

Jean-Jacques Rousseau

The Social Contract

## **BOOK II**

### **1. THAT SOVEREIGNTY IS INALIENABLE**

THE first and most important deduction from the principles we have so far laid down is that the general will alone can direct the State according to the object for which it was instituted, i.e., the common good: for if the clashing of particular interests made the establishment of societies necessary, the agreement of these very interests made it possible. The common element in these different interests is what forms the social tie; and, were there no point of agreement between them all, no society could exist. It is solely on the basis of this common interest that every society should be governed.

I hold then that Sovereignty, being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented except by himself: the power indeed may be transmitted, but not the will.

In reality, if it is not impossible for a particular will to agree on some point with the general will, it is at least impossible for the agreement to be lasting and constant; for the particular will tends, by its very nature, to partiality, while the general will tends to equality. It is even more impossible to have any guarantee of this agreement; for even if it should always exist, it would be the effect not of art, but of chance. The Sovereign may indeed say: "I now will actually what this man wills, or at least what he says he wills"; but it cannot say: "What he wills tomorrow, I too shall will" because it is absurd for the will to bind itself for the future, nor is it incumbent on any will to consent to anything that is not for the good of the being who wills. If then the people promises simply to obey, by that very act it dissolves itself and loses what makes it a people; the moment a master exists, there is no longer a Sovereign, and from that moment the body politic has ceased to exist.

This does not mean that the commands of the rulers cannot pass for general wills, so long as the Sovereign, being free to oppose them, offers no opposition. In such a case, universal silence is taken to imply the consent of the people. This will be explained later on.

## 2. THAT SOVEREIGNTY IS INDIVISIBLE

SOVEREIGNTY, for the same reason as makes it inalienable, is indivisible; for will either is, or is not, general;<sup>[6]</sup> it is the will either of the body of the people, or only of a part of it. In the first case, the will, when declared, is an act of Sovereignty and constitutes law: in the second, it is merely a particular will, or act of magistracy — at the most a decree.

But our political theorists, unable to divide Sovereignty in principle, divide it according to its object: into force and will; into legislative power and executive power; into rights of taxation, justice and war; into internal administration and power of foreign treaty. Sometimes they confuse all these sections, and sometimes they distinguish them; they turn the Sovereign into a fantastic being composed of several connected pieces: it is as if they were making man of several bodies, one with eyes, one with arms, another with feet, and each with nothing besides. We are told that the jugglers of Japan dismember a child before the eyes of the spectators; then they throw all the members into the air one after another, and the child falls down alive and whole. The conjuring tricks of our political theorists are very like that; they first dismember the Body politic by an illusion worthy of a fair, and then join it together again we know not how.

This error is due to a lack of exact notions concerning the Sovereign authority, and to taking for parts of it what are only emanations from it. Thus, for example, the acts of declaring war and making peace have been regarded as acts of Sovereignty; but this is not the case, as these acts do not constitute law, but merely the application of a law, a particular act which decides how the law applies, as we shall see clearly when the idea attached to the word law has been defined.

If we examined the other divisions in the same manner, we should find that, whenever Sovereignty seems to be divided, there is an illusion: the rights which are taken as being part of Sovereignty are really all subordinate, and always imply supreme wills of which they only sanction the execution.

It would be impossible to estimate the obscurity this lack of exactness has thrown over the decisions of writers who have dealt with political right, when they have used the principles laid down by them to pass judgment on the respective rights of kings and peoples. Every one can see, in Chapters III and IV of the First Book of Grotius, how the learned man and his translator, Barbeyrac, entangle and tie themselves up in their own sophistries, for fear of saying too little or too much of what they think, and so offending the interests they have to conciliate. Grotius, a refugee in France, ill-content with his own country, and desirous of paying his court to Louis XIII, to whom his book is dedicated, spares no pains to rob the peoples of all their rights and invest kings with them by every conceivable artifice. This would also have been much to the taste of Barbeyrac, who

dedicated his translation to George I of England. But unfortunately the expulsion of James II, which he called his "abdication," compelled him to use all reserve, to shuffle and to tergiversate, in order to avoid making William out a usurper. If these two writers had adopted the true principles, all difficulties would have been removed, and they would have been always consistent; but it would have been a sad truth for them to tell, and would have paid court for them to no one save the people. Moreover, truth is no road to fortune, and the people dispenses neither ambassadorships, nor professorships, nor pensions.

### **3. WHETHER THE GENERAL WILL IS FALLIBLE**

IT follows from what has gone before that the general will is always right and tends to the public advantage; but it does not follow that the deliberations of the people are always equally correct. Our will is always for our own good, but we do not always see what that is; the people is never corrupted, but it is often deceived, and on such occasions only does it seem to will what is bad.

There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than a sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another,[7] and the general will remains as the sum of the differences.

If, when the people, being furnished with adequate information, held its deliberations, the citizens had no communication one with another, the grand total of the small differences would always give the general will, and the decision would always be good. But when factions arise, and partial associations are formed at the expense of the great association, the will of each of these associations becomes general in relation to its members, while it remains particular in relation to the State: it may then be said that there are no longer as many votes as there are men, but only as many as there are associations. The differences become less numerous and give a less general result. Lastly, when one of these associations is so great as to prevail over all the rest, the result is no longer a sum of small differences, but a single difference; in this case there is no longer a general will, and the opinion which prevails is purely particular.

It is therefore essential, if the general will is to be able to express itself, that there should be no partial society within the State, and that each citizen should think only his own thoughts:[8] which was indeed the sublime and unique system established by the great Lycurgus. But if there are partial societies, it is best to have as many as possible and to prevent them from being unequal, as was done by Solon, Numa and Servius. These

precautions are the only ones that can guarantee that the general will shall be always enlightened, and that the people shall in no way deceive itself.

#### 4. THE LIMITS OF THE SOVEREIGN POWER

IF the State is a moral person whose life is in the union of its members, and if the most important of its cares is the care for its own preservation, it must have a universal and compelling force, in order to move and dispose each part as may be most advantageous to the whole. As nature gives each man absolute power over all his members, the social compact gives the body politic absolute power over all its members also; and it is this power which, under the direction of the general will, bears, as I have said, the name of Sovereignty.

But, besides the public person, we have to consider the private persons composing it, whose life and liberty are naturally independent of it. We are bound then to distinguish clearly between the respective rights of the citizens and the Sovereign,<sup>[9]</sup> and between the duties the former have to fulfil as subjects, and the natural rights they should enjoy as men.

Each man alienates, I admit, by the social compact, only such part of his powers, goods and liberty as it is important for the community to control; but it must also be granted that the Sovereign is sole judge of what is important.

Every service a citizen can render the State he ought to render as soon as the Sovereign demands it; but the Sovereign, for its part, cannot impose upon its subjects any fetters that are useless to the community, nor can it even wish to do so; for no more by the law of reason than by the law of nature can anything occur without a cause.

The undertakings which bind us to the social body are obligatory only because they are mutual; and their nature is such that in fulfilling them we cannot work for others without working for ourselves. Why is it that the general will is always in the right, and that all continually will the happiness of each one, unless it is because there is not a man who does not think of "each" as meaning him, and consider himself in voting for all? This proves that equality of rights and the idea of justice which such equality creates originate in the preference each man gives to himself, and accordingly in the very nature of man. It proves that the general will, to be really such, must be general in its object as well as its essence; that it must both come from all and apply to all; and that it loses its natural rectitude when it is directed to some particular and determinate object, because in such a case we are judging of something foreign to us, and have no true principle of equity to guide us.

Indeed, as soon as a question of particular fact or right arises on a point not previously regulated by a general convention, the matter

becomes contentious. It is a case in which the individuals concerned are one party, and the public the other, but in which I can see neither the law that ought to be followed nor the judge who ought to give the decision. In such a case, it would be absurd to propose to refer the question to an express decision of the general will, which can be only the conclusion reached by one of the parties and in consequence will be, for the other party, merely an external and particular will, inclined on this occasion to injustice and subject to error. Thus, just as a particular will cannot stand for the general will, the general will, in turn, changes its nature, when its object is particular, and, as general, cannot pronounce on a man or a fact. When, for instance, the people of Athens nominated or displaced its rulers, decreed honours to one, and imposed penalties on another, and, by a multitude of particular decrees, exercised all the functions of government indiscriminately, it had in such cases no longer a general will in the strict sense; it was acting no longer as Sovereign, but as magistrate. This will seem contrary to current views; but I must be given time to expound my own.

It should be seen from the foregoing that what makes the will general is less the number of voters than the common interest uniting them; for, under this system, each necessarily submits to the conditions he imposes on others: and this admirable agreement between interest and justice gives to the common deliberations an equitable character which at once vanishes when any particular question is discussed, in the absence of a common interest to unite and identify the ruling of the judge with that of the party.

From whatever side we approach our principle, we reach the same conclusion, that the social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights. Thus, from the very nature of the compact, every act of Sovereignty, i.e., every authentic act of the general will, binds or favours all the citizens equally; so that the Sovereign recognises only the body of the nation, and draws no distinctions between those of whom it is made up. What, then, strictly speaking, is an act of Sovereignty? It is not a convention between a superior and an inferior, but a convention between the body and each of its members. It is legitimate, because based on the social contract, and equitable, because common to all; useful, because it can have no other object than the general good, and stable, because guaranteed by the public force and the supreme power. So long as the subjects have to submit only to conventions of this sort, they obey no-one but their own will; and to ask how far the respective rights of the Sovereign and the citizens extend, is to ask up to what point the latter can enter into undertakings with themselves, each with all, and all with each.

We can see from this that the sovereign power, absolute, sacred and inviolable as it is, does not and cannot exceed the limits of general conventions, and that every man may dispose at will of such goods and liberty as these conventions leave him; so that the Sovereign never has a right to lay more charges on one subject than on another, because, in that case, the question becomes particular, and ceases to be within its competency.

When these distinctions have once been admitted, it is seen to be so untrue that there is, in the social contract, any real renunciation on the part of the individuals, that the position in which they find themselves as a result of the contract is really preferable to that in which they were before. Instead of a renunciation, they have made an advantageous exchange: instead of an uncertain and precarious way of living they have got one that is better and more secure; instead of natural independence they have got liberty, instead of the power to harm others security for themselves, and instead of their strength, which others might overcome, a right which social union makes invincible. Their very life, which they have devoted to the State, is by it constantly protected; and when they risk it in the State's defence, what more are they doing than giving back what they have received from it? What are they doing that they would not do more often and with greater danger in the state of nature, in which they would inevitably have to fight battles at the peril of their lives in defence of that which is the means of their preservation? All have indeed to fight when their country needs them; but then no one has ever to fight for himself. Do we not gain something by running, on behalf of what gives us our security, only some of the risks we should have to run for ourselves, as soon as we lost it?

## **5. THE RIGHT OF LIFE AND DEATH**

THE question is often asked how individuals, having no right to dispose of their own lives, can transfer to the Sovereign a right which they do not possess. The difficulty of answering this question seems to me to lie in its being wrongly stated. Every man has a right to risk his own life in order to preserve it. Has it ever been said that a man who throws himself out of the window to escape from a fire is guilty of suicide? Has such a crime ever been laid to the charge of him who perishes in a storm because, when he went on board, he knew of the danger?

The social treaty has for its end the preservation of the contracting parties. He who wills the end wills the means also, and the means must involve some risks, and even some losses. He who wishes to preserve his life at others' expense should also, when it is necessary, be ready to give it up for their sake. Furthermore, the citizen is no longer the judge of the

dangers to which the law-desires him to expose himself; and when the prince says to him: "It is expedient for the State that you should die," he ought to die, because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature, but a gift made conditionally by the State.

The death-penalty inflicted upon criminals may be looked on in much the same light: it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins. In this treaty, so far from disposing of our own lives, we think only of securing them, and it is not to be assumed that any of the parties then expects to get hanged.

Again, every malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country; by violating its laws he ceases to be a member of it; he even makes war upon it. In such a case the preservation of the State is inconsistent with his own, and one or the other must perish; in putting the guilty to death, we slay not so much the citizen as an enemy. The trial and the judgment are the proofs that he has broken the social treaty, and is in consequence no longer a member of the State. Since, then, he has recognised himself to be such by living there, he must be removed by exile as a violator of the compact, or by death as a public enemy; for such an enemy is not a moral person, but merely a man; and in such a case the right of war is to kill the vanquished.

But, it will be said, the condemnation of a criminal is a particular act. I admit it: but such condemnation is not a function of the Sovereign; it is a right the Sovereign can confer without being able itself to exert it. All my ideas are consistent, but I cannot expound them all at once.

We may add that frequent punishments are always a sign of weakness or remissness on the part of the government. There is not a single ill-doer who could not be turned to some good. The State has no right to put to death, even for the sake of making an example, any one whom it can leave alive without danger.

The right of pardoning or exempting the guilty from a penalty imposed by the law and pronounced by the judge belongs only to the authority which is superior to both judge and law, i.e., the Sovereign; each its right in this matter is far from clear, and the cases for exercising it are extremely rare. In a well-governed State, there are few punishments, not because there are many pardons, but because criminals are rare; it is when a State is in decay that the multitude of crimes is a guarantee of impunity. Under the Roman Republic, neither the Senate nor the Consuls ever attempted to pardon; even the people never did so, though it sometimes revoked its own decision. Frequent pardons mean that crime will soon need them no longer, and no one can help seeing whither that leads. But I feel my heart protesting and restraining my pen; let us leave these questions to the just man who has never offended, and would himself stand in no need of pardon.

## 6. LAW

BY the social compact we have given the body politic existence and life; we have now by legislation to give it movement and will. For the original act by which the body is formed and united still in no respect determines what it ought to do for its preservation.

What is well and in conformity with order is so by the nature of things and independently of human conventions. All justice comes from God, who is its sole source; but if we knew how to receive so high an inspiration, we should need neither government nor laws. Doubtless, there is a universal justice emanating from reason alone; but this justice, to be admitted among us, must be mutual. Humanly speaking, in default of natural sanctions, the laws of justice are ineffective among men: they merely make for the good of the wicked and the undoing of the just, when the just man observes them towards everybody and nobody observes them towards him. Conventions and laws are therefore needed to join rights to duties and refer justice to its object. In the state of nature, where everything is common, I owe nothing to him whom I have promised nothing; I recognise as belonging to others only what is of no use to me. In the state of society all rights are fixed by law, and the case becomes different.

But what, after all, is a law? As long as we remain satisfied with attaching purely metaphysical ideas to the word, we shall go on arguing without arriving at an understanding; and when we have defined a law of nature, we shall be no nearer the definition of a law of the State.

I have already said that there can be no general will directed to a particular object. Such an object must be either within or outside the State. If outside, a will which is alien to it cannot be, in relation to it, general; if within, it is part of the State, and in that case there arises a relation between whole and part which makes them two separate beings, of which the part is one, and the whole minus the part the other. But the whole minus a part cannot be the whole; and while this relation persists, there can be no whole, but only two unequal parts; and it follows that the will of one is no longer in any respect general in relation to the other.

But when the whole people decrees for the whole people, it is considering only itself; and if a relation is then formed, it is between two aspects of the entire object, without there being any division of the whole. In that case the matter about which the decree is made is, like the decreeing will, general. This act is what I call a law.

When I say that the object of laws is always general, I mean that law considers subjects en masse and actions in the abstract, and never a particular person or action. Thus the law may indeed decree that there shall be privileges, but cannot confer them on anybody by name. It may set up several classes of citizens, and even lay down the qualifications for



membership of these classes, but it cannot nominate such and such persons as belonging to them; it may establish a monarchical government and hereditary succession, but it cannot choose a king, or nominate a royal family. In a word, no function which has a particular object belongs to the legislative power.

On this view, we at once see that it can no longer be asked whose business it is to make laws, since they are acts of the general will; nor whether the prince is above the law, since he is a member of the State; nor whether the law can be unjust, since no one is unjust to himself; nor how we can be both free and subject to the laws, since they are but registers of our wills.

We see further that, as the law unites universality of will with universality of object, what a man, whoever he be, commands of his own motion cannot be a law; and even what the Sovereign commands with regard to a particular matter is no nearer being a law, but is a decree, an act, not of sovereignty, but of magistracy.

I therefore give the name "Republic" to every State that is governed by laws, no matter what the form of its administration may be: for only in such a case does the public interest govern, and the *res publica* rank as a reality. Every legitimate government is republican;[\[10\]](#) what government is I will explain later on.

Laws are, properly speaking, only the conditions of civil association. The people, being subject to the laws, ought to be their author: the conditions of the society ought to be regulated solely by those who come together to form it. But how are they to regulate them? Is it to be by common agreement, by a sudden inspiration? Has the body politic an organ to declare its will? Who can give it the foresight to formulate and announce its acts in advance? Or how is it to announce them in the hour of need? How can a blind multitude, which often does not know what it wills, because it rarely knows what is good for it, carry out for itself so great and difficult an enterprise as a system of legislation? Of itself the people wills always the good, but of itself it by no means always sees it. The general will is always in the right, but the judgment which guides it is not always enlightened. It must be got to see objects as they are, and sometimes as they ought to appear to it; it must be shown the good road it is in search of, secured from the seductive influences of individual wills, taught to see times and spaces as a series, and made to weigh the attractions of present and sensible advantages against the danger of distant and hidden evils. The individuals see the good they reject; the public wills the good it does not see. All stand equally in need of guidance. The former must be compelled to bring their wills into conformity with their reason; the latter must be taught to know what it wills. If that is done, public enlightenment leads to the union of understanding and will in the social body: the parts

are made to work exactly together, and the whole is raised to its highest power. This makes a legislator necessary.

## 7. THE LEGISLATOR

IN order to discover the rules of society best suited to nations, a superior intelligence beholding all the passions of men without experiencing any of them would be needed. This intelligence would have to be wholly unrelated to our nature, while knowing it through and through; its happiness would have to be independent of us, and yet ready to occupy itself with ours; and lastly, it would have, in the march of time, to look forward to a distant glory, and, working in one century, to be able to enjoy in the next.<sup>[11]</sup> It would take gods to give men laws.

What Caligula argued from the facts, Plato, in the dialogue called the *Politicus*, argued in defining the civil or kingly man, on the basis of right. But if great princes are rare, how much more so are great legislators? The former have only to follow the pattern which the latter have to lay down. The legislator is the engineer who invents the machine, the prince merely the mechanic who sets it up and makes it go. "At the birth of societies," says Montesquieu, "the rulers of Republics establish institutions, and afterwards the institutions mould the rulers."<sup>[12]</sup>

He who dares to undertake the making of a people's institutions ought to feel himself capable, so to speak, of changing human nature, of transforming each individual, who is by himself a complete and solitary whole, into part of a greater whole from which he in a manner receives his life and being; of altering man's constitution for the purpose of strengthening it; and of substituting a partial and moral existence for the physical and independent existence nature has conferred on us all. He must, in a word, take away from man his own resources and give him instead new ones alien to him, and incapable of being made use of without the help of other men. The more completely these natural resources are annihilated, the greater and the more lasting are those which he acquires, and the more stable and perfect the new institutions; so that if each citizen is nothing and can do nothing without the rest, and the resources acquired by the whole are equal or superior to the aggregate of the resources of all the individuals, it may be said that legislation is at the highest possible point of perfection.

The legislator occupies in every respect an extraordinary position in the State. If he should do so by reason of his genius, he does so no less by reason of his office, which is neither magistracy, nor Sovereignty. This office, which sets up the Republic, nowhere enters into its constitution; it is an individual and superior function, which has nothing in common with human empire; for if he who holds command over men ought not to have

command over the laws, he who has command over the laws ought not any more to have it over men; or else his laws would be the ministers of his passions and would often merely serve to perpetuate his injustices: his private aims would inevitably mar the sanctity of his work.

When Lycurgus gave laws to his country, he began by resigning the throne. It was the custom of most Greek towns to entrust the establishment of their laws to foreigners. The Republics of modern Italy in many cases followed this example; Geneva did the same and profited by it. [13] Rome, when it was most prosperous, suffered a revival of all the crimes of tyranny, and was brought to the verge of destruction, because it put the legislative authority and the sovereign power into the same hands.

Nevertheless, the decemvirs themselves never claimed the right to pass any law merely on their own authority. "Nothing we propose to you," they said to the people, "can pass into law without your consent. Romans, be yourselves the authors of the laws which are to make you happy."

He, therefore, who draws up the laws has, or should have, no right of legislation, and the people cannot, even if it wishes, deprive itself of this incommunicable right, because, according to the fundamental compact, only the general will can bind the individuals, and there can be no assurance that a particular will is in conformity with the general will, until it has been put to the free vote of the people. This I have said already; but it is worth while to repeat it.

Thus in the task of legislation we find together two things which appear to be incompatible: an enterprise too difficult for human powers, and, for its execution, an authority that is no authority.

There is a further difficulty that deserves attention. Wise men, if they try to speak their language to the common herd instead of its own, cannot possibly make themselves understood. There are a thousand kinds of ideas which it is impossible to translate into popular language. Conceptions that are too general and objects that are too remote are equally out of its range: each individual, having no taste for any other plan of government than that which suits his particular interest, finds it difficult to realise the advantages he might hope to draw from the continual privations good laws impose. For a young people to be able to relish sound principles of political theory and follow the fundamental rules of statecraft, the effect would have to become the cause; the social spirit, which should be created by these institutions, would have to preside over their very foundation; and men would have to be before law what they should become by means of law. The legislator therefore, being unable to appeal to either force or reason, must have recourse to an authority of a different order, capable of constraining without violence and persuading without convincing.

This is what has, in all ages, compelled the fathers of nations to have recourse to divine intervention and credit the gods with their own wisdom, in order that the peoples, submitting to the laws of the State as to those of

nature, and recognising the same power in the formation of the city as in that of man, might obey freely, and bear with docility the yoke of the public happiness.

This sublime reason, far above the range of the common herd, is that whose decisions the legislator puts into the mouth of the immortals, in order to constrain by divine authority those whom human prudence could not move.<sup>[14]</sup> But it is not anybody who can make the gods speak, or get himself believed when he proclaims himself their interpreter. The great soul of the legislator is the only miracle that can prove his mission. Any man may grave tablets of stone, or buy an oracle, or feign secret intercourse with some divinity, or train a bird to whisper in his ear, or find other vulgar ways of imposing on the people. He whose knowledge goes no further may perhaps gather round him a band of fools; but he will never found an empire, and his extravagances will quickly perish with him. Idle tricks form a passing tie; only wisdom can make it lasting. The Judaic law, which still subsists, and that of the child of Ishmael, which, for ten centuries, has ruled half the world, still proclaim the great men who laid them down; and, while the pride of philosophy or the blind spirit of faction sees in them no more than lucky impostures, the true political theorist admires, in the institutions they set up, the great and powerful genius which presides over things made to endure.

We should not, with Warburton, conclude from this that politics and religion have among us a common object, but that, in the first periods of nations, the one is used as an instrument for the other.

## 8. THE PEOPLE

AS, before putting up a large building, the architect surveys and sounds the site to see if it will bear the weight, the wise legislator does not begin by laying down laws good in themselves, but by investigating the fitness of the people, for which they are destined, to receive them. Plato refused to legislate for the Arcadians and the Cyrenæans, because he knew that both peoples were rich and could not put up with equality; and good laws and bad men were found together in Crete, because Minos had inflicted discipline on a people already burdened with vice.

A thousand nations have achieved earthly greatness, that could never have endured good laws; even such as could have endured them could have done so only for a very brief period of their long history. Most peoples, like most men, are docile only in youth; as they grow old they become incorrigible. When once customs have become established and prejudices inveterate, it is dangerous and useless to attempt their reformation; the people, like the foolish and cowardly patients who rave at

sight of the doctor, can no longer bear that any one should lay hands on its faults to remedy them.

There are indeed times in the history of States when, just as some kinds of illness turn men's heads and make them forget the past, periods of violence and revolutions do to peoples what these crises do to individuals: horror of the past takes the place of forgetfulness, and the State, set on fire by civil wars, is born again, so to speak, from its ashes, and takes on anew, fresh from the jaws of death, the vigour of youth. Such were Sparta at the time of Lycurgus, Rome after the Tarquins, and, in modern times, Holland and Switzerland after the expulsion of the tyrants.

But such events are rare; they are exceptions, the cause of which is always to be found in the particular constitution of the State concerned. They cannot even happen twice to the same people, for it can make itself free as long as it remains barbarous, but not when the civic impulse has lost its vigour. Then disturbances may destroy it, but revolutions cannot mend it: it needs a master, and not a liberator. Free peoples, be mindful of this maxim: "Liberty may be gained, but can never be recovered."

Youth is not infancy. There is for nations, as for men, a period of youth, or, shall we say, maturity, before which they should not be made subject to laws; but the maturity of a people is not always easily recognisable, and, if it is anticipated, the work is spoilt. One people is amenable to discipline from the beginning; another, not after ten centuries. Russia will never be really civilised, because it was civilised too soon. Peter had a genius for imitation; but he lacked true genius, which is creative and makes all from nothing. He did some good things, but most of what he did was out of place. He saw that his people was barbarous, but did not see that it was not ripe for civilisation: he wanted to civilise it when it needed only hardening. His first wish was to make Germans or Englishmen, when he ought to have been making Russians; and he prevented his subjects from ever becoming what they might have been by persuading them that they were what they are not. In this fashion too a French teacher turns out his pupil to be an infant prodigy, and for the rest of his life to be nothing whatsoever. The empire of Russia will aspire to conquer Europe, and will itself be conquered. The Tartars, its subjects or neighbours, will become its masters and ours, by a revolution which I regard as inevitable. Indeed, all the kings of Europe are working in concert to hasten its coming.

## **9. THE PEOPLE (CONTINUED)**

As nature has set bounds to the stature of a well-made man, and, outside those limits, makes nothing but giants or dwarfs, similarly, for the constitution of a State to be at its best, it is possible to fix limits that will

make it neither too large for good government, nor too small for self-maintenance. In every body politic there is a maximum strength which it cannot exceed and which it only loses by increasing in size. Every extension of the social tie means its relaxation; and, generally speaking, a small State is stronger in proportion than a great one.

A thousand arguments could be advanced in favour of this principle. First, long distances make administration more difficult, just as a weight becomes heavier at the end of a longer lever. Administration therefore becomes more and more burdensome as the distance grows greater; for, in the first place, each city has its own, which is paid for by the people: each district its own, still paid for by the people: then comes each province, and then the great governments, satrapies, and vice-royalties, always costing more the higher you go, and always at the expense of the unfortunate people. Last of all comes the supreme administration, which eclipses all the rest. All these over charges are a continual drain upon the subjects; so far from being better governed by all these different orders, they are worse governed than if there were only a single authority over them. In the meantime, there scarce remain resources enough to meet emergencies; and, when recourse must be had to these, the State is always on the eve of destruction.

This is not all; not only has the government less vigour and promptitude for securing the observance of the laws, preventing nuisances, correcting abuses, and guarding against seditious undertakings begun in distant places; the people has less affection for its rulers, whom it never sees, for its country, which, to its eyes, seems like the world, and for its fellow-citizens, most of whom are unknown to it. The same laws cannot suit so many diverse provinces with different customs, situated in the most various climates, and incapable of enduring a uniform government. Different laws lead only to trouble and confusion among peoples which, living under the same rulers and in constant communication one with another, intermingle and intermarry, and, coming under the sway of new customs, never know if they can call their very patrimony their own. Talent is buried, virtue unknown and vice unpunished, among such a multitude of men who do not know one another, gathered together in one place at the seat of the central administration. The leaders, overwhelmed with business, see nothing for themselves; the State is governed by clerks. Finally, the measures which have to be taken to maintain the general authority, which all these distant officials wish to escape or to impose upon, absorb all the energy of the public, so that there is none left for the happiness of the people. There is hardly enough to defend it when need arises, and thus a body which is too big for its constitution gives way and falls crushed under its own weight.

Again, the State must assure itself a safe foundation, if it is to have stability, and to be able to resist the shocks it cannot help experiencing, as

well as the efforts it will be forced to make for its maintenance; for all peoples have a kind of centrifugal force that makes them continually act one against another, and tend to aggrandise themselves at their neighbours' expense, like the vortices of Descartes. Thus the weak run the risk of being soon swallowed up; and it is almost impossible for any one to preserve itself except by putting itself in a state of equilibrium with all, so that the pressure is on all sides practically equal.

It may therefore be seen that there are reasons for expansion and reasons for contraction; and it is no small part of the statesman's skill to hit between them the mean that is most favourable to the preservation of the State. It may be said that the reason for expansion, being merely external and relative, ought to be subordinate to the reasons for contraction, which are internal and absolute. A strong and healthy constitution is the first thing to look for; and it is better to count on the vigour which comes of good government than on the resources a great territory furnishes.

It may be added that there have been known States so constituted that the necessity of making conquests entered into their very constitution, and that, in order to maintain themselves, they were forced to expand ceaselessly. It may be that they congratulated themselves greatly on this fortunate necessity, which none the less indicated to them, along with the limits of their greatness, the inevitable moment of their fall.

## **10. THE PEOPLE (CONTINUED)**

A BODY politic may be measured in two ways — either by the extent of its territory, or by the number of its people; and there is, between these two measurements, a right relation which makes the State really great. The men make the State, and the territory sustains the men; the right relation therefore is that the land should suffice for the maintenance of the inhabitants, and that there should be as many inhabitants as the land can maintain. In this proportion lies the maximum strength of a given number of people; for, if there is too much land, it is troublesome to guard and inadequately cultivated, produces more than is needed, and soon gives rise to wars of defence; if there is not enough, the State depends on its neighbours for what it needs over and above, and this soon gives rise to wars of offence. Every people, to which its situation gives no choice save that between commerce and war, is weak in itself: it depends on its neighbours, and on circumstances; its existence can never be more than short and uncertain. It either conquers others, and changes its situation, or it is conquered and becomes nothing. Only insignificance or greatness can keep it free.

No fixed relation can be stated between the extent of territory and the population that are adequate one to the other, both because of the differences in the quality of land, in its fertility, in the nature of its products, and in the influence of climate, and because of the different tempers of those who inhabit it; for some in a fertile country consume little, and others on an ungrateful soil much. The greater or less fecundity of women, the conditions that are more or less favourable in each country to the growth of population, and the influence the legislator can hope to exercise by his institutions, must also be taken into account. The legislator therefore should not go by what he sees, but by what he foresees; he should stop not so much at the state in which he actually finds the population, as at that to which it ought naturally to attain. Lastly, there are countless cases in which the particular local circumstances demand or allow the acquisition of a greater territory than seems necessary. Thus, expansion will be great in a mountainous country, where the natural products, i.e., woods and pastures, need less labour, where we know from experience that women are more fertile than in the plains, and where a great expanse of slope affords only a small level tract that can be counted on for vegetation. On the other hand, contraction is possible on the coast, even in lands of rocks and nearly barren sands, because there fishing makes up to a great extent for the lack of land-produce, because the inhabitants have to congregate together more in order to repel pirates, and further because it is easier to unburden the country of its superfluous inhabitants by means of colonies.

To these conditions of law-giving must be added one other which, though it cannot take the place of the rest, renders them all useless when it is absent. This is the enjoyment of peace and plenty; for the moment at which a State sets its house in order is, like the moment when a battalion is forming up, that when its body is least capable of offering resistance and easiest to destroy. A better resistance could be made at a time of absolute disorganisation than at a moment of fermentation, when each is occupied with his own position and not with the danger. If war, famine, or sedition arises at this time of crisis, the State will inevitably be overthrown.

Not that many governments have not been set up during such storms; but in such cases these governments are themselves the State's destroyers. Usurpers always bring about or select troublous times to get passed, under cover of the public terror, destructive laws, which the people would never adopt in cold blood. The moment chosen is one of the surest means of distinguishing the work of the legislator from that of the tyrant.

What people, then, is a fit subject for legislation? One which, already bound by some unity of origin, interest, or convention, has never yet felt the real yoke of law; one that has neither customs nor superstitions deeply ingrained, one which stands in no fear of being overwhelmed by sudden invasion; one which, without entering into its neighbours' quarrels, can



resist each of them single-handed, or get the help of one to repel another; one in which every member may be known by every other, and there is no need to lay on any man burdens too heavy for a man to bear; one which can do without other peoples, and without which all others can do;<sup>[15]</sup> one which is neither rich nor poor, but self-sufficient; and, lastly, one which unites the consistency of an ancient people with the docility of a new one. Legislation is made difficult less by what it is necessary to build up than by what has to be destroyed; and what makes success so rare is the impossibility of finding natural simplicity together with social requirements. All these conditions are indeed rarely found united, and therefore few States have good constitutions.

There is still in Europe one country capable of being given laws — Corsica. The valour and persistency with which that brave people has regained and defended its liberty well deserves that some wise man should teach it how to preserve what it has won. I have a feeling that some day that little island will astonish Europe.

## 11. THE VARIOUS SYSTEMS OF LEGISLATION

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

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

Such equality, we are told, is an unpractical ideal that cannot actually exist. But if its abuse is inevitable, does it follow that we should not at least make regulations concerning it? It is precisely because the force of circumstances tends continually to destroy equality that the force of legislation should always tend to its maintenance.

But these general objects of every good legislative system need modifying in every country in accordance with the local situation and the temper of the inhabitants; and these circumstances should determine, in each case, the particular system of institutions which is best, not perhaps in itself, but for the State for which it is destined. If, for instance, the soil is barren and unproductive, or the land too crowded for its inhabitants, the

people should turn to industry and the crafts, and exchange what they produce for the commodities they lack. If, on the other hand, a people dwells in rich plains and fertile slopes, or, in a good land, lacks inhabitants, it should give all its attention to agriculture, which causes men to multiply, and should drive out the crafts, which would only result in depopulation, by grouping in a few localities the few inhabitants there are.<sup>[17]</sup> If a nation dwells on an extensive and convenient coast-line, let it cover the sea with ships and foster commerce and navigation. It will have a life that will be short and glorious. If, on its coasts, the sea washes nothing but almost inaccessible rocks, let it remain barbarous and ichthyophagous: it will have a quieter, perhaps a better, and certainly a happier life. In a word, besides the principles that are common to all, every nation has in itself something that gives them a particular application, and makes its legislation peculiarly its own. Thus, among the Jews long ago and more recently among the Arabs, the chief object was religion, among the Athenians letters, at Carthage and Tyre commerce, at Rhodes shipping, at Sparta war, at Rome virtue. The author of *The Spirit of the Laws* has shown with many examples by what art the legislator directs the constitution towards each of these objects. What makes the constitution of a State really solid and lasting is the due observance of what is proper, so that the natural relations are always in agreement with the laws on every point, and law only serves, so to speak, to assure, accompany and rectify them. But if the legislator mistakes his object and adopts a principle other than circumstances naturally direct; if his principle makes for servitude while they make for liberty, or if it makes for riches, while they make for populousness, or if it makes for peace, while they make for conquest — the laws will insensibly lose their influence, the constitution will alter, and the State will have no rest from trouble till it is either destroyed or changed, and nature has resumed her invincible sway.

## 12. THE DIVISION OF THE LAWS

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

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

change its laws, however good; for, if it choose to do itself harm, who can have a right to stop it?

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

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

Along with these three kinds of law goes a fourth, most important of all, which is not graven on tablets of marble or brass, but on the hearts of the citizens. This forms the real constitution of the State, takes on every day new powers, when other laws decay or die out, restores them or takes their place, keeps a people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit. I am speaking of morality, of custom, above all of public opinion; a power unknown to political thinkers, on which none the less success in everything else depends. With this the great legislator concerns himself in secret, though he seems to confine himself to particular regulations; for these are only the arc of the arch, while manners and morals, slower to arise, form in the end its immovable keystone.

Among the different classes of laws, the political, which determine the forms of the government, are alone relevant to my subject.

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<sup>6</sup> To be general, a will need not always be unanimous; but every vote must be counted: any exclusion is a breach of generality.

<sup>7</sup> "Every interest," says the Marquis d'Argenson, "has different principles. The agreement of two particular interests is formed by opposition to a third." He might have added that the agreement of all interests is formed by opposition to that of each. If there were no different interests, the common interest would be barely felt, as it would encounter no obstacle; all would go on of its own accord, and politics would cease to be an art.

<sup>8</sup> "In fact," says Machiavelli, "there are some divisions that are harmful to a Republic and some that are advantageous. Those which stir up sects and parties are harmful; those attended by neither are advantageous. Since, then, the founder of a Republic cannot help enmities arising, he ought at least to prevent them from growing into sects" (History of Florence, Book vii).

<sup>9</sup> Attentive readers, do not, I pray, be in a hurry to charge me with contradicting myself. The terminology made it unavoidable, considering the poverty of the language; but wait and see.

<sup>10</sup> I understand by this word, not merely an aristocracy or a democracy, but generally any government directed by the general will, which is the law. To be legitimate, the government must be, not one with the Sovereign, but its minister. In such a case even a monarchy is a Republic. This will be made clearer in the following book.

<sup>11</sup> A people becomes famous only when its legislation begins to decline. We do not know for how many centuries the system of Lycurgus made the Spartans happy before the rest of Greece took any notice of it.

<sup>12</sup> Montesquieu, *The Greatness and Decadence of the Romans*, ch. i.

<sup>13</sup> Those who know Calvin only as a theologian much under-estimate the extent of his genius. The codification of our wise edicts, in which he played a large part, does him no less honour than his Institute. Whatever revolution time may bring in our religion, so long as the spirit of patriotism and liberty still lives among us, the memory of this great man will be for ever blessed.

<sup>14</sup> "In truth," says Machiavelli, "there has never been, in any country, an extraordinary legislator who has not had recourse to God; for otherwise his laws would not have been accepted: there are, in fact, many useful truths of which a wise man may have knowledge without their having in themselves such clear reasons for their being so as to be able to convince others" (*Discourses on Livy*, Bk. v, ch. xi).

<sup>15</sup> If there were two neighbouring peoples, one of which could not do without the other, it would be very hard on the former, and very dangerous for the latter. Every wise nation, in such a case, would make haste to free the other from dependence. The Republic of Thiascala, enclosed by the Mexican Empire, preferred doing without salt to buying from the Mexicans, or even getting it from them as a gift. The Thiascalans were wise enough to see the snare hidden under such liberality. They kept their freedom, and that little State, shut up in that great Empire, was finally the instrument of its ruin.

<sup>16</sup> If the object is to give the State consistency, bring the two extremes as near to each other as possible; allow neither rich men nor beggars. These two estates, which are naturally inseparable, are equally fatal to the common good; from the one come the friends of tyranny, and from the other tyrants. It is always between them that public liberty is put up to auction; the one buys, and the other sells.

<sup>17</sup> "Any branch of foreign commerce," says M. d'Argenson, "creates on the whole only apparent advantage for the kingdom in general; it may enrich some individuals, or even some towns; but the nation as a whole gains nothing by it, and the people is no better off."

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