politically right though morally wrong,' execrated by every government; a maxim fit only for an infernal Pandemonium, and Barbary or Malay pirates. Away also with the sophistry of Hobbs, who, by confounding right with might, would turn the state of nature into a state of war.

"Oh! that all possessed of power would reflect on the desolation and misery their mad ambition causes, and the solemn account they must render to God. Let them descend from their gilded thrones, and view the horrors of the ensanguined field; the agonies of the expiring victims of their vain glory, the lacerated limbs, the widow's tears, the aged parent bereft of the only prop of declining years, the tender relation or friend weeping over the mangled corpse, and hear the orphan's cries. But I must restrain these feelings. What is history but a great tragedy? How few benefactors appear on the stage."—Crowther,

These testimonials are confirmed by the consenting verdict of all respectable writers on political economy, who *nem. con.* declare war to be, generally speaking, the worst policy which can possibly involve a nation in poverty and distress; exhausting resources and accumulating grievances.

## **NOTE II.**

[\*] THIS splendid penegyric of Cicero on the ancient mysteries of initiation is well worthy our attention. Like the Jews, the Gentile nations had two systems of divine instruction. The first was that distinguished by the title *divinity* or *theology*, and was especially cultivated by the priesthood in the churches. The second was theosophy and mythology, comprising the occult sciences and arts, which was especially cultivated by the cabalistic Jews, and handed down through the lodges of initiation among the Gentile nations.

This vast system of theosophy, therefore, was neither theology nor philosophy, properly so called; but it lay between both, and combined both, and harmonized both. There were co-existent at one and the same time, the theology of the church, the theosophy of the lodge, and the philosophy of the schools. And this theosophy of the lodges of initiation had quite as distinct and palpable an existence as either of the other two. Many learned writers who have not been themselves initiated, have miserably misrepresented this simple matter of fact, which has been confirmed by the testimony of all ages and nations.

This great catholic system of theosophic and cabalistic initiations prevailed in the oriental and classic nations from time immemorial. It originally arose in the East, (*ex oriente lux*), and extended through Egypt to Greece. In Greece, Pythagoras and Plato were especially fond of theosophy; and in Rome, Cicero, Macrobius, and others. Cicero's testimony in favour of the theosophic initiations is perfectly open and clear. "Among the many admirable and divine things which the Athenians have established to the advantage of human society, there is nothing better than the mysteries by which we are polished and softened into politeness, from the rude austerities of barbarism. Justly, indeed, are they called *initiations*, for by them we especially learn the grand principles of philosophic life, and gain not only the art of living agreeably, but of dying with a better hope."

This science of theosophy has always maintained its distinct place and position among the initiations which have prevailed in Europe, even to our own times. The antique and vast science of theosophy is still professed by a few initiated theosophers, through their number is now very small. There are still two or three theosophic initiates in this country, who, if duly encouraged, might give this noble science fresh developements, as brilliant as those it received from Philo, Origen, Psellus, Mirandola, Rheuchlin, Kircher, Selden, and Ramsey. But Germany is the only country where the higher developements of initiated intelligence are now patronized. In France and England, every writer that rises into the sphere of divine metaphysics is sure to be neglected. "Scratch me, and I'll scratch you," is the order of the day; and the most learned writer must stoop to the most ignorant reader, in order to be tolerated.

One branch of theosophists, namely the freemasons, however, still subsists. Traces of theosophic initiations, that have descended through all ages and nations, are still visible in the lodges of freemasonry. Mr. Oliver, and some of the recent freemasonic publications, have displayed very considerable learning and talent, and nobly defended their cause from the aspersions of cowans, who know nothing about the subject they criticise.—*Ne sutor ultra crepidam*.

The system of theosophic initiations has, however, like all other good institutions, been liable to corruptions and abuses. Cicero in his day saw and satirized many of these abuses that fell under his observation. And since his time, the condition of lodges has been just as frequently and miserably abused to unjustifiable purposes as the condition of schools. A very long catalogue of corruptions might be charged upon the lodges of initiation; but probably no more than could be collected, if necessary, against any other social institution.

In Cicero's days, the women were admitted to the initiations. Their extreme incapacity for keeping a secret, as well as other little frailties, have, for the last three centuries, banished them from the lodges, to their great indignation and displeasure. There are many portions of freemasonry, however, which may still be communicated to them without scandal, if men were not so extravagantly fond of keeping the women in the dark.

## **NOTES TO THE THIRD BOOK.**

### **NOTE I.**

[\*] As Cicero has treated this question respecting the poll and the ballot, or open and secret

voting, more at large than any other classical writer, it is worth while to explain his doctrine in its application to modern times. Cicero's grand and simple maxim is, that suffrages should *be at once notorious to the nobles, and free to the people*, (*optimatibus nota, plebi libera sunt*o.) He evidently wished to combine these two grand desiderata; the cognizance of the senators respecting the individual votes of the people; and the liberty of the people to give those votes according to their conscience, without hindrance, or prejudice, or fear. The syncretic or combinative doctrine, which Cicero applied to all his subjects, he applied here; he wished to unite and reconcile two desiderata equally important, and which less practised statesmen had often disjoined, as if the cognizance of the senators and the freedom of the people were incompatibles. It is necessary to bear this syncretic doctrine of Cicero in mind in this question of suffrages, as it explains his several dicta, which might otherwise appear contradictory. He seems, in fact, to have advocated that union of interests in elections, the dividing of which has occasioned so much idle contention in our own times.

Thus, in general, he lays down the *cognizance of the senators* of the votes of the people, as his essential major proposition. He knew well enough the importance of giving the senators a perfect knowledge of the individual votes of the people, because it is only by this knowledge that they can measure the *moral value* of the votes, by a consideration of the persons who gave them. Were those persons pious, honourable, wise, and experienced men? or were they fools and knaves? When a senator is aware of the character of the voter, he knows how to attach more weight to the vote of a studious and experienced citizen than can belong to a thousand of the idle suffrages that emanate from the mob. Pythagoras appears to have been anxious to uphold that *personal morality*, that ethic character, which belongs to all *vivâ voce* or open votes, in his famous maxim: "*A fabis abstineto,*" *abstain from beans;*" for beans were employed in the ballots of the Greeks, which by occasioning a democratical licence and confusion, at length destroyed their Commonwealths. Cicero therefore insists on the votes being open to the observation of the senators. Let them, says he, be at once notorious to the nobles, and free to the people; which rule contains a reprobation of those laws, which by any means hide a suffrage (*quæ tegunt omni ratione suffragium*), so that no one may inspect it, litigate it, or appeal against it.

But while Cicero pleads thus strongly as a general rule in favour of the cognizance of the senators, and an open system of polling *vivâ voce*, none was more justly severe than himself against those culpable senators and landlords, who use their power as a cloak of maliciousness; who convert their cognizance of votes into an instrument of oppression; and who, for the sake of some pitiful private interest—some sneaking and villainous corruption—will violate the sacred laws of conscience and patriotism against their honest and helpless dependants.

Against such false and disgraceful politicians, Cicero was especially indignant. He wished to make some keen and scrutinizing law, which should reach and punish every such base proceeding on the part of these unjustifiable oppressors. He was desirous of trying every legal method of correction, that could apply to such political abuses, before he resorted to that secret ballot, which he viewed with so much suspicion. "It is better (says he) to restrain the excessive influence of the great for unjustifiable objects in elective suffrages, than to give the people a mask and veil by which they may keep the more honourable citizens in ignorance of their

individual sentiments; and thus make the ballot a mere cover for corrupt and hypocritical votes.”

But if all other constitutional means of redress against the petty tyranny that landlords sometimes exercise over their dependants in elections failed; then, and *then only*, was Cicero, whose love of the aristocracy did not lead him to betray the liberty of the people, ready to resort to ballot. Much as he detested this secret voting, as a thing essentially unmanly and ignoble, yet he saw extreme cases had arisen, and might arise, in which even ballot might become for a short time desirable. “In such cases, (says he) if the laws could but hinder intrigues, the people might be allowed the ballot as a vindicator of liberty; provided it were so laid open, and freely exposed to all honourable and worthy citizens, that their authority might be blended with this popular privilege; thus leaving the people the power of expressing their deference for the aristocracy.” It is in such cases, and such cases only, that Cicero not merely tolerates, but commends the ballot. Then (says he) in his oration for Plancius, “the ballot becomes agreeable and pleasant, for it opens men’s countenances and conceals their thoughts, and gives them liberty to do what they please.”

Such are Cicero’s views respecting the poll and the ballot—in other words, open voting, and secret voting. In these views he was followed by Pliny, who likewise professes his fear, that the state would be exposed by ballots (*tacitis suffragiis*) to worse dangers than those intended to be rectified.

Thus also writes Gozliski, in his ‘Accomplished Senator,’ illustrating the doctrines of Cicero: —“Let the electors depend altogether on the general judgment, the fixed and established opinion, and the experience which the best and wisest of their fellow-subjects have of a man’s character. An established character, which is well supported by the prevailing and concurrent testimony of the best and wisest members of society, is the very height of glory, and the noblest qualification for all the honours our country can bestow upon us. While the popular *urn* or *ballot-box* is only one of blind Fortune’s tools and instruments, by which she deals out honours and offices, in a loose uncertain way, and scatters them at random, without reason and without judgment.”

To this may be added the sentence of Montesquieu, who says, “It is a question of some importance, whether the suffrages ought to be public or secret. Cicero observes that the laws which rendered them secret towards the close of the Roman Republic were the cause of its decline. The lower sort of people ought to be directed by those in a higher rank, and restrained within bounds by the gravity of certain 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.”

Such appears to be the catholic and general testimony of the ablest politicians that have investigated the subject. The question has lately been brought before the British public in a stirring way. The translator of these works has endeavoured to support our old constitutional method of open voting by poll, in the leading Conservative periodicals. Several able pamphlets have been written on the same side, and of late Sir Robert Peel and his friends in the House, have nobly supported the views of Cicero, by showing that the experience of the great majority of sound governments had adopted open voting, and that the few exceptions, which had

resorted to the ballot, were already growing tired of it, and practically renouncing it. These illustrious politicians have done much to make open voting dearer than ever to the British people. At the same time, to do the ballotists justice, they have generally argued their cause with great fairness and talent, which induce us to expect that the more respectable advocates of secret voting will renounce their plea, when a larger investigation of the subject shall have more fully developed its objectionable points.

The only way to arrive at the true decision respecting ballot, or any other question, is, as far as possible, to cast off the prejudices of sect and party, and to give due weight to the arguments of our antagonists. For truth is a thing perfectly catholic and universal; it is diffused and distributed among all political parties; there is none so wise as to possess it all, and none so foolish as to be entirely without it.

## **NOTE II.**

[\*] THE last sentence now found in Cicero's laws is one which declares his hopes in a glorious immortality. He looked forward, amid the distractions of human passion to that divine system of policy and law, which is the portion of just spirits in a brighter state of existence,—where all is harmony and peace, and the dissonance of sects and parties is no more heard.

Our unrivalled Milton appears to have concluded his sketch of "Reformation in England," with an aspiration equally vivid, and still more eloquent. "In that futurity, (says he) amid the hymns and hallelujahs of saints, some one may perhaps be heard, offering as high strains in new and lofty measures, to sing and celebrate the divine mercies and marvellous judgments in this land, throughout all ages; whereby this great and warlike nation, instructed and inured to the fervent and continual practice of truth and righteousness, and scattering far from her the rags of her old vices, may press on hard to that high and happy emulation, to be found the soberest, wisest, and most christian people at that day, when Thou, the Eternal, and shortly expected King, shalt open the clouds to judge the several kingdoms of the world; and distributing national honours and rewards to religious and just commonwealths, shalt put an end to all earthly tyrannies, proclaiming thy universal and mild monarchy through heaven and earth. Then, they assuredly, that by their labours, counsels, and prayers have been earnest for the common good of religion and their country, shall receive, above the inferior orders of the blessed, the regal addition of principalities, legions, and thrones into their glorious titles; and in super-eminence of beatific vision, progressing the dateless and irrevoluble circle of eternity, shall clasp inseparable hands with joy and bliss in over-measure for ever."

A more recent poet has beautifully expressed the same hope of immortality in verse:—

*Souls of the just, whose truth and love,*

*Like light and heat, once dwelt below,*

*Where have ye ta'en your flight above,*

*Leaving life's vale in wint'ry woe?*

*God hath withdrawn you near his throne,  
 Centre and source of brightness all:  
 As o'er yon hills the evening sun  
 Recalls his beams when shadows fall.  
 But there are weeping eyes that find  
 A loss in every parting ray;  
 And there are exiled hearts behind,  
 That long with you to fly away.  
 O happy hour! when every germ  
 Of captive spirit shall be free;  
 And shine with you, all bright and warm,  
 Around one glorious Deity!*

### **ADDENDA.**

THE Addenda to the foregoing translation of Cicero's Treatise on Laws, will consist of extracts from various valuable works, tending to elucidate the several branches of jurisprudence.

From Mr. Williams' excellent "Treatise on the Study and Practice of the Law," we quote a few passages which relate to the law of God; the law of nature and nations; the canonical or ecclesiastical law; and the civil or municipal law.

#### **Of The Law Of God.**

Concerning this Divine Law, the judicious Hooker thus writes:—"Of law, no less can be said than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, the greatest as not exempted from her power; both angels, and men, and creatures of what creation soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their common peace and joy." This divine law is mainly to be studied in the revelation of God to the soul, and the Bible and biblical literature.—Vide *Cudworth, Brocklesby, &c.*

#### **Of The Law Of Nature And Nations.**

Preparatory to the student's entering on the study of the municipal laws of the realm, he should endeavour to obtain a general knowledge of ethics, the law of nations, and the civil and

feudal law.

For general ethics, read Tully's offices; and for exercising and disciplining the reasoning powers, Aristotle's Ethics, Locke on the Human Understanding, Montesquieu's Spirit of Laws, Paley's Moral Philosophy, and the works of Stewart and Reid on the Mind, will be found of great advantage.

The Study of the law of nations is not only a useful introduction to the law of England, and an important branch of the education of those who are destined for the profession of the law, but it is also an interesting part of general study: according to Grotius, it is the parent of all municipal law—*proavia juris civilis.*—*De Jure Belli ac Pacis, proleg. s. 16.*)

For the study of the law of nations, which is partly founded on the law of nature, and partly positive, Lord *Mansfield* recommends the student to read Grotius, *de Jure Belli ac Pacis*, Puffendorff's Law of Nature and Nations, with Barbeyrac's notes, and Burlamaqui's *Droit Natural*; and as these authors treat the same subjects in their books, he suggests, that they may be read together and compared. If the student should wish to obtain a masterly knowledge of this subject, the works of Wolfius, Vattel, Heineccius, Ward, Marten, and Dr. Paley's Moral Philosophy, will be necessary.

"The reduction of the law of nations to a system," says Sir James Mackintosh, (*Discourse on the Study of the Law of Nature and Nations, p. 13*), "was reserved for Grotius. It was by the advice of Lord Bacon and Peirsce, that he undertook this arduous task. He produced a work, which we now indeed justly deem imperfect; but which is perhaps the most complete that the world has yet owed, at so early a stage in the progress of any science, to the genius and learning of one man. But so great is the uncertainty of posthumous reputation, and so liable is the fame even of the greatest men to be obscured by those new fashions of thinking and writing, which succeed each other so rapidly among polished nations, that Grotius, who filled so large a space in the eye of his contemporaries, is now perhaps known to some only by name. Yet, if we fairly estimate both his endowments and his virtues, we may justly consider him as one of the most memorable men who have done honour to modern times."

At page 20 of the "Discourse," Sir James states that the imperfect nature of Grotius's work, is occasioned by his inconvenient and unscientific method, and his inversion of the natural order of the subject:—"That instead of searching for the original principles of the science in human nature, then applying them to the regulation of the conduct of individuals; and, lastly, employing them for the decision of those difficult and complicated questions that arise, with respect to the intercourse of nations; Grotius has chosen the reversed method. He begins with the consideration of the states of peace and war, and he examines original principles only occasionally and accidentally, as they grow out of the questions which he is called upon to decide. It is a necessary consequence of this disorderly method, which exhibits the elements of the science in the form of scattered digressions, that he seldom employs sufficient discussion on those fundamental truths, and never in the place where such a discussion would be most instructive to the reader."

The work of Puffendorff is very prolix, and utterly void of all the attractions of composition; but it is a mine of principles of Public Law. His plan is superior to that of Grotius; by remedying which, he restored natural law to that superiority which belonged to it; and with great propriety, treated the law of nations as only one main branch of the parent stock. Without the genius of his master, and with very inferior learning, he has yet treated this subject with sound sense, with clear method, with extensive and accurate knowledge, and with a copiousness of detail sometimes indeed tedious, but always instructive and satisfactory.

"To the large work of Wolfius," the same elegant writer observes, p. 31, "the observations which I have made on Puffendorff as a book for general use, apply with tenfold force. His abridger, Vattel, deserves, indeed, considerable praise. He is a very ingenious, clear, elegant, and useful writer. But he only considers one part of this extensive subject, namely, the law of nations, strictly so called; and I cannot help thinking, that, even in this department of the science, he has adopted some doubtful and dangerous principles, not to mention his constant deficiency in that fulness of example and illustration, which so much embellishes and strengthens reason. It is hardly necessary to take any notice of the text book of Heineccius, the best writer of elementary books with whom I am acquainted on any subject. Burlamaqui is an author of superior merit; but he confines himself too much to the general principles of morality and politics."

### **Of The Canon Or Ecclesiastical Law.**

The necessity of an acquaintance with the canon law will appear to the student, when he considers that many points of antiquity, as well as of daily practice, are derived from it. The primitive institution of our terms, the custom of not going on with the business of terms, the term in the afternoon, the singular conceit of prohibiting jurors meat, drink, or candle-light, till they are agreed in their verdict, are all either the text, or by way of gloss on the Canon Law. (*See Splem. Reliq.* 89, 98.)

Many rules concerning the church, as to advowsons, patronage, rights of presentation; others with regard to matrimony, privilege of clergy, and concerning testaments, are derived from the same source. Instances enough might be soon produced to justify Chief Justice Vaughan, in saying (2 *Vent. Rep.* 11), that though the knowledge of the Canon Law be not an adequate subject, yet it is a subject in common." (*Eunomus, vol. 1, dial.* 16).

The works to be particularly consulted on this subject by the student, are Dr. Burn's Ecclesiastical Law, Hooker's Laws of Ecclesiastical Polity, the Introductory Discourse to Bishop Gibson's Codex Juris Ecclesiastici Anglicani; and Toller, Mirehouse, Ellis and Gwillim on Tithes. At his leisure he may consult Lindewood's Provincial Constitutions of England; Ecton's Liber Regis, vel Thesaurus Rerum Ecclesiasticarum: Brewster's Collectanea Ecclesiastica, Ayliffe's Pargon, and Cunningham's Law of Simony. The inquisitive student may find an interesting inquiry into the Canon Law, as well as the Roman, in Dr. Robertson's History of Charles the Fifth, vol. 1, p. 74 et seq., 381, and note 25.

## **Of The Civil Law.**

"When you have laid a foundation in the moral law," continues Lord *Mansfield*, "it will be time to look into those systems of positive law, that have prevailed in their turns. You will begin of course with the Roman or Civil laws; for the history of which, read Gravina's elegant work *De Ortu et Progressu Juris Civilis*, and Fernier's *History of the Roman or Civil Law*, then Dr. Halifax's *Analysis of the Civil Law*, and Dr. Bever's *History of the Legal Polity of the Roman State*; after which Justinian's *Institutes*, with Vinnius's *Comment* and Harris's notes may be studied. In Dr. Taylor's *Elements of the Civil Law*, and Dr. Brown's *Compendious View*, the student will find much useful information and assistance. The *Corpus Juris Civilis*, by Gothofred, and the works of Domat, Ayliffe, and Wood, may be used at his leisure. In Mr. Gibbon's *Decline and Fall of the Roman Empire*, may be found a beautiful and spirited sketch of the Civil Law. As to the nature and extent of the influence of the civil law on the jurisprudence of Great Britain, and the other modern states of Europe, see Duck's treatise *De Usu et Auctoritate Juris Civilis in Dominiis Principum Christianorum*.

"The study of the civil law," says the elegant author of *Eunomus*, "deserves, on many accounts, to be studied by the professors of our own. For the law of England often borrows the rules of the civil law, in the construction of wills and trusts; and in the calculations of the degrees of kindred, several important branches of our law are regulated by the civil and common laws." Our Chancery proceedings are also founded on Roman jurisprudence; and the statute of the distribution of intestates' effects is penned on the principles of one of the novels. Indeed it may be affirmed with safety, that as a collection of written reason, as a great body of principles, it has no rival, and is deserving, as a pattern, of being admired and consulted, even where it has no binding force. The man whose philosophic ambition aims at something beyond the skill of an able attorney; *qui vult rerum cognoscere causas*; who, with a scholar's mind, wishes to know the rudiments and origin of the rules laid down for his instruction, ought to be a disciple of Justinian as well as of Coke.

By uniting the study of the civil law with that of the municipal law of England, the student will be enabled to observe that an infinite number of cases in our own law, are founded upon rules laid down in the *Corpus Juris Civilis*. "I have not the smallest scruple to assert," says the learned Dr. Halifax, (*Analysis of the Civil Law*, pref. 22), "that the student who confines himself to the institutions of his own country, without joining to them any acquaintance with those of imperial Rome, will never arrive at any considerable skill in the grounds and theory of his profession: though he may perhaps attain to a certain mechanical readiness in the forms and practical parts of the law, he will not be able to comprehend that enlarged and general idea of it, by which it is connected with the great system of universal jurisprudence; by the knowledge of which alone he will be qualified to become a master in this art, and be capable of applying it as an honourable means of subsistence for himself, and credit to his country."

Also, the study of the civil law, as a science conversant with the great principles of justice and equity, cannot (as the same ingenious author observes), but be of the greatest importance and

utility to the general scholar, as well as the lawyer. It is admirably calculated to furnish the minds of youth with universal and leading notions relating to natural and positive, to written and unwritten law; it instructs them in the various rights of persons, whether in a natural or civil capacity; the origin and rights of property; the grounds and reasons of testamentary and legal succession; the obligations arising from proper and improper contracts; the several species of civil injuries and crimes; together with the means of applying for and obtaining redress, and of bringing the guilty to condign punishment. It will be to entertain a very mean and disparaging opinion of the venerable monuments of ancient wisdom, contained in the body of the Roman Law, to regard the rules there laid down for the decision of controverted points, whether of a public or private nature, as the maxims of mere lawyers. These great masters of legislation, were as eminent for their skill in moral as in legal knowledge, and the sublimest notions, both in philosophy and religion, are inculcated in their writings. Accordingly we find them frequently called, among their other titles, *juris divini et humani periti*; and the very distinction of jurisprudence given by Ulpian (*Dig. 1, 10*), like that of *sapientia* by Cicero, (*De Off. 1, 43*), is *divinarum atque humanarum rerum notitia*. This affinity between the Study of Law and philosophy has impressed a remarkably scientific cast upon the responses of the Roman sages? and a competent knowledge of their tenets and principles is absolutely necessary, in order to understand with exactness and taste, the allusions to Roman customs and manners, which abound in the Latin classic authors. To which must be added, what will still more recommend the science to the polite scholar, the purity of the language, in which the Pandects in particular are composed; which are held to be so perfect and elegant, in point of style, that the Latin tongue might be retrieved from them, were all other Latin authors lost."

The authority which the Civil Law acquired on its adoption into the municipal polities of the modern nations of Europe, was various. The German emperors appear to have considered themselves as the successors to the Roman empire in the west, and their dominions as therefore subject to that system of law, by which the Romans were governed. Hence, in Germany, properly so called, in the southern parts of France, or what are called the *Pays de Droit écrit*, and in several parts of Italy, which, at the time when the German emperors enjoyed the highest prosperity, were included under their dominion, the Roman Law is understood to be the common law of the country, to which the inhabitants, on the failure of their own municipal customs and regulations, are bound to submit. In other European countries, it is viewed in the light of a foreign system; which, however, from its intrinsic merit, is entitled to great attention and regard; and of which many particulars have been in a manner naturalized by long usage, or adopted by the positive will of the legislature. This is the case in Spain, in Portugal, in the northern parts, or what are called the *Pays de Coutumes*, in France, in Sweden, in Denmark, and in Scotland. In England, its operation is confined to the maritime, the military, and the ecclesiastical courts, as also those of the two Universities; or as it is used merely in argument to illustrate the doctrines, or delineate the principles of natural justice, independent of all positive institutions.—(*Millar's Hist. View. Eng. vol. 2, p. 322, &c.*)

For the method of quoting the Civil and Canon Law, see Dr. Halifax's Analysis of the Roman Civil Law, p. 2, and Dr. Taylor's Elements of Civil Law, p. 24. See also Mr. Gibbon's

observations, (Decline and Fall of the Roman Empire, vol. 8, p. 2, n.) respecting the absurd mode of quoting the code, pandects, and the institutes which authority and custom support.

The general excellence of the rules of the Civil Law, and the justice of its decisions, have extorted from all the nations of Europe an acknowledgment of its pre-eminence. They have, in consequence, either adopted it as their own municipal law; or, where circumstances and events forbade so general an admission, they have in all cases, where their own laws were silent or imperfect, ascertained the dictates of natural equity, in the illustrations of this code. Nor are the sources of its utility yet exhausted. In every age, and every civilized country, it will furnish principles, which, modified and altered as the circumstances of the times may require, will greatly contribute to the real interests and advantages of society.

On the intimate connection of these two codes, let us (says the eloquent author of the Discourse on the Study of the Law of Nature and Nations, p. 59, n.) hear the words of Lord *Holt*, whose name never can be pronounced without veneration, as long as wisdom and integrity are revered among men:—"Inasmuch as the laws of all nations are doubtless raised out of the ruins of the Civil Law, as all governments are sprung out of the ruins of the Roman Empire, it must be owned that the principles of our law are borrowed from the Civil Law, therefore grounded upon the same reason in many things."—(12 *Mod.* 482).

See 1 P. Wms. 10; *Ibid.* 267; *Ibid.* 104; *Ibid.* 405; *Ibid.* 441; *Ibid.* 542; *Prec. in Chan.* 694; 2 *Atk.* 115; 3 *Ibid.* 364; *Wils.* 135; *Com.* 738; 1 *Burr.* 1623; 1 *Ves.* 86; &c. &c.

Some of our earliest juridical writers, particularly Bracton and Thornton, have transcribed considerable passages from the Roman collections. This they did, according to Selden's opinion, not because they thought any foreign code could bind the subject of this realm; but, in order that, where the laws of England were silent, they might confirm their own problematical or conjectural positions of natural reason, by the doctrine of the civilians; or, where both laws were consonant to each other, might, by such citation, illustrate and explain our municipal institutions.

Leibnitz, a great mathematician, as well as philosopher, declares (*Oper. tom. 4, p. 254*), that he knows nothing which approaches so near to the method and precision of geometry as the Roman law.

The student is recommended, prior to his commencing the study of the Civil Law, to read the thirty-third chapter of Fernier's History of the Civil Law, which contains a method to be observed in studying this branch of legal science.

### **The Law Of God.**

The Law of God, or the Divine Law, in whatever degree united to the Law of Nature, is in some respects to be distinguished from it. The Law of God is the supreme spiritual fountain, out of which the stream of the natural and physical law flows. If the connection between this fountain and this stream is cut off, the latter becomes stagnant, corrupt, and contemptible. For this

reason man must perpetually appeal to the divinity within him—the voice of God sounding in his conscience; otherwise his conscience itself becomes cauterized, and seared by the influences of physical things, and the abominations of time and sense. Hence, the holy scriptures perpetually speak of the Law of God, as far superior to the law of nature. “The law of the Lord, says the Psalmist, is perfect, converting the soul; blessed are they who walk in the law of the Lord. As for me, my delight is in the law of the Lord, and I meditate thereon day and night.” On the other hand, we are warned by the inspired writers not to give too much reverence to *nature*, however excellent in itself; because after all, it is but an external stream, a thing outwardly generated and born, a mere picture of the infinite reality. Though no one therefore values the law of nature more than we do, we would avoid taking it as our standard,—we would avoid a mere natural and physical morality; for, as the poet says, “he builds too low, who builds beneath the skies.”

### **Whether The Natural Law Is Common To God And Man.**

Those authors, who search for the first pattern, says Puffendorff, or the original draft, of natural law in God himself, are divided into two parties. For some, placing the spring and fountain, as it were, of it in the divine will, do thence conclude, that inasmuch as that will is in the highest manner free, the law of nature may therefore be changed by God, or the contrary be commanded, as is the case and the condition of positive laws. Others affirm this natural law to be founded after such a manner in the essential holiness and justice of God, as to represent and express a kind of image or copy of those attributes. And hence, likewise, they say, proceeds the immutability of the law of nature: inasmuch as the divine justice and holiness are utterly incapable of change or alteration. Concerning the former of these opinions, we have this to remark, that it was indeed at first entirely free to the divine pleasure, to produce or not to produce an animal to whom the present law of nature should agree. But that since God Almighty hath been pleased to create man, a being not possibly to be preserved without the observation of this law, we have no manner of reason or colour to believe that he will either reverse or alter the law of nature, so long as he brings no change on human nature itself; and so long as the actions enjoined by this law, do by a natural consequence promote society, in which is contained all the temporal happiness of mankind; while the contrary actions do by as strong a necessity destroy that society; that is, so long as beneficence, kindness, fidelity, gratitude, and the like practices, shall have a power of engaging and of winning on men’s minds; and injuriousness, treachery, and ingratitude, a power of raising and provoking them. And therefore, supposing human nature and human affairs to be fixed and constant, the law of nature, though it owed its original institution to the free pleasure of God, remains firm and immovable; unlike to those divine positive laws, which depend in such a manner on the divine will, as not to seem so necessarily requisite to the good and safe condition of mankind in general. Besides, though this opinion be so far right, as it makes God the author of natural law, a truth which no man in his wits can doubt of; yet it still remains an uncertainty, by what means this divine will is to be known, and what tokens they are to evince, that God intended to comprehend such or such a thing under the law of nature. And the same inconvenience attends likewise on the latter opinion. For though no one can be guilty of such horrid impiety, as to

assert that the law of nature contains anything in it repugnant to the divine holiness or justice; yet it would be very difficult to prove, that the same law is so exact a copy or resemblance of those attributes, that in what manner soever God Almighty is pleased to deal with his creatures, particularly with men, in the same manner the law of their nature commands men to deal with one another. Nor doth it appear how a right which is to obtain amongst persons by nature equal, can be copied from that transcendent right, which the Creator useth towards his own works; that is, how a law imposing a mutual obligation on men, can represent any image of omnipotency, which no laws, no obligations, can restrain. For that argument, drawn from scripture, about man's being created in the image of God, is of no force as to the present case. For even those who confess that the image be lost, do yet acknowledge the sense of natural law to have still remained in man. Amongst ourselves we usually call him a holy or righteous person, who abstains from grosser sins, and regularly observes his duty: but yet, whoever framed a notion of the divine holiness by so unworthy a model? He, amongst men, is accounted just, who makes it his constant purpose and resolution to hurt no body, and to pay every one his due: but in God it is justice to destroy his creatures, even in the most grievous and painful manner. Neither can he so owe a person anything, as to be accused of doing an injury upon withholding it. If he hath been pleased to promise anything to mortals, he indeed performs it: not by virtue of such a promise they obtain a right against God; but because it would be some kind of derogation from his greatness and goodness to command men to expect any favour from him, and afterwards to frustrate their expectations. For he who breaks his promise, either wants power to perform it, or else through inconstancy or dishonesty fails from the engagement he had once well made, or else at the time of making his promise, he was ignorant how the state and condition of things would be, when it was afterwards to be fulfilled; all which cases imply some kind of failing and imperfection. Hence God *cannot* but observe his promises, and men *ought not* but to observe theirs: hence human promises turn into *debts*, but divine promises are made good out of pure *favour*. What rules the vindictive justice of God proceeds by, is far above our apprehension to discover; but thus much is certain, that they are not altogether conformable to the methods of human judicature. *Arist. Ethic. Nicom. l. 10, c. 8.* What kind of actions ought we to attribute to the gods? Shall we say they are just? But alas! it would seem most ridiculous to fancy, that they are concerned in driving bargains, in restoring loans, and the like performances, which we reckon honest amongst men. Shall we call them valiant and brave, able to endure hardships, and encounter dangers? Shall we pronounce them liberal? Who then shall be the object, or what the matter of the bounty? Certainly, we must not oppress them with the load of money or treasures. In like manner it would be an impertinent and troublesome commendation, to say they are temperate; in as much as they have no inordinate affections to govern and restrain. And thus, if we run through the whole train of human actions, we shall find them all so mean and contemptible, as to be infinitely unworthy of the heavenly natures.—Catull. ad Manl. 68, lin. 141.

*Atque nec divis homines componier æquum est.*

*No just comparison 'twixt gods and men.*

From this consideration, that we ought not to admit any law common both to God and man, we

may draw an easy answer to those instances, which some give of God's dispensing with the law of nature, as when he commanded Abraham to kill his son, and the Israelites to rob the Egyptians of their vessels of silver and vessels of gold. For God, the supreme lord and disposer of all things, hath a much higher and fuller right over his creatures, than one man can have over another, who is by nature his equal. Therefore we cannot properly call it a dispensation of the law of nature, when a man by express command from heaven, executes God's right upon other men, merely as *his* instrument.—*Comp. Grot. l. 1, c. 1, s. 10, n. 6.* None, I believe, can be so simple as to imagine that when the object is changed, or the circumstances varied, the law itself suffers alteration. When the creditor hath forgiven a debt, it loseth that name, and therefore is no longer comprehended under the law which enjoins payment. And as for the other instance, when the goods of a person who gave a thing in trust, are adjudged to the public treasury, neither the law is changed nor its object. For thus runs the law: He who receives a thing in trust, ought to restore it either to him who committed the thing (being his own) to his charge, or to him on whom the right descends. Now this law cannot affect the thief, because the thing was not his own; nor to the former owner, who is supposed to be at present a banished man, because the propriety of all that was his passeth to the public.

But neither do the arguments which the author of the treatise *de Principiis Justi et Decori* produces, seem forcible enough to establish a twofold natural law, divine and human, which, supposing the present order of the world to continue, do fall in with one another. For inasmuch as all law implies obligation, and that again pre-supposes some external and superior principle, it doth not appear how we can without absurdity apply any such matter to God. And it is a like impropriety to say, that God is obliged by himself, or by his own essence. Nor will that text which he alleges, of Rom. i, 32, ever prove such a law to be in God. For since the Gentiles, from the dictates of their reason, were able to gather the knowledge of the law of nature, the next thing which they must infer, was, that God the legislator would not suffer the law to be violated without punishing the offender. Therefore, upon the violation of that law, there arises a right to God (if it be decent so to speak) of exacting punishment; or upon commission of the sin, God most justly executes what he before threatened. But who can conclude from hence, that God is obnoxious to law? What follows is an ambiguous expression, that the supreme right of God over his creatures is discovered by natural reason from those principles, which make the foundations of natural rights and equity amongst men. For if this only be the sense of it, that in many cases God doth proceed in the same manner in his dealings with men, as he would have them follow in their transactions with each other; it will easily pass without contradiction. For thus God, by the natural law, hath enjoined men to keep their promises, as he will firmly keep those which he makes himself. So he forbids human judges to condemn the innocent, declaring that he himself will acquit them in his own judgments. But if it be meant to assert that God hath no more right over his creatures than men are allowed to obtain over each other, there will be no need of more convincing arguments to make us believe, that the supreme lord and master hath no fuller right over his servants, than the servants have over their fellow-servants, with whom nature has set them on a level: or, to use Grotius's terms, that the *Jus Rectorium*, and the *Jus Æquatorium*, the right of governors, and the right of equals, are exactly the same thing.

Neither must we let that assertion pass by uncensured, which the author of the same treatise lays down, page 52, that God ought necessarily to esteem the laws of nature as just, the order of the universe being established in the manner we now behold: and that he cannot but own every deviation from them to be indecent and unjust. For without doubt those imperious terms, God ought necessarily, are very unsuitable to the majesty of an omnipotent legislator. Nor is here any necessity to be discovered in the case, except such as owes its original merely to the divine pleasure. The reason which he subjoins is not strong enough to maintain his first position; "All things, (says he,) which our thoughts can imagine, have always some kind of *χέσις* or relation, arising from the intrinsic nature of the thing, and which cannot be separated from the thing without offering violence to reason. For this nature, and this adhering relation, things have not from themselves, but from the free-will of God; and the decrees of his will cannot properly be called his own law. Thus, the reason why amongst men one benefit obliges to the return of another; why violation of covenants, inhumanity, pride, slander, can never be allowable, is, because God hath given man a sociable nature, and as long as that nature remains unaltered, those things which are agreeable to it must be good and honest, and those which are repugnant to it uncomely and unlawful. But who can hence infer, either that there is but one law, common to God and men, or that things are indued with any *χέσις* or habitude, independent from the divine disposal?

### **The Obligation Of The Law Of Nature Is From God.**

But to make these dictates of reason obtain the power and the dignity of laws, it is necessary to call in a much higher principle to our assistance. For although the usefulness and expediency of them be clearly apparent, yet this bare consideration could never bring so strong a tie on men's minds, but that they would recede from these rules, whenever a man was pleased either to neglect his own advantage, or to pursue it by some different means, which he judged more proper, and more likely to succeed. Neither can the will of any person be so strongly bound by his own bare resolution, as to hinder him from acting quite contrary whenever the humour takes him. And although we should suppose many persons standing in a natural liberty, and combining to keep these precepts, yet the force of them could then last no longer than the agreement from whence they derived it. Nor would the obligation then only cease, when all the consenting parties should please to alter their minds; (as is now the manner of receding from mutual covenants by common consent;) but even during the general agreement, the power of obliging would be wanting to the compact: inasmuch as we suppose, *that* dictate of reason, which commands us to stand to our bargains and promises, not yet to have obtained the authority of a law; and therefore it is at every one's pleasure to renounce the covenant, whether the other persons concerned are willing or not. Lastly, the mere force of human command seems insufficient to invest these dictates with the power of obligation. For since no such command could take place otherwise than by the intervention of covenants, and since covenants owe all their strength to some law, it doth not appear how there could arise any human sovereignty capable of obligations, unless the dictates of reason were beforehand received for laws. Or should we grant the fancy of some, that human government depends only

on human consent, and then make these rational duties be enjoined the subjects like other laws; yet even thus they would obtain no more power than positive constitutions, which depend on the will of the legislator, both as to their original and their duration. It is therefore on all accounts to be concluded and to be maintained, that the obligation of natural law proceeds from God himself, the great Creator and supreme Governor of mankind; who, by virtue of his sovereignty, hath bound men to the observation of it. And thus much may be demonstrated by the sole light of natural reason. Here then we lay it down as a granted truth, that God Almighty is the Creator and Governor of the world, since it hath been shown with so much evidence by wise and learned men, and since no person of sense and understanding ever called it in question. Now this supreme being having so formed and disposed the nature of things and of mankind, as to make a sociable life necessary to our subsistence and preservation; and having on this account indued us with a mind capable of entertaining such notions as conduce to this end, and having insinuated these notions into our understandings by the movement of natural things, derived from him the first mover; and likewise most clearly represented to us their necessary connexion and their truth: hence it follows, that it is the will of God man should frame his life according to that disposition and method which he seems peculiarly to have assigned him, above the life of brutes. And since this cannot otherwise be achieved and compassed, than by the observance of *natural law*, it must be supposed that God hath laid an obligation on man to obey this *law*, as a *means* not arising from human invention, or changable at human pleasure, but expressly ordained by God himself for the accomplishment of this design. For when any sovereign enjoins his subject the pursuit of such an end, he is at the same time supposed to oblige him to make use of those means, without which the end cannot be attained. Nor is this the only proof of man's being obliged to a social life by the command of God, that as the condition of mankind stands at present, we could not support and secure ourselves unless this persuasion were firmly rooted in our minds; and that by order of the divine providence it so falls out, that by a natural consequence our happiness flows from such actions as are agreeable to the law of nature, and our misery from such as are repugnant to it. But it is farther confirmed by this consideration, that in no other animal there is discoverable any sense of religion, or any fear of a deity. To which may be added, that tender sense of conscience inherent in the minds of men that are not corrupted and debauched with vice; by which they are convinced, that to sin against nature's law, is to offend Him, who hath a sovereign power over men's souls, and who is to be feared, even when we do not apprehend any danger from human punishment.

The laws of nature would have a full power of binding men, although God Almighty had never proposed them anew in his revealed word. For man was under obligation to obey his creator, by what means soever he was pleased to convey to him the knowledge of his will. Nor was there any absolute necessity of a particular revelation to make a rational creature sensible of his subjection to the supreme author and governor of things. No one will deny but that those persons who were not acquainted with the holy scriptures, did yet sin against the law of nature: which we could not affirm, did this law derive its force from the promulgation made of it in the sacred writings. On this account we can by no means admit of that notion started by Hobbes, "Since those laws, (says he,) which we call natural, are nothing else but certain

conclusions apprehended by reason, concerning things to be done and things to be omitted; and since law, in a proper sense, is only the speech of him, who by virtue of his right commands men to execute or to abstain from some performances; therefore they are not laws as they proceed from nature, but only as they are enacted by God in scripture." For we do not take it to be essential to a law, that it be conveyed to the subject's notice in the form and manner of a proposition; but we reckon it sufficient that the will of the sovereign be gathered and understood any way, whether by internal suggestion of the mind, or from the contemplation of our state and condition, and of the nature of those affairs and transactions which are to engage our life. And indeed he himself acknowledges as much, in another part of the same work, where he observes, that the laws of God are declared three ways; first by the tacit dictates of right reason, &c. Besides, the laws of nature as they are deduced by ratiocination, cannot be apprehended otherwise than in the manner of propositions, and therefore in this respect they may be allowed to bear that name. But as in civil laws it matters not, whether they be promulgated in writing, or *vivà voce*; so the divine law is of equal obligation, whether it is discovered to men either by God himself in a visible shape, and with the resemblance of a human voice, or by holy men, peculiarly inspired from heaven; or whether, lastly, it be worked out by natural reason, from the contemplation of human condition. For reason, properly speaking, is not the law of nature itself, but the means, upon a right application of which that law is to be discovered. Nor doth the manner and the method of promulgating a law belong to its inward essence and constitution. Farther, although it seem a more clear and a more compendious way of revealing one's will to another, to force it upon his senses by express words and speeches: yet, that is likewise reckoned to be sufficiently revealed, which we must unavoidably discover if we make use of the occasion offered, and keep the way that we are put into. And thus man, who by the bounty of his creator, enjoys the faculty of comprehending both his own and other men's actions; and of judging whether or no they are agreeable to human nature, cannot but take occasion, (supposing there are more men in the world besides himself) to observe and consider how some of those actions do really thus agree with the inclination and with the condition of mankind.

Although to render a law obligatory there is a necessity of making it known to the subject; and although to deduce the law of nature from the suggestions of reason, and to apprehend its foundation, and its necessary connexion with the state of humanity, be not the gift of every person; yet hence it can neither be pretended that this law doth not oblige all men, or that it may not be said to be known by the light of reason. For to give a law a binding force, a popular and simple knowledge is sufficient; nor is an artificial demonstration and deduction absolutely requisite to this purpose. And although it is very probable that the chief heads of natural law were expressly delivered by God Almighty to the first mortals, and were from them communicated to others by custom and institution; yet the knowledge of that law may nevertheless be stiled *natural*, inasmuch as the necessary truth and certainty of it may be drawn from the use of natural reason. At the same time, because those propositions which represent to us the law of nature, are insinuated into men's minds from the contemplation of the nature of things; on that account they are justly attributed and referred to God, the author of nature.

The wisest of the old Heathens acknowledged the authority of natural law, and derived it rightly from God. Thus Plutarch ταυτόν στι τ πεισ αι ε , κα τ πεί εσ αι λόγ . To follow God and to obey reason is the same thing. But Tully hath left the most noble testimony for our purpose, as it is cited out of his books *de Republicâ* by Lactantius: "There is indeed (says he) a law agreeable to nature, and no other than right reason, made known to all men, constant and perpetual; which calls us to duty by commands, and deters us from sin by threats; and whose commands and threats are neither of them in vain to the good, though they may seem of little force to the wicked. This law we are neither allowed to disannul, nor to diminish; nor is it possible it should be totally reversed; the senate or the people cannot free us from its authority. Nor do we need any other explainer or interpreter of it besides ourselves. Nor will it be different at Rome and at Athens, now and hereafter; but will eternally and unchangeably affect all persons in all places: God himself appearing the universal master, the universal king. It is he who is the inventor, the expounder, the enactor of this law; which whosoever shall refuse to obey, shall fly and loath his own person, and renounce his title to humanity; and shall thus undergo the severest penalties, though he escape everything else which falls under our common name and notion of punishment?" Sophocles speaks very honourably on the same subject, in his first *Ædipus*, act 3d, p. 187. Ed. H. Steph.

— μ , &c.  
 — *The lofty laws,*  
*Derived from Heaven and high Olympian Jove,*  
*Are not the mean device of mortal man.*

Mr. Selden, in his discussion of this point, hath shown, that although the Gentiles did acknowledge the chief heads of natural law to be sometimes violated through the corrupt manners of men; and to be (as it were) oppressed and stifled by wicked ordinances and constitutions; yet they were at the same time fully persuaded that their τ υτοδίκαιον, or, what was really just and fit to be done, did by order of the gods perpetually remain the same, and hold the same force of obligation. Whence arose that common opinion amongst them of the punishment of wicked men in another state, when they had been guilty of any monstrous offences against the law of nature. And since they thus believed the gods to be the avengers of its violation, we may take it for granted, that they thought them too the authors and founders of its authority. On the other hand, such of them as had any sense of any virtue, did as fairly suppose, that good men exercising piety never failed of the peculiar countenance and consideration of Heaven. Thus Jamblichus: we must take this therefore for a certain truth, that nothing properly evil shall happen to a good man, either in this life or after it. Nor are the affairs and concerns of such a person neglected by the immortal deities. And Euripides says, "good men do at last obtain what their virtue hath deserved: but evil men shall never arrive at any tolerable degree of happiness." But Mr. Selden farther shews it to have been a constant opinion amongst the primitive christians, that in the interval betwixt the creation and the publication of the decalogue, those natural and universal laws were given to mankind, which were afterwards inserted in the Mosaical constitutions. Hence was drawn that most excellent observation of St. Chrysostom, that to the commandments about the honouring of parents,

about murder, about adultery, and about theft, God was therefore pleased to add no reason, because those duties were already well known and understood, as being main points of the *law natural*; whereas to the ordinance concerning the sabbath-day, a reason of the precept was designedly affixed, upon account of its being *positive* and arbitrary. To conclude, all legislators have believed that their laws, of what kind soever, would derive the greatest strength and authority from the succours of religion: As appears from their solemn custom of ushering in all their constitutions with the worship of the gods.

### **Of The Establishment Of The Law Of Nature.**

It is well worth our while to treat more distinctly and more carefully concerning the *sanction* of the law of nature. And to this purpose, besides what we have formerly delivered about the sanction of laws in general, we will first of all observe, that the goods and evils which happen to man, may be both divided into three ranks or classes. And as for the goods, some of them proceed, either from the free and liberal donation of the creator, or from the voluntary benevolence of other men, or from the industry of the acquirers, to which industry they determined themselves by their own free choice. And it is plain, that this first sort are not owing to the observation of the laws. Other goods there are which flow, by a natural consequence, from some actions which the laws command: the Creator having been pleased to assign to such and such performances of the laws such perpetual and natural effects, productive of the good and profit of mankind. And these are those which Dr. Cumberland calls *natural rewards*. A third kind of goods proceed from some certain actions, either by the pleasure of the legislator, or by the covenant and agreement of men; of which the former are called, κατ' ἔξοχον, *rewards*, or arbitrary returns, the latter, more properly, wages. In the same manner may evils be divided. Some of them follow the very nature and condition of men; (if we abstract the first cause and original of that condition;) or they happen without the particular default of him who suffers them, which we may, in a sound sense, call *fatal evils*, opposing the word fate, not to the divine disposal, but to the peculiar faultiness of the person on whom these evils light. Others do, by natural consequence and connexion, proceed from sins; which are by some authors termed *natural punishments*. Lastly, others there are which arise from sins, by the peculiar determination and disposal of the legislator beyond the manner of natural effects; in which the quality, the manner, the place, and time of the evil, depend on the legislator's pleasure. And these are what we would *properly* call *punishments*, or (in a looser sense of the word) *arbitrary punishments*.

Thus much being premised, we proceed to remark, that although the Omnipotent Creator might, by virtue of his sovereign right, have required our obedience, without making any good fruit proceed thence to our own advantage: yet it hath pleased his infinite goodness so to order and constitute the nature of things and of mankind, that by a kind of natural connexion some goods should attend the observance, and some evils the transgression, of nature's laws. Thus a constant obedience is followed by serenity and security of conscience, joined with a good and certain assurance; by a good frame and a settled tranquility of mind; by the preservation of the body from many evils, not *fatal*: besides an infinite number of advantages, which may be

obtained by the mutual benevolence and good offices of other men. On the other hand, from the violation of the same laws, arise by a natural connexion, disquiet of conscience, disturbance and degeneracy of mind, destruction of the body, and numberless evils, which may be occasioned by the withdrawing of other mens' assistance, or by the violence of their provoked revenge.

Now although these rewards, and these punishments, are by some imagined not to proceed with certainty enough from good and evil actions; because many persons in return for benefits receive only hatred, envy, or injury; whilst others on the contrary do securely enjoy the fruits of their wickedness, without molestation or punishment; whence we cannot be infallibly assured beforehand, that our good deeds will be equally repaid by *other men*; (though the fruit which arises in *ourselves* from such honest practices is not capable of hindrance or of interruption:) yet thus much is beyond dispute, that more advantages most surely and certainly follow from good and just proceedings, than we can in reason expect from the opposite vices. And although the whole train of those goods do not attend on such a conscientious behaviour, as in the nature of things they were disposed to do, yet we have a fair probability that many of them will not disappoint us; at least that we shall obtain a greater share than we could have hoped for from a course of dishonesty and wickedness. And so by this means we provide much better for our own security, and have much fairer grounds to hope that others will, in their turn, be alike ready to promote our interests and concerns; than if, laying aside all regard to our neighbours, we directed everything towards our own private advantage; and therefore infinitely better than if, by the exercise of violence or of deceit, we endeavoured to make our own gains and profits out of the losses of other men. By this way of reckoning therefore it appears, that the value of that reward which will follow a good action, doth, all things rightly considered, exceed the gain of the opposite illegal practice.

We desire it should be well observed, that whilst we are here treating about the natural effects of good and of evil actions, we do not by any means reckon amongst these effects, those kind of goods which we but now ranked in the first class, and which our own prudence and industry either cannot obtain, or cannot avoid. Such things both may, and generally do happen alike to virtuous and to vicious men. Thus a wicked person may by the gift of nature, possess a vigorous and a healthy body, while perhaps a man of honesty and piety, labours under a weak and crazy constitution. And thus death lays hold promiscuously on the just and on the vile. But the only goods we here allude to are such as it is in the power of human reason to provide for us; and which do therefore, in some measure, depend upon our own act. Now although some part of those goods which we intend by the observance of the law of nature to obtain from other men, has a dependance on their kindness and on their probity, and so is not absolutely in our own power; yet, forasmuch as in all probability they have the same end and design with ourselves, we have at least fair reason to hope for and to expect such good usage and retribution from them, though we cannot give ourselves an infallible assurance of it before it comes. Scarce any man hath met with so many enemies in the world, as not to own himself indebted to some benefactors. And we see that the evils which men procure to one another, have never been able to prevail to the utter ruin and destruction of the human race: which is a

plain evidence, that good actions have oftener attained their just end and reward than they have failed and been disappointed of it. On the other side, although a person who neglects or disobeys the law of nature, may sometimes, by an unaccountable concourse of external causes, receive a whole flood of goods and benefits from other men; yet because in this case those effects are, with regard to him, merely contingent, and do very seldom fall out in such a manner, we may conclude, that nature and reason did not prescribe, much less command, the means by which he attained, only casually, to such an end. Reason, on the contrary, most clearly shews us, that we take a much more probable way to happiness, by acting on a settled design, and by applying the best means we can to the gaining of our purpose, than if we should throw aside all counsel and forecast, and permit ourselves to be driven at random by the blind guidance of chance. But this point is indeed as clear as anything in nature, and hath been made out to full advantage by Dr. Cumberland.

There remains therefore this only question farther, whether or no, besides the natural effects of evil actions, and besides those which arise from the sanction of civil laws, there are still others in reserve appointed by God's free pleasure, and to be inflicted by virtue of his sovereign prerogative; or whether God hath not added to the sanction of the laws of nature some arbitrary punishment; especially since it is apparent, that the natural consequences and effects of evil actions are frequently interrupted, and that the wickedness of many men seems to turn to their gain and advantage. Now what the scripture hath declared in this matter, is plain and beyond all dispute. But waiving that authority, the affirmative side of the question may be defended from several considerations: As from that most ancient and most universal tradition, concerning a certain revenging divinity, and the pains after death. Of which opinion we have two fair instances in the cases of Jonah and of St. Paul; (Jonah i, 7; Acts xxviii, 1, &c.) for there being no natural connexion and consequence either between Jonah's crime and the tempest, or between the fact of murder and the biting of the viper, the people who were present at both accidents immediately supposed that God Almighty did thus extraordinarily interpose his hand to punish some heinous wickedness. Moreover, it being most certain that it is the divine pleasure those laws should be obeyed, and not less manifest that the natural effects of them may be (partly at least) eluded; it is highly probable, that God will find some other way of punishing such offenders: especially since the gnawings of conscience, and the want of quiet and security, which constantly attend evil men, do not always rise to such an afflicting degree, as to seem a sufficient plague and penalty for their crimes. But because whatever arguments we can alledge *a priori*, will not amount to a demonstration, but only to a high probability; and because this arbitrary punishment presupposes some positive determination of the divine will, which we can hardly come to a knowledge of without a particular revelation; and since our induction and our experience are at present imperfect, we can scarce avoid confessing, that to those who see only by the light of natural reason, this controversy must still appear in some measure dark and obscure.

### **Ecclesiastical Law.**

THE Ecclesiastical Law of England (says Dr. Burn) is compounded of these four main

ingredients; the civil law, the canon law, the common law, and the statute law. And from these, digested in their proper rank and subordination to draw out one uniform law of the church, is the purport of his book on this subject.

Where these laws do interfere and cross each other, the order of preference is this: The civil law submitteth to the canon law; both of these to the common law; and all the three to the statute law.

So that from any one or more of these, without all of them together, or from all of these together, without attending to their comparative obligation; it is not possible to exhibit any distinct prospect of the English ecclesiastical constitution.

I. By the civil law is meant, the law of the ancient Romans; which had its foundation in the Grecian republics, and received continual improvements in the Roman state during the space of upwards of a thousand years, and did not expire at last even with the empire itself.

For the distinct knowledge whereof, it is to be remembered, that after the abolishing of the regal government at Rome, and the establishment of the republic, they sent three men into Greece, to collect the laws of the Athenian and other Grecian states; and from these were compiled and digested by ten commissioners, well known by the name of the *Decemviri*, the laws of the Twelve Tables (so called from their being engraved on twelve tables of brass), which were the first and principal foundation of the Roman law.

To the Twelve Tables were added the *Responsa Prudentum*, or interpretation of the lawyers; who accommodated the same to the use and practice of their courts. And this was denominated, in contradistinction to the laws of the Twelve Tables, the *jus non scriptum*, or unwritten law; and having no other name, began then to be called the civil law; and is that which is styled by Justinian the *jurisprudencia media*, because it came in between the laws of the Twelve Tables and the Imperial constitutions.

Next to these were the *Leges*, or laws, emphatically so called; because they were enacted by the whole body of the people, reckoning both the nobility and commonalty together; and this was particularly, when a new case happened that was not provided for by the former laws. The consuls on this occasion caused the people to be assembled together, and informing them what the case was, and asking their opinions, that is, putting it to the vote, they decided the same according to the rules of equity as the matter appeared to them; and this decision being made, was ever afterwards in the like cases observed as a law. For after the abolition of the regal government, the magistracy was lodged with the people; one principal branch whereof is the power of making laws.

Afterwards, the common people multiplying, upon some differences with the nobility, retired and separated themselves from the nobility for some time; and during this secession, they enacted laws of their own, which were called *Plebiscita*, and upon a reconciliation with the nobility afterwards, it was agreed and consented to, that these also should have the force of law, and be obligatory upon the whole Roman people, the nobility as well as others.

But on the daily increase of the Roman state, it appearing almost impossible to assemble the whole body of the people, at least without some tumult and commotion; it was thought expedient, whenever a new case arose, to trust the senate with this power. And when any new law was made by them, it was styled *senatus-consultum*, or a decree of the senate; and was, in like manner as the *plebiscita*, incorporated into the Roman civil law.

Furthermore, when the consuls were abroad in the wars, to the end that the city might not be destitute of governors during their absence, the people created for themselves two officers, called *prætors*, and these had power given to them, of adding to, or supplying and correcting the civil law of the Twelve Tables; and were wont to propound certain edicts, which, being approved by the people, were incorporated into the civil law, and were called *jus prætorium*, or the prætorian edicts.

Also the *Ædiles curules* in some cases did establish laws; but as their office, so also their edicts, were but for the year; and therefore at first they were called annual edicts, until the time of the Cornelian law, which made them perpetual, and thenceforth they were called perpetual edicts. These were digested and put into order by Salvius Julianus, under the emperor Adrian, and illustrated by the commentaries of the Roman lawyers.

These were the component parts of the Roman civil law, whilst their state continued republican. After the government was transferred into the hands of the emperors, two other branches were added, to wit, the *constitutiones principum*, or imperial constitutions, and the *responsa prudentum*, or answers of the lawyers.

For after the administration was by the *lex regia* granted by the people to Augustus; whatsoever the emperor ordained by his epistle, or commanded by his edict or proclamation, or decreed on the cognizance of any matter coming before him in judgment, had the force of a law, under the style and title of an imperial constitution. And these constitutions were sometimes called *placita principum*; because they were such as the prince or emperor was pleased to ordain according to his discretion.

Next to the imperial constitutions, were the *responsa prudentum* under the emperors. The *responsa prudentum* during the times of the republic were delivered without the sanction of public authority, and made part (as was said) of the *jus non scriptum*. But under the emperors after Augustus, no person was suffered to deliver answers concerning the law, but those to whom the emperors gave commission; and to their answers the judges were obliged to conform. And these do constitute a part of the *us scriptum*, or written law.

The imperial constitutions aforesaid, in the space of five hundred years, from Augustus to Justinian, grew to so immense a bulk, that the lawyer Gregorius thought fit to make a digest thereof, from the time of Adrian, or (as others say) of Augustus, down to the reign of Dioclesian; and this he did by his own private authority, and from him the Gregorian code had its name and original.

The second code which we read of, was that of Hermogenes, who lived in the age of the

Constantines; wherein were comprized all the imperial constitutions of Claudius, Aurelius, Probus, Carus, Carinus, and that vast number of constitutions made by Dioclesian and Maximian.

The next code was that of the emperor Theodosius the younger, who caused the same to be compiled after the manner of the foregoing codes; containing the constitutions of the emperors from the time of Constantine down to Theodosius's own reign; and this collection from him was called the Theodosian code.

But in these three codes there was nevertheless so much confusion, contradiction, and superfluity, that Justinian judged a revisal and correction thereof to be very necessary.

And therefore from these three codes of the imperial constitutions, and also from such new constitutions as had been made and published after the compiling of the Theodosian code, the emperor Justinian caused a new code to be compiled, which from him was denominated the Justinian code. Which code he afterwards caused to be revised and corrected in many particulars, and re-published; and that code we have now extant at this day.

After which he caused in like manner the *responsa prudentum*, consisting of some hundred volumes of the writings of the Roman lawyers, to be digested and abridged; and this he called the digest or *pandect*, as containing all the decisions collected from the questions and resolutions of the ancient Roman lawyers.

And from this digest or pandect, and likewise from his own code and other commentaries of the ancient lawyers, he caused also his book of Institutes to be compiled, which containeth the elements of the Roman law, written in an elegant and easy flowing style.

Last of all he published his novels, which novels (*novellæ*) were new constitutions made by Justinian himself, after the publication of the other books; and these are sometimes called the *authentics*, to distinguish them from some other publications of constitutions of the succeeding emperors, which are not respected as of much authority. And generally, the whole civil law in use at this day, is comprized in those four books of Justinian; the Code, the Digest, the Institute, and the Novels.

The greatest part of this island was governed wholly by the civil law for about three hundred and sixty years, from Claudius to Honorius; during which time, some of the most eminent Roman lawyers, as Papinian, Paulus, and Ulpian, whose opinions and decisions are collected in the body of the civil law, did sit in the seat of judgment in this nation. But after the declension of the Roman empire, the Saxon, Danish, and Norman customs took place.

Nevertheless, in after times, the same law again came to be of great repute within this kingdom; particularly during all the time from the reign of king Stephen to the reign of king Edward the third, both inclusive. During which period, and at other times according as the study of the civil law prevailed, the judges and professors of the common law had frequent recourse to it, in cases where the common law was either totally silent or defective. And thus we see in

the most ancient books of the common law, as Bracton, Thornton, and Fleta, that the authors thereof have transcribed, one after another, in many places, the very words of Justinian's institute.

And there are some particular matters in which the civil law hath always been, and still is allowed to be, the only law in England, whereby they are to be decided; and the courts of justice which have cognizance of those matters, do proceed therein according to the rules and forms of the civil law.

Thus in the High Court of Admiralty (which was established about the time of king Edward the first), all causes civil and maritime are to be decided according to the civil law, and the maritime customs.

Thus in the Court of Honour or Chivalry, the Lord High Constable and Earl Marshal, who are the judges thereof, are to proceed according to the civil law, as being the most proper law for deciding all controversies arising upon contracts made in foreign countries, deeds of arms, and of war out of the realm, and things that pertain to war within the realm, and other matters whereof that court hath the proper cognizance.

So also in the two Universities; the courts which are there held for determining suits to which the scholars or members of the universities are parties, do proceed according to the rules of the civil law.

The Courts of Equity also are in many things conformable to the rules of the civil law; of which the chief is, the High Court of Chancery. There suits are commenced by petition or bill; witnesses privately examined, and nothing is there determined by a jury of twelve men, but all the decisions are made by the Chancellor. And almost all the Chancellors, from Becket to Wolsey, that is to say, from the age next after the conquest until the age of the reformation, comprehending almost the whole time of the pope's domination within this realm, were ecclesiastics, well skilled in the Roman laws.

And, finally, in all the ecclesiastical courts within this kingdom, although the canon law is the foundation of their proceedings, yet the canon law being in a great measure founded upon the civil law, and so interwoven with it in many branches thereof, that there is no understanding the canon law rightly without being very well versed in the civil law; the knowledge thereof is therefore absolutely necessary for the dispatch of all causes of ecclesiastical cognizance. And the civil law not only serves to explain the canon law; but, by the practice of all ecclesiastical courts, it is allowed to come in aid of and to supply the canon law, in cases which are there omitted. And how necessary and useful the civil law is in this respect, doth evidently appear from the commentaries of Lindwood and of John de Athon, upon the provincial and legatine constitutions.

II. The Canon law sprang up out of the ruins of the Roman empire, and from the power of the Roman pontiffs. When the seat of the empire was removed to Constantinople, many of the European princes and states fell off from the dominion of the emperors, and Italy amongst the

rest. And the bishops of Rome, having been generally had in esteem as presiding in the capital city of the empire, began to set up for themselves, and by degrees acquired a temporal dominion in Italy, and a spiritual dominion throughout Italy and almost all the rest of Europe.

And thereupon the several princes and states, did willingly receive into the body of their own laws, the canons of councils, the writings of the holy fathers, and the decrees and constitutions of popes.

Concerning the canons of councils, it was established by Justinian himself, that the canons of the councils of Nice and of Constantinople, of the first council of Ephesus, and of the council of Chalcedon, should be observed for laws; and that their decrees, as to matters of faith and doctrine, should be esteemed even as the holy scriptures.

After Justinian, the authority of canons made in general or provincial councils, and of the writings of the fathers, still prevailed; and the decision of ecclesiastical controversies, which could not be drawn from the councils and the fathers, was sought for from the Roman pontiffs, who want answers to those that consulted them, in like manner as the Roman emperors; and their determinations were called rescripts and decretal epistles, and obtained the force of laws.

More particularly, of the canon law there are two principal parts, the decrees and the decretals.

The Decrees are ecclesiastical constitutions, made by the pope and cardinals, at no man's suit. These were first collected by Ivo, in the year 1114. And afterwards polished and perfected by Gratian, a monk of Bononia, in the year 1149.

The Decretals are canonical epistles written by the popes alone, or by the pope and cardinals, at the instance or suit of some one or more, for the ordering and determining of some matter in controversy; and have the authority of a law in themselves.

Of the Decretals there are three volumes. The first collected by order of Gregory the ninth, about the year 1231. The second by Boniface the eighth, about the year 1298. The third made by pope Clement the fifth, and from him called the Clementines, and published by him about the year 1308.

To these may be added the Extravagants of John the twenty second, and of some other bishops of Rome, whose authors or collectors are not known, and are as novel constitutions unto the rest.

So that the popes did the same in the church, which Justinian did in the empire; they took order to have Gratian's decrees published in the manner of the Pandect; the decretal epistles, like as the Code; the extravagants, in the nature of Justinian's Novels; and that nothing might be wanting, Paul the fourth ordered an institute of the canon law to be written by John Lancellot, which was added to the body of the canon law, printed at Rome under Gregory the thirteenth.

There were also as many commentators on the canon, as on the civil law.

And thus both the civil and the canon laws became in some considerable degree received throughout all christendom; affording mutual help and ornament to each other.

And the rule in interpreting them was this: If a case happened, which was either not at all determined in the civil law, or not expressly, but doubtfully and obscurely, and the same was plainly and clearly delivered in the canon law: the decision thereof was taken from the canon law: and on the contrary, where in the canon law there was no direction, or the same was ambiguously or obscurely expressed, the decision thereof was taken from the civil law: and if in any case the civil and canon laws did interfere, and were contrary to each other, the civil law was to be observed in the civil law courts, and the canon law in the canon law courts; the civil law within the emperor's dominions, and the canon law within the pope's dominions. And in the courts of civil law, where a matter of canon law cognizance came in question, the same was there determined according to the rules of the canon law; and in the courts of canon law, where a matter of civil law cognizance came in question, the same was determined according to the rules of the civil law.

And particularly, that the canon law in many instances was received here in England, appeareth clearly from hence; namely, for that very many of the decretal epistles of the popes are directed hither, upon controversies arising in this nation.

Besides the foreign canon law, we have our legatine and provincial constitutions.

The legatine constitutions were made and published within this realm in the times of Otho, legate of Gregory the ninth: and of Othobon (afterwards pope Adrian the fifth), who was legate here to Clement the fourth. And these are illustrated by the learned comment of John de Athon.

These legatine constitutions did extend equally to both provinces, having been made in national synods or councils, held here by the respective legates.

The provincial constitutions were made in convocation in the times of the several Archbishops of Canterbury, from Stephen Langton to Henry Chichely; containing the constitutions of those two archbishops, and of these several archbishops intermediate, to wit, Richard Wethershed, Edmund of Abingdon, Boniface, John Peccham, Robert Winchelsey, Walter Reynold, Simon Mepham, John Stratford, Simon Islepe, Simon Langham, Simon of Sudbury, and Thomas Arundel. These were collected and adorned with the learned gloss of William Lindwood, official of the court of Canterbury, and afterwards bishop of St David's in the reign of king Henry the fifth. Which constitutions, although made only for the province of Canterbury, yet were received also by the province of York in convocation, in the year 1463.

There were other constitutions of divers prelates, both before and after; but these which have been mentioned, having been introduced to public notice by the two learned canonists above-named, have been principally regarded.

### **[The Civil Law.](#)**

IN former times, (says Dr. W. Strahan), when the Civil Law was more universally known and studied here in England than it is at present, the judges and professors of the common law had frequent recourse to it in cases where the common law was either totally silent or defective. Thus, we see, in the most ancient books of the common law, as Bracton, Thornton, and Fleta, that the authors thereof have transcribed, one after another, in many places, the very words of Justinian's institutes. And sometimes the judges upon the bench, in delivering their opinions, have quoted the rules of the civil law as the foundation of their opinions; which Mr. Selden, in his dissertation on Fleta, has clearly demonstrated from the annals of those times. So that the sages of the law in those days were sensible of the good use that might be made of the reason of the civil law, in aid and subserviency to the common law of the land, as other nations make use of it at this day.

And besides this general advantage that is to be reaped from the study of the civil law, we are not to look upon it altogether as a foreign commodity with respect to this island; some of the particular laws thereof having been enacted for deciding controversies which arose here in England, and bearing date from this country. The greatest part of this island was governed wholly by the civil law for the space of about three hundred and sixty years; to wit, from the reign of the emperor Claudius, to that of Honorius; during which time some of the most eminent among the Roman lawyers, as Papinian, Paulus, and Ulpian, whose opinions and decisions are collected in the body of the civil law, sat in the seat of judgment here in England, and distributed justice to the inhabitants. But after the declension of the Roman empire, the Saxon, Danish, and Norman customs took place in the island, according as the said nations became masters of us, every one being fond of introducing their own customs.

Having elsewhere mentioned the several courts where the civil law is allowed to be not only of use, but of force and authority here in England, by virtue of the sanction which it has, not from the Roman emperors, the first authors thereof, but from our own kings, who have since received it as law in certain matters; I must beg leave to consider how far the reason and equity thereof may be of service in other courts where it has not the force and authority of law. And I cannot but think that in all courts of equity, where the rigour of the common law is to be mitigated by the rules of equity, the knowledge of the civil law must be of great service. For, as I have already observed, it is there, and no where else, that we have the fullest and most perfect collection of the general rules of natural reason and equity, applied to all the various transactions and intercourses between man and man. If therefore one were to judge what is just and equitable in a cause depending between parties, would it not be a great help towards forming a right judgment therein, to enquire into the general rules of equity touching the said matter, which have been laid down and established by the most eminent lawyers that ever lived in any age, and to see how they have applied them in the like cases? Can it be imagined, that the reasonings of those great men upon cases of the like nature, will not give great light, and contribute very much towards forming an equitable decision in matters which are to be determined upon the principles of equity, and not according to the rigour of the law. How far therefore these rules of equity, which are collected in the body of the civil law, may be useful

in the High Court of Chancery, whose proceedings are according to equity, is what I humbly submit to the great wisdom and experience of the learned judges, and others who are best acquainted with the practice of those Courts.

And if this knowledge of the rules of reason and equity can be of service in the Inferior Courts of Equity, it cannot be less useful and necessary in the Supreme Court of Equity of the kingdom, which is that of the lords assembled in parliament. It is to that high tribunal that the subjects have recourse, in order to obtain an equitable redress of the grievances which they pretend to have had done them by the Inferior Courts. And the lords who compose that august assembly, and who are the supreme judges of the property of the subject, cannot be supposed, by reason of their high rank and quality, and their frequent avocations upon account of the weightier matters of government to apply themselves to that minute study of the law which is expected from other judges. And therefore seeing they have frequent occasions to act in a judicial capacity, it is the more necessary that they should be acquainted, at least with the general rules of reason and equity, which may help to guide them in the judgments which they give in matters of private property that come before them.

And if we consider the said body in their legislative capacity, as having under their direction the arduous matters of state, and especially such as regard the intercourse between us and other countries; the knowledge of the law of nations, which is built upon the civil law, is absolutely necessary in deliberations of this kind, that no resolutions may be taken in such matters but what are agreeable to the principles of the law of all nations. And it was upon this account, that, according to the ancient custom and usage of parliament, the Masters of Chancery, who formerly were civilians, were summoned, with the judges of the realm, to give their assistance and attendance in the Upper House of Parliament. For as the judges of the realm were to give their counsel and advice, when required, in matters which depended on the laws of the land; so the Masters of Chancery, who were skilled in the civil law, and the law of nations, were often consulted in matters which depended on those laws.

There is likewise another court, where I humbly conceive that the knowledge of the civil law may be of service for determining matters that come before it; and that is, the King's Privy Council; which is a court of justice in some respects, as it is in others a council with which his Majesty is graciously pleased to advise and consult in matters relating to the public. It is a court of justice, wherein his Majesty is pleased finally to determine some matters of private property; as particularly, all matters of prizes taken from an enemy in time of war; in which the appeal lies from the High Court of Admiralty to the king in council. And these causes are to be judged by no other law but the civil and maritime law. The Privy Council is likewise a court of justice for the final determination of all appeals that come from the English plantations in America, from the isles of Jersey and Guernsey, and other places. In all which causes the rules of equity collected in the body of the civil law, must be of service to judge of the equity of the sentences which are complained of; but more especially in the causes which come from the isles of Jersey and Guernsey, where the proceedings in their courts of judicature have a great conformity with the civil law. And the customs of Normandy, which are the law by which those islands are governed, are not only illustrated and explained by the civil law, but many times

the aid of the civil law is there invoked as a rule for deciding cases which are not expressly regulated by their own customs, as appears from the commentaries of Rouille, Terrien, and others, on the said customs.

Having seen in what cases the civil law may be useful, if not necessary, for determining some matters that come before the Privy Council as a court of justice; I must beg leave to consider how far it may be useful in the other matters that come under the deliberation of that august assembly, as a council to his Majesty for the affairs of state. It is by their counsel and advice that his Majesty steers the helm of the government. It is there that all treaties of peace and commerce with foreign states and potentates are examined and considered. As to what regards the internal policy of the state, for maintaining peace and quiet in society, for procuring plenty of all things necessary to human life, for encouraging manufactures within ourselves, and promoting a beneficial trade with our neighbours; although all these things depend in a great measure on the frame and constitution of our own government, on the soil and climate of the country on its situation for trade, and on the natural temper and disposition of the inhabitants; yet in order to improve these to the best advantage, I cannot but think that it may be of service to know what laws the Romans, the greatest and most flourishing commonwealth that ever was, thought fit to enact for promoting trade and manufactures within themselves, and for the government of their colonies in foreign parts, to preserve them in a due subjection, and to make them useful and subservient to the seat of the empire from which they derived their origin, and to which they owed their protection; all which laws are collected in the body of the civil law, and may be usefully applied by us on many occasions.

But as to what concerns the outward policy of the state, that is, the intercourse which it must have with other states and princes, I humbly conceive that the knowledge of the civil law must be of singular use in all transactions of that kind. For the civil law being in so great esteem and veneration among all other nations, that they make it the rule and standard of equity in all cases which are not expressly provided for by their own particular laws and customs, what more effectual arguments can be used to obtain justice from them in an amicable way, than those which are founded on the principles and maxims of the civil law? It is arguing with them upon their own principles, from maxims of their own law, and the law of all nations, which is the most effectual way to convince them by reason. And it was in consideration of this, that our ancestors, in their great wisdom, thought proper to employ generally in all negotiations with foreign courts, and in treaties of peace and commerce, persons who were well skilled in the civil law, and law of nations. And although it was necessary on some occasions, and more particularly at solemn congresses for treating of peace, for the greater lustre and splendour of the embassy, to employ persons of the first rank and quality; yet, to ease them of the great weight of affairs, they were always accompanied by some person of an inferior rank, who being versed in the study of the civil law, and law of nations, might be aiding and assisting in the conferences which were to be held for settling and adjusting the respective interests of the several princes and states concerned. And this we see is the constant practice of all other nations at this day, who in their embassies for treaties of peace employ always at least one person who has been bred to the law; although this is the less necessary in foreign countries,

where all the nobility in their studies at the university go through a regular course of the study of the civil law, and law of nations; by which means they lay such a foundation, as to be able afterwards from the principles thereof to assert and defend the interests of their country, whenever their prince is pleased to employ them in affairs of that kind.

In matters of intercourse between one nation and another, we have no other law to go by but the law of nations. And this law of nations is chiefly grounded on the rules and maxims of equity which are laid down in the civil law, and which have been received by most nations as the rules of justice between one nation and another. So that to understand the law of nations thoroughly, and to be able to comprehend the reasoning of the authors who treat thereof, it is absolutely necessary to have some knowledge of the civil law, as one may easily perceive by looking into Grotius, Puffendorf, and other authors who have written on that subject.

Among other advantages which may be reaped from the study of the civil law, I must not omit to take notice how serviceable it may be in the government of the English plantations. For if we consider them with respect to the trade and commerce which they drive in Negroes, the civil law furnishes them with an ample detail of rules for regulating that commerce, both as to the buying and selling of slaves, as a merchandise, the property which their masters have in them, and the redress which the slaves ought to have in case of any cruel or barbarous usage from their masters. If we view the said colonies with regard to their own government within themselves; the civil law supplies us with many precedents of excellent laws made by the Roman emperors, for securing the inhabitants of their colonies against the oppressions and extortions of their governors. If we consider the said colonies with respect to their settlements, and the intercourses which they are obliged to have with the neighbouring nations, it is by the principles of the civil law, and the law of nations, that they must assert and maintain their rights and privileges.

And I must observe here in relation to the English colonies upon the continent of America, that there is a very great affinity between them and the colonies of the Spaniards, and other nations, who have made settlements among the Indians in those parts. For the grants made by our kings of tracts of land in that country, for the planting of colonies, and making settlements therein, appear to have been made in imitation of the grants made by the kings of Spain to the proprietors of lands in the Spanish colonies, upon the very same conditions, and in consideration of the same services to be performed by the grantees. So that the government of the Spanish colonies, and the rights of the proprietors of lands therein, depending chiefly on the rules of the civil and feudal laws; as may be seen by the learned treatise of Solorzanus, *De Indiarum Jure*, the knowledge of the said laws must be of service likewise for determining any controversies that may arise touching the duties, or forfeitures, of the proprietors of lands in our English colonies.

I have made these few remarks, only to shew in what particulars the civil law is, and may be of use here in England, and how we may reap the same advantages from it which other nations do, without any danger to our own municipal laws. Our ancestors were so sensible of the great importance thereof, both in private and public affairs, that, besides the public professors

established in the universities for teaching this science, and who have salaries allotted them by the beneficence of our princes, many of the private founders of Colleges have in their endowments set apart particular fellowships, as an encouragement to persons to study it.

### **ON THE REFORMATION OF JURISPRUDENCE.**

THE Deity and his will are the sole original sources of just authority, legislation, and government. From these are derived all legitimate subordinations among men; by these, they continue to subsist, and into these they must be ultimately resolved.

Divine law, revealed, and natural, written and unwritten, has enjoined it upon kings and governors, both ecclesiastical and civil, as one of their primary duties, not only to improve their own talents and capacities to their utmost capability, but to extend the blessings of profound and varied instruction through all classes of the community. And this, upon the assurance that useful knowledge would be both refined and augmented in exact proportion to the number of its true and sedulous students. Hence the legitimate monarchs and directors of nations have not only endeavoured to regulate the institutions of church and state in such a manner that their respective officers may receive fresh accessions of individual and social intelligence, but they have also provided universities, colleges, and schools, wherein each succeeding generation may progressively take advantage of the experience accumulated by their predecessors. And this, in the descending scale of age and rank, through all the gradations of society.

We say, the descending scale of age; for, politically considered, every man is entitled to precedence according to priority of birth and seniority of years. The elder members of the Commonwealth, who came into the world earlier, possess a relative and comparative priority over their juniors, who came into the world later. And thus, if we consider the races of men according to their respective genera and species, the parent stocks must necessarily rank higher than the derivative offspring; and the elder branches of kindred sway the younger. By this doctrine, the whole system of lenial and collateral descents is governed, from the royal family downwards, as well as the whole system of national education, whose end is to provide the commonwealth with loyal and serviceable subjects.

The case, however, is reversed, if we consider man independent of his relations to society; as a member to a body, or a part to a whole; for when thus beheld, as a segregate and abstract individual, we find that his oldest years are in fact his youngest; and *vice versa*. It was this reflection, which tempted Wordsworth to say, "the boy is father to the man;" and this reflection must enter largely into every system of individual education, where the formation of sound character, the great end of all education, is philosophically attended to.

The religious and philosophical governors of church and state have therefore been especially careful to institute universities and colleges, beneath ecclesiastical superintendance, in the neighbourhood of capital cities; well knowing that such institutions were necessary to provide proper officers for the various service of the commonwealth; and to give consistency and efficacy to all the scholastic establishments scattered over the face of the country.

It would be altogether foreign to our purpose on the present occasion, to occupy your attention with a history of the various collegiate bodies established over Europe; a detail of the comparative merits or demerits of their internal economy. Suffice it to say, that the most venerable and serviceable of these institutions have usually been placed under the superintendance of illustrious divines, who always endeavoured (till of late years) to connect religion with all secular sciences and polite accomplishments, to reduce the whole mass of moral, intellectual, and sentimental accomplishments into one harmonious system, and to make them all subservient to the cause of loyalty and patriotic usefulness. Such colleges were fairly termed universities, for they embraced the universal cyclopædia of sacred and profane literature, ancient and modern. In these, a youth might enjoy the privilege of accomplishing himself in all things that could become a scholar and a gentlemen. He might traverse the broad firmament of science, where so numberless are the stars that to the eye "they make all but one galaxy;" he might fathom all the depths and shoals of philosophy, and catch bright glimpses of her heaps of pearl, inestimable jems, unvalued jewels; and he might accumulate sympathies, glorious and full of gratulation, from all the noblest spirits that ever visited the earth.

Many of the modern colleges, however, have wilfully and widely receded from the ancient pattern. Several of them have thus forfeited their right to the name "University," however they may choose to usurp it. Those, certainly, can have no just claim to it, which reject religion from the course of their discipline; that forget to instruct their pupils in those mighty principles of eternal and immutable morality which sway the majestic universe of angels and men, and knit into one loyal commonwealth all serviceable spirits dispersed through the nature of things. Neither can those lay claim to it, which omit a deep and capacious study of natural and national jurisprudence,—that study which so gloriously unfolds and aggrandises the human mind, and prepares us perpetually to ameliorate the laws of our country: that study, which is so infamously neglected in Great Britain, and for want of which, our island is fast becoming a political Babel.

Believe us, it is no small loss, to lose our mental congeniality with the devotion of the mighty dead, and the loyalty of our renowned ancestry. If we lose it, we lose the glory of our name and our birthright; we lose that noble sympathy for departed greatness which forms the "soul's calm sunshine;" we lose the key which unlocks all mysteries, and enables a man to become "not one, but all mankind's epitome."

But so it is; *Tempora mutantur et nos mutamur in illis*. From the bosom of antique devotion and patriotism (*heu pietas heu prisca fides*) has sprung up in modern times a mighty schism of thorough bred and absolute secularians; who, casting aside whatever was deemed pure and transcendent in the innate philosophy of men, and bursting all the ties that bound our ancestry to the intelligible universe of invisibles, have confined their eager and impetuous energies to physical relations alone; and thus having dethroned the great God of our faith, exalted in his stead the idols of Mammon and Materialism. Alas! they have lost sight of that prime truth, which pervades all religion and philosophy, that the things which are seen are temporal, while the things which are not seen are eternal, (*invisibilia non decipiunt, visibilia plenissima falsitatis*). And consequently, they have fallen away into a temporary apostacy from the diviner

principles of our nature, for nothing separates men so widely from the great community of free minds as the sacrifice of moral cultivation to secular passion.

One of the first who contemplated the full extent and perilousness of this portentous schism was our illustrious statesman Burke. He was not only the best political philosopher of his day, but the terrible sagacity which informs the poet's heart was all his own. He possessed the vision, and the faculty divine, in a larger measure than any British orator. Like some of the renowned lawgivers of antiquity, Burke was not only a legislator but a prophet. The profound verity of his arguments was long concealed beneath the dazzling environment of his eloquence. The intensity of conviction excited by the former was too long eclipsed by the intensity of admiration enkindled by the latter. But posterity has had more leisure to examine, and more experience to prove; and the celebrated passage, in which Burke gives his view of that revolutionary schism of which we speak, has often been repeated with veneration by his patriotic followers.

The age of chivalry, (says Burke) is gone; that of sophists, economists, and calculators has commenced; and the glory of Europe is extinguished for ever. Never, never more shall we behold that generous loyalty to rank and sex, that proud submission, that dignified obedience, that subordination of the heart, which kept alive, even in servitude itself, the spirit of exalted freedom. The unbought grace of life,—the cheap defence of nations,—the nurse of manly sentiment and heroic enterprize, is gone. It is gone:—that sensibility of principle,—that chastity of honour, which felt a stain like a wound; which inspired courage while it mitigated ferocity; which enobled whatever it touched, and under which, vice itself lost half its evil, by losing all its grossness.

But now, all is to be changed. All the pleasing illusions which made power gentle, and obedience liberal; which harmonized the different shades of life; and which, by a bland assimilation, incorporated into politics the sentiments which beautify and soften private society, are to be dissolved by this new conquering empire of light and reason. All the decent drapery of life is to be rudely torn off. All the superadded ideas furnished from the wardrobe of a moral imagination, which the heart owns and the understanding ratifies, as necessary to cover the defects of our naked, shivering nature, and to raise it to dignity in our own estimation, are to be exploded as a ridiculous, absurd, and antiquated fashion.

In this essay all that can be expected of us is to define the proper sphere of Jurisprudence, to show its connection with other sciences; and to trace its applications to the present conditions of society.

We have said that Divinity and Theological Philosophy are the parents of Jurisprudence; and if this intimate relation be lost sight of, both sciences will suffer detriment. Divinity itself is nothing else than Divine Jurisprudence, or the Law of God, as displayed in the government and redemption of souls. Hence, the Old Testament is denominated the law of faith and works; and the New, the law of faith and love. The one especially applying itself to the moral and intellectual faculties that occupy the spaces of philosophic research, and the other, to all the

affections of the heart, the sentiments and feelings, that have their outgoings in universal benevolence.

Most of our readers are probably aware that one of the eldest titles of the divine mind or intelligence was "the Just." The attribute of justice and right law, has in both the covenants been expressly given to Jehovah and our Saviour. In the classics, no epithet is more frequently ascribed to Jove, than that of the "just judging;" and thus, most of the male and female divinities, that regulated justice and law, are the immediate sons and daughters of Jupiter.

Hence, we discover the reason why Moses, the legislator of the Jews, is so often represented as a personification and image of the Judge of all the earth. In the ancient world the theocratic legislators of the nations were supposed to be paternal representatives, and vicegerents of the unseen Deity of Justice. In many instances, their names appear to be alike significant of that eternal lawgiver, whose prototypes they were, and whose way they were destined to make ready. Justice was with them a living and inspiring presence, an informing divinity, who sat beside them in the judgment seat, and noted their words in the book of fate. All its regulations were full of the vital energies of truth, and from it proceeded, in dazzling and interminable succession, the long series of beautiful dependences, which are called the laws of philosophy, and science, and art.

These ancient legislators seem generally to have adopted the practice of associating the transcendental ranges of jurisprudence with the system of initiations, and their symbolic mysteries. That this was the case in the Mosaic institutions, we have the testimony of universal tradition: the New Testament itself puts the question beyond a doubt. Throughout the whole law, there existed a spiritual and intellectual signification, of which the literal description was symbolic and emblematical. The discovery of this spiritual and ideal meaning, was the chief employment of the schools of the prophets, and gave rise to the initiatory rites of the Cabalistic Essenes and Rabins, with which the oriental and western initiations so closely correspond.

The sublime kind of jurisprudence which was involved in the mysteries of initiations was a selection of those principles of theologic and mythologic science, which immediately related to the divine origin and lapsed condition of souls, and the inherent elements of moral obligation in that degree of liberty of action allowed in this fallen state. Thus the jurisprudence taught in the mysteries, ran parallel with the great scheme of religion: from this it derived all its dignity, and the main part of its interest and utility.

That these great principles of truth are common to the religion and jurisprudence of every ancient nation, may easily be proved by a comparison of the various codes of laws. All alike begin with the manifestation of the divine nature, the genesis or theogony of the various divinities that preside over destiny, the conflict of good and evil spirits, the recovery of souls loyal to the former, and the ruin of those that adhere to the latter. A large portion of this primitive jurisprudence may yet be restored by a careful comparison of the several ancient codes, and that traditional knowledge of the mysteries which has survived the revolutions of society.

Some curious instances of the extent of signification, which was once vouchsafed to jurisprudence, yet remain.

Thus, says Philo, in his Commentary on Genesis, Moses's law beginneth with the creation of the world, the world harmonizing with the law, and the law with the world. A man of the law being, therefore a cosmopolite, or citizen of the world, ordereth his actions according to the directive will of nature, governing the universe of things. Thus, says Eusebius, the ancients supposed the universe to be one great city, placed under the authority of the divine law, which was the common property of gods, archangels, angels, demons, genii, heroes, and men and animals. Who is not elevated, says Cicero, and possessed with reverence and fear, when God, and the genii about him and above him, inspectors and rectors, are in his thoughts? And on the other side, who contemneth not avarice, and divesteth himself of sordid cares, when he encompasseth himself with the world as his city and country? We have not enclosed ourselves, says Seneca, with the walls of one city, but with a generous greatness of mind, have enlarged ourselves to the whole world's commerce, to give more room for the exercise of virtue.

By degrees, however, the term Jurisprudence has assumed a more definite signification; and if we were now asked for a definition, we should call it "the science of the divine law, as applied to the ecclesiastical or canon law, the law of nature and nations, politically considered, and the civil and criminal laws of particular states." It will thus appear to bear directly on all moral metaphysics, as well as on political economy; and it will frequently touch on the physical sciences so far as they are connected with legislative institutions. And, thus the study of jurisprudence gives us possession of the legitimate key which unlocks the mysteries of divine and human discipline.

We cannot be surprised that so exalted and so extensive a science should have received the eulogies of the most eminent men of all ages. The science of Jurisprudence (says Burke) is the pride of human intellect, which with all its defects, redundancies, and errors, is the collected reason of ages, combining the principle of original justice with the infinite variety of human concerns. There is not, in my opinion, (says Sir James Mackintosh) in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence, —where we may contemplate the cautious and unwearied exertions of a succession of wise men, through a long course of ages withdrawing every case as it arises from the dangerous power of discretion, and subjecting it to inflexible rules, extending the dominion of justice and reason, and gradually contracting, within the narrowest possible limits, the domain of brutal force and arbitrary will.

In this essay, we can only just allude to the names of the authors who have best illustrated the various branches of jurisprudence, to whose works we refer the student. The divine law contained in the scripture, that primary source of all jurisprudence, confirmed by the natural conscience, reason, and affection of men, has been very largely unfolded by many writers. It has engaged the traditional and cabalistic lore of the rabbinical doctors, the philosophic subtlety of Philo, and the historical diligence of Josephus. The Christian fathers, especially Origen, Augustine, Gregory, Chrysostom, and Dionysius, have lent it many valuable illustrations. Nor

are the Gnostical and Platonic writers, whose doctrines are so widely scattered over the Eastern world, devoid of useful exposition. In modern times, many excellent commentators have endeavoured to collect the scattered lights of Biblical interpretation, and to reconcile the figurative language of scripture with the concurrent mythology and political philosophy of the primitive legislators. Not to mention the professed commentators, whose works may be found in Horne's critical introduction to the study of the scriptures, and the numerous classed catalogues, it may suffice to cite the names of Menochius, Selden, Spencer, Leydecker, Cunæus, Conringius, Hottinger, Lipsius, Godwin, Michaelis, Pastoret, and Lowman.

But every year enables us to extend a more enlarged and philosophic system of interpretation, with regard to the law and policy of the Hebrews. We are learning to expand and diversify the symbolic terms and metaphors in which they are conveyed, in order to reconcile them with the new discoveries of ancient institutions in general. And we believe the time is not far distant, when, escaping from the literal trammels of scholastic expositors, and the licentious neologism of conceited sceptics, we shall behold the majestic lineaments of divine jurisprudence evolved from the pages of revelation, and reduced to a beautiful harmony with the scattered elements of truth.

We cannot leave this department of our subject, without noticing a few of the illustrious men who have striven to blend the sacred laws of the bible and the fathers with the laws of ecclesiastical and national policy and civic economy in general. Such were Bossuet, Menochius, Buddeus, Burnet, Baxter, Hall, Whiston, Croxal, Malby, Grave, Bates, Bathurst, Milton, Lawson, Bathurst and Yates.

The first applications of divine jurisprudence are to be found in the government of the church. In this, consists the chief value of the ecclesiastical or canon law, that it forms the connecting medium between sacred and secular legislation, and affords us much useful instruction relative to the secret history of political revolutions. There are many distinguished writers on the ecclesiastical laws, as Budeus, Fleury, Hooker, Disney, Gibson, Ayliffe, Ecton, and Burn. But the Ecclesiastical laws have been shamefully neglected in Great Britain, to which we may partly impute the disorders in church policy and popular morality. The critical positions in which the church has been placed, have often revived this study, and the enquiries at present set afloat will probably awaken public attention.

The next application of jurisprudence, is to the law of nature and nations. This forms the deep and inexhaustible lake and reservoir from which all the streams of law spring forth and divide themselves. This science has always been a special favourite among free peoples. The oriental and classical worlds have rivalled one another in composing philosophical treatises on this majestic subject. Almost all the great writers of antiquity have more or less illustrated the law of nature and nations. It flourished in all the periods of light and liberty, but its very existence became problematical during the long eclipse of the dark ages.

At length, however, the genius of divine religion re-appeared among men, and with her, as her constant associate, the genius of jurisprudence. The causes of this sudden revival are too

profound and complex to be even touched upon in this brief sketch. But so it was. The law of nature and nations arose with a glorious resurrection, and the rights of war and peace were known and read of all men.

The reduction of the law of nations to a system (says Sir James Mackintosh, in his celebrated discourse on the Law of Nature and Nations), was reserved for Grotius. It was by the advice of Lord Bacon and Peiresc, that he undertook this arduous task. He produced a work which we now indeed justly deem imperfect, but which is perhaps the most complete that the world has yet owned, in so early a stage of the progress of any science, to the genius and learning of one man.

The fervent interest that was thus awakened for the law of nature and nations, has never been allowed to languish. For many years past, Italy, Germany, France, and Great Britain, have been prolific of talented men who have emulously devoted their talents to the completion of this ennobling science. The terrible revolutions of empires, and the immense accumulations of art, have alike adorned it with the most brilliant illustrations, and wherever it borrows the voice of patriotism or eloquence, all men confess its charms. Some of the principal authors who have best advanced this study, are Grotius, Cumberland, Puffendorf, Wolfius, Vattel, Bodin, More, Harington, Sidney, Barclay, Clarendon, Burlamaqui, Falangieri, Bielfield, Real, Bentham, Constant, Savigny, and Lerminier.

The next application of jurisprudence, is extended to the civil and municipal laws of individual states. In this department also, the accumulations of literary research are vast and diversified. The laws and policy of the ancient Asiatic nations, have received many beautiful illustrations from the translations of oriental scholars. Those of Greece and Rome are most elaborately laid open to the legal student, and their curious and intricate combinations with the Gothic and the Celtic jurisprudence, and the laws of the barbarians generally, are matters of familiar inquiry. What a magnificent field of research is thus thrown open to jurisprudence! This illimitable science teaches us to become cosmopolites of the universe, and naturalizes us in every empire and every principality, by a kind of intellectual ubiquity. We seem to take possession of all ages and all nations. Syria and Egypt, Persia, India and China, Greece, and her matchless islands, Rome, Germany, Gaul, and the peninsula, are equally tributary to our science; and when we return from our long and triumphant march through all foreign kingdoms, we return laden with all the spoils of experience, and devote them to the glory and illumination of our native Britain. The authors who have illustrated these topics are so well known that it is superfluous to cite them. It is enough to mention the names of Gravina, Terrasson, Fernier, Halifax, Bever, Taylor, Domat, Ayliffe, Wood, Pastoret, Barret, Heeren, Ward, Montesquieu, La Croix, De Lolme, Pezron, Jones, Dumont, Sismondi, and Flintoff.

Such is the dignity and vastness of the high science of jurisprudence. We have endeavoured, as amply as the present occasion permits, to display its moral transcendency and the extensiveness of its historical relations. And if what we have advanced be true, none can fail to perceive how necessarily the study of jurisprudence must precede the profitable cultivation of national laws and political constitutions. On the new and fascinating speculations of political

economy it also bears with peculiar force of adaptation; and, in fact, there is scarcely a branch of human philosophy or art to which it does not lend illustration, and from which it does not receive embellishment.

Men of the soundest judgments, men of the most gifted genius, men to whom we owe the glories of our church and state and all the blessings of our liberty, have alike consented to extol this solemn and sublime, this pure and beautiful science. They have left us their oracular sentence, that "in proportion as the science of law flourishes in a country, will that country be virtuous, free, and happy;" and their words have been verified by the experience of ages. Wherever we see men building on the sure foundations of divine and moral jurisprudence, we may predict with certainty that the legislative policy of such men will be honourable, consistent, and prosperous; and wherever we see men despising the profound and elaborate processes of jurisprudence, from which all wisdom is extracted, and rushing with reckless and impious haste on the post of political power, their schemes which commence in folly, will assuredly end in confusion.

Such is the irreversible rule, confirmed by a thousand examples, with which you are all familiar. The deep and devoted study of jurisprudence, is the sole legitimate pathway to political honours. It forms that universal precedent by which all political documents must be attested and examined. It is the only authentic passport which can give us undisputed licence to range through the ample territories of civic and social chrestomathics.

If painful experience had not convinced us of the fact, it would appear well nigh impossible, that in the present advanced period of human history, christian patriots and sound philosophic jurists should be so very few and so much sequestered, and that too in a nation which undoubtedly contains more pious and learned men than any other. The cause of this strange anomaly must be sought either in the want of that moral courage which obeys the dictates of conscience with heroic determination, or a want of intellectual power to discern the proper methods of blending the different relations of truth.

In our parliament, however, other causes of this alarming deficiency are easily discoverable. The notorious popular error which sometimes impregnates the atmosphere of St. Stephen's, that a member's individual character as a christian gentleman may be sacrificed with impunity at the altar of political expediency. The preposterous absurdity of cashiering men, who by long processes of studious research and philosophic experience have fitted themselves for the leading offices of state, and of introducing a perpetual alternation of unprincipled time-servers, into the very penetralia of legislation.

Jurisprudence is a vast and majestic science, having its roots deep-buried in theology, and interlacing its branches with all metaphysical and physical learning. How arduous and complicated must that science be which undertakes to regulate the economy of mighty nations, will be felt by those who have been called on to apply its doctrines to the common offices of society. Long years of laborious investigation are required to initiate us in its solemn mysteries; how then is it possible for the unfledged wittlings of spurious and upstart popularity to touch its

delicate machinery without impairing it? Alas! the world is conducted with so little of practical philosophy, that as little would inevitably bankrupt any private establishment whatsoever.

One of the most astounding proofs of the desperate ignorance of jurisprudence among many of our legislators, will be manifest to any one who considers the question of the union between religion and law, which they are now seeking to dissolve. Every lawgiver whose code has established the foundations of a state,—every author whose writings have enlarged its prosperity,—every patriot whose name is remembered with veneration,—have all alike indissolubly connected religion with the law, which depends on it. They felt that religion and morality formed the very elements of national existence, and the opposite vices, the very elements of national destruction. They knew that "righteousness alone exalteth a nation, and sin is the disgrace of any people."

Now the main error by which our parliament has of late years deviated into evil, results from the utter confusion of this principle of ancient religion and law, of church and state, with certain formal abuses that have gathered round it. We conceive this reckless confounding between the use and abuse of union, between our ecclesiastical and civil constitutions, has already done infinite mischief. It has more than any other cause degraded the Britons, from a church-loving, pious, loyal, and happy people, into a reprobate crowd of radical democrats and agitators. The dignified integrity, the manly plain sense, the Crassa Minerva, the jovial good fellowship of our buried ancestry, are forgotten, and nothing is to be heard but that eager controversy and recrimination which lead to every thing but virtue, or charity, or happiness.

It is, therefore, with peculiar jealousy that we regard the contest which has so long been carried on between that party of venerable and prudent statesmen who would preserve the essential advantages of our political institutions, by modifying their external formalities; and the great majority of those who are called demagogues whose hearts have been seduced, from loyalty and patriotism, who have lost their first love of our envied and unrivalled constitutions, and seek after the idle phantasies of false and ignorant speculators.

Our politicians may believe us when we assert, that there is in the providential government of the world, a golden mean, a just medium, which can never be neglected without injury. This medium lies between the divine element of religion, (for it is the theologic philosophy of jurisprudence) and the infinite variety of secular interests. If, when the religious principle is exalted above all the humanites of philosophy, it degenerates into enthusiasm or fanaticism; on the other hand, when degraded to too low a station, it loses its vital and consolatory efficacy, till seeking to recover its just ascendancy, it throws mankind into a state of confusion terrible to anticipate.

We have now a little breathing-time in our political voyage of discovery, to consider our latitude and longitude, and take observations in our whereabouts. A pretty whereabouts it is; a kind of half-way station between constitution and revolution. Change alone remains unchanged; disorder is regularly organized; nothing is fixed but mutability; old establishments half down, new ones half up; we seem to have realized the perfections of Milton's limbo.

Our learned professors of political alchemy have cast our gold into the crucible of decomposition; and we are waiting with impatience for the solution of the grand problem. Shall we find the glittering ore restored from the furnace with rich and gorgeous increase, or will the residuum prove nothing at all but a mass of sulphur and cinders? Non constat,—time will show.

As political writers are at present eager to discover some general yet practicable system of political economy, we shall take the liberty of presenting our views on the subject. The plan we are about to propose will be considered too simple or too sweeping to be sound. Like all great and important truths, it is simple, but it will be found to agree with the established principle of finance, it will furnish the kingdom with one plain intelligible and equitable system of taxation, and it will receive attestation from a comparison of innumerable details found in the treatises on the revenue. It will bear equally on all orders of society, and amazingly facilitate our domestic and foreign commerce.

If the extreme simplicity of this plan should not at once condemn it in the eyes of our modern financiers, we could prove its truth by documents in our hands. We could show by a variety of proofs that by thus distributing the weight of taxation in exact proportion to the public means of supporting it, the revenue, so far from declining, would actually increase and flourish. A new spring and energy would thus be given to agricultural, manufacturing, and commercial interests, and, accompanied with the distribution of waste lands, would procure much useful employment for the poor in home industry, naval commerce, and colonial intercourse.

We entertain a strong conviction that a universal ad valorem duty proportionably on all things now liable to ecclesiastical or civil rates, be they tithes, customs, excise duties, or general taxes, would be far preferable to the present modes of impost. Never till this is done, will our tithe laws, our corn laws, and other branches of our financial system work well. A universal ad valorem taxation is the system best confirmed by the authority of the scriptures and the greatest jurisprudential writers. If it were necessary or desirable, we could prove this argument by a great amount of statistical facts. The time is not very distant, when a great reform of our revenue laws will be imperatively demanded, and when this proposition will be acted on to a degree which some of our cotemporaries scarcely imagine possible.

Another branch of our legal reform, will consist in the introduction of an improved industrial or philergic system. Industry houses must be substituted in lieu of the present system of workhouses or poor houses. In these, the work test, as it is called, will be established on the Biblical rule, "if any man refuses to work, neither shall he eat." But the present workhouse test, namely, that able-bodied men shall receive the wages of idleness, provided they choose to immure themselves in union workhouses, is fraught with mischief. This is a truth of the utmost importance, which has lately been announced in the ablest of European journals by a member of parliament. I think (says he) in a certain parish it was suspected that a class of men was trying to live idly on the parish funds. The simple remedy of a well conducted stone yard, on the principle of fair work and moderate pay, reduced the number of claimants from 800 to 20 within a very short period. Even under the old law, though in some parishes the badly managed gravel pit became a real nuisance from want of plan and system, many instances may be

quoted of a successful application of the work test, by a few able and energetic individuals. And in the new system, an assistant commissioner has discovered, that a work test may work efficiently. See *Times*, Dec. 15, 1841.

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### **OPINIONS OF THE PRESS ON CICERO'S POLITICAL WORKS.**

"It has been a heavy reproach to our literature, that we have hitherto had no translation of these two master works of him, who was not less distinguished as the first orator of Rome, than as her most profound of political philosophers. This appears to be the more remarkable, and the less creditable, when we revert to the extraordinary excitement of surprise and exultation, which, as with a shock of moral electricity, broke upon all the scholars and men of education of European connection or sympathies, when the discovery by the illustrious Mai of the greater portion of the long-lost treatise of the Republic was made known. Among the many remarkable occurrence by which this century has been signalized, the partial recovery from a seemingly valueless Vatican palimpsest of this invaluable record of the antique times, was, and will, no doubt, continue to be deemed one of the most remarkable. It would be vain to dispatiate here on the merit and importance long since recorded, and now again universally recognized of this essay, in which the ever-agitated question of the best form of political institutions, is deliberately and deeply treated of, by one whose intellect ranked among the highest of those, by which mankind has at any period been politically influenced, and who was familiar as the air wherein he breathed, with the working of those old republican systems, of which the memory has descended to these far distant ages, to rule us with their enduring prestige. It is but necessary to refer to the mode in which Mr. Barham has acquitted himself in the execution of his delicate task, and this appears highly creditable to his scholarship. His long introductory review of the history of Cicero's Commonwealth, in which considerable extracts are made from the preface of Mai, is in itself a literary paper of no ordinary interest, manifesting much erudite research and criticism, becoming a man of sound dispassionate judgment. In the translation, he has aimed at giving a free but accurate version of the classic text, being as literal as was, in fact, consistent with the common vernacular style of expression. In a word, the spirit and vigour of an original composition are happily infused into this work. And it commends itself, by its consistent intelligent tone on topics, where obscurity would be promptly felt, to the apprehension of its readers."—*Morning Herald*, Jan. 11.

Of this noble text-book of Political and Civil Law, the *Cyclopædia Britannica* says, "This is the most valuable contribution to classical literature which has appeared in modern times."

See also the *Quarterly* and *Edinburgh Reviews*.

