BOOK 29
On the way to compose the laws

CHAPTER 1
On the spirit of the legislator

I say it, and it seems to me that I have written this work only to prove it: the spirit of moderation should be that of the legislator; the political good, like the moral good, is always found between two limits. Here is an example.

The formalities of justice are necessary to liberty. But, their number could be so great that it would run counter to the end of the very laws establishing them: suits[a] would be interminable; the ownership of goods would remain uncertain; one of the parties would be given the goods of the other without examination, or both would be ruined by the examination.

Citizens would lose their liberty and their security; accusers would no longer have the means to convict nor the accused, a means to vindicate themselves.

[a] *affaires*. See note [c], bk. 2; note [j], bk. 28.

CHAPTER 2
Continuation of the same subject

Caecilius, according to Aulus Gellius,[1] speaking on that law of the Twelve Tables that permitted the creditor to cut the insolvent debtor to pieces, justifies the law by its very atrocity, which prevented one's borrowing beyond one's abilities.[2] Shall the cruellest laws, therefore,

[1] [*NA*] bk. 20, chap. 1 [20.1.39–52].
[2] Caecilius states that he had neither seen nor read of this penalty being inflicted; indeed, it

be the best? Shall the excess be the good, and all the relations between things be destroyed?

is likely that it was never established. The opinion of a number of jurists, that the Law of Twelve Tables spoke only of the division of the price paid for the debtor, is very possible.

CHAPTER 3
That laws which seem to diverge from the aims of the legislator often conform to them

The law of Solon, which declared infamous all those who took no part in a sedition, has appeared extraordinary, but one must attend to the circumstances of Greece at that time. Greece was divided into very small states; in a republic tormented by civil discord it was to be feared that the most prudent people would take cover and that things would thereby be carried to an extreme.

In the seditions that occurred in these small states, the bulk of the town entered the quarrel, or began it. In our great monarchies the parties are formed by a few, and the people want to lead a life of inaction. In this case it is natural to incorporate the seditious men into the bulk of the citizens, not the bulk of the citizens into the seditious men; in the former, the small number of wise and tranquil people must be made to go among the seditious men; thus it is that the fermentation of one liquor can be checked by a single drop of a different one.

CHAPTER 4
On laws that run counter to the aims of the legislator

There are laws that the legislator has understood so poorly that they are even contrary to the end he himself has proposed. Those who established for the French that when one of two claimants to a benefice dies, the benefice remains with the survivor, doubtless sought to quell disputes. But a contrary effect results from it: one sees ecclesiastics, like mastiffs, attack each other and fight to the death.

CHAPTER 5

Continuation of the same subject

The law I shall mention occurs in this oath that has been preserved for us by Aeschines.[3] "I swear that I will never destroy a town of the Amphictyons and that I will not divert its running water; if any people dare do such a thing, I shall declare war on them, and I shall destroy their towns." The last article of this law, which seems to confirm the first, is in reality contrary to it. The Amphictyonic league wants the Greek towns never to be destroyed, and this law opens the door to the destruction of these towns. In order for the Greeks to establish a good right of nations, they had to become accustomed to thinking it an atrocious thing to destroy a Greek town; therefore, they should not destroy even destroyers. The law of the Amphictyons was just, but it was imprudent. This is proved by the very abuse of it that occurred. Did not Philip give himself the power to destroy towns on the pretext that they had violated the laws of the Greeks? The Amphictyons could have inflicted other penalties: ordering, for example, that a certain number of magistrates in the town of the destroyers or of leaders of the violating army would be punished by death; that the destroyers would cease for a time to enjoy the privileges of Greeks; that they would pay a fine until the town was reestablished. Above all, the law should have addressed the reparation of the damage.

[3] [Aeschines] *De falsa legatione* [*On the Embassy* 115].

CHAPTER 6

That laws that appear the same do not always have the same effect

Caesar forbade men to keep more than sixty sesterces in their houses.[4] In Rome this law was regarded as quite proper for reconciling debtors and creditors because, by obliging the wealthy to lend to the poor, it put the latter in a position to satisfy the wealthy. A similar law, made in

[4] Cass. Dio, bk. 41 [41.38]. [This should be 60,000, not 60, sesterces.]

France at the time of the System,[b] was catastrophic; this is because the circumstances in which it was made were frightful. After removing all the means of investing one's silver, even the recourse of keeping it at home was taken away; this was equivalent to taking it away by violence.[c] Caesar made his law so that silver would circulate among the people; the minister of France made his so that silver would be collected in a single hand. The first gave lands or mortgages on individuals for silver; the second offered for silver, bills that had no value and which could by their nature have none, because his law obliged one to take them.

[b] Of John Law. [c] See 22.10.

CHAPTER 7

Continuation of the same subject. Necessity for composing the laws well

The law of ostracism was established in Athens, Argos, and Syracuse.[5] In Syracuse it produced a thousand ills because it was made without prudence. The principal citizens banished each other by holding a fig leaf in their hand,[6] so that those of some merit no longer took part in public business. In Athens, where the legislator felt the extension and limits that he should give to his law, ostracism was a remarkable thing; only a single person was subjected to it; there had to be such a great number of votes that it was difficult for any one to be exiled unless his absence was necessary.

One could banish only every five years: indeed, as soon as ostracism was practiced only against a great personage who inspired fear in his fellow citizens, it should not have been an everyday business.

[5] Aristotle, *Republic* [*Politics*], bk. 5, chap. 3 [1302b18–19].
[6] Plutarch, *Life of Dionysius*. [Plutarch did not write a life of Dionysius of Syracuse. He wrote a life of Dion, an adviser to Dionysius, but does not describe the Syracusan form of ostracism, called petalism. A source for this information is Diodorus Siculus, 11.87.]

CHAPTER 8

That laws that appear the same have not always had the same motive

France accepts most of the Roman laws on substitutions; but in France, substitutions have a motive altogether different from that of the Romans. For them an inheritance was bound with certain sacrifices to be made by the heir and were ruled by pontifical right.[7] This is why they considered it dishonorable to die without an heir and took their slaves for heirs or devised substitutions. The vulgar substitution, the first devised and applicable only when the appointed heir would not accept the inheritance, is a great proof of this; its purpose was not to perpetuate the inheritance in a family of the same name, but to find someone who would accept the inheritance.

[7]When the inheritance was too burdened, one could avoid the right of the pontiffs by certain sales, hence the phrase *sine sacris haereditas*: without sanctified heirs.

CHAPTER 9

That, without having the same motive, both Greek and Roman laws punished the killing of oneself

"A man," says Plato,[8] "who killed the one with whom he is most closely linked, that is, himself, not by order of the magistrate, or to avoid ignominy, but from weakness, will be punished." Roman law punished this act, when it was done not from weakness of soul, from boredom with life, or from an incapacity to suffer sorrow, but from despair over some crime. The Roman law absolved in the case where the Greek condemned and condemned in the case where the latter absolved.

Plato's law was formed along the lines of the institutions of the Lacedaemonians, where the orders of the magistrate were completely absolute, where ignominy was the greatest misfortune, and weakness the greatest crime. Roman law abandoned all these fine ideas; it was a fiscal law only.

At the time of the republic, there was no law in Rome punishing

[8][Plato] *Laws*, bk. 9 [873c–d].

those who killed themselves; this act is always taken in stride by the historians, and one never sees a punishment for those who did it.

At the time of the first emperors, the great families of Rome were constantly exterminated by judgments. The custom of preventing condemnation by voluntary death was introduced. It offered a great advantage. One gained the honor of a burial and the execution of one's testament;[9] this came from Rome's having no civil law against those who killed themselves. But when the emperors became as avaricious as they had been cruel, they no longer left to those of whom they wanted to be rid the means of preserving their goods, and they declared that it would be a crime to take one's life out of remorse for another crime.

What I say of the motive of the emperors is so true that they agreed that the goods of those who killed themselves should not be confiscated when the crime for which they killed themselves was not subject to confiscation.[10]

[9]"Those who decided on their own [to commit suicide] had their bodies buried and their wills respected; this was the reward for making haste" [L.] Tacitus [*Annales*, 6, 29].

[10]Rescript of the Emperor Pius, in Law 3, paras. 1–2 [*Corpus Juris Civilis*, *Digest* 48.21.3.1–2], *de bonis eorum qui ante sententiam vel mortem sibi consciverunt vel accusatorem corruperunt.*

CHAPTER 10

That laws that seem contradictory are sometimes derived from the same spirit

Today one goes into the house of a man to summon him to judgment; this could not be done among the Romans.[11]

A summons to judgment was a violent action,[12] a kind of physical constraint,[13] and one could no more enter the house of a man to summon him to judgment than one can today go into his house to physically constrain a man condemned only for civil debts.

The Roman laws[14] and ours equally admit the principle that each

[11]Law 18 [*Corpus Juris Civilis*, *Digest* 2.4.21, 22]; *in jus vocando.*

[12]See the Law of the Twelve Tables [*XII Tables, Unplaced Fragments*, 5, i.e., Cicero, *De republica* 2.31.54].

[13]"He hastened him to Court" [L.]. Horace, *Satires* 9 [1.9.77]. This is why one could not summon to judgment those to whom a certain respect was owed.

[14]See Law 18 [*Corpus Juris Civilis*, *Digest* 2.4.18, 21, 22]; *in jus vocando.*

citizen's house is his sanctuary and that he should not be done violence in it.

CHAPTER 11

In what way two different laws can be compared

In France the penalty for false witnesses is capital; in England it is not. In order to judge which of these two laws is better, one must add that in France criminals are put to the question, in England, they are not; and one must also say that in France the accused does not produce his own witnesses, and it is very rare to admit what are called mitigating circumstances;[d] that in England one receives testimony from both parties. The three French laws form a well-linked, consistent system; the three English laws form one that is no less so. The English law, which does not admit putting criminals to the question, has only slight expectations of drawing from the accused a confession of his crime; it summons outside testimonies then from every quarter, and it does not dare discourage them by the fear of a capital penalty. The French law, which has an additional recourse, does not so greatly fear intimidating the witnesses; on the contrary, reason demands that it intimidate them: the law hears the witnesses of one side only;[15] they are those produced by the public party, and the fate of the accused depends on their testimony alone. But in England, one accepts witnesses from both sides, and the business is, so to speak, argued out between them. Therefore, false witnesses can be less dangerous there; the accused has a recourse against false witness, whereas French law gives none. Thus, in order to judge which of these laws is more in conformity with reason, they must not be compared one by one; they must be taken all together and compared together.

[15] Under the old French jurisprudence, witnesses were heard from both parts. Thus one can see, in *Les Etablissements de Saint Louis*, bk. 1, chap. 7 [1.9], that the penalty against false witnesses, in a matter of justice, was pecuniary.

[d] *les faits justificatifs.*

CHAPTER 12

That laws that seem alike are sometimes really different

Greek and Roman laws punished the receiver of stolen goods as they did the robber;[16] French law does the same. The first were reasonable; the latter is not. Among the Greeks and Romans, since the robber was condemned to a pecuniary penalty, one had to punish the receiver with the same penalty, for a man who contributes in any way whatever to this damage should repair it. But as among us the penalty for robbery is capital, it has not been possible to punish the receiver like the robber without carrying things to excess. The one who receives stolen goods can on a thousand occasions receive them innocently, the one who robs is always guilty; the former prevents conviction for the crime already committed, the latter commits the crime; all is passive in the one, there is action in the other; the robber must overcome more obstacles and his soul must have been hardened against the laws for a longer time.

The jurists went further: they regarded the receiver as more odious than the robber,[17] for without him, they say, the robbery could not be hidden for long. This, again, could be good so long as the penalty was pecuniary; it was a question of damage, and ordinarily the receiver was more in a position to make reparation; but when the penalty became capital, one should have been ruled by other principles.

[16] Law 1 [*Corpus Juris Civilis, Digest* 47.16]; *de receptatoribus.*
[17] Law 1 [*Corpus Juris Civilis, Digest* 47.16]; *de receptatoribus.*

CHAPTER 13

That laws must not be separated from the purpose for which they are made. On the Roman laws about robbery

When the robber was caught with stolen goods before he had put them where he had decided to hide them, it was called a manifest robbery among the Romans; when the robber was discovered only afterwards, it was a non-manifest robbery.

The law of the Twelve Tables ordered that the manifest robber be whipped and reduced to servitude if he were an adult, or only whipped

if he were not an adult; it condemned the non-manifest robber only to paying twice the value of the stolen thing.

When the Porcian law had abolished the usage of whipping citizens and reducing them to servitude, the manifest robber was condemned to a payment of quadruple the value,[18] and the non-manifest robber continued to be punished with a payment of double.

It seems odd that the laws put such a difference in the status of these two crimes and in the penalty they inflicted for them; indeed, whether the robber was caught before or after carrying the stolen goods to the place of destination was a circumstance which did not change the nature of the crime. I cannot doubt that the whole theory of the Roman laws on robbery was drawn from Lacedaemonian institutions. Lycurgus, with a view to endowing his citizens with cunning, trickery, and quickness, wanted the children to be trained in petty theft and be severely whipped if they were caught; among the Greeks and later among the Romans, this established a great difference between manifest robbery and non-manifest robbery.[19]

Among the Romans the slave who had robbed was thrown off the Tarpeian rock. Here it was not a question of the Lacedaemonian institutions; the laws of Lycurgus on robbery had not been made for slaves; deviating from them on this point was to follow them.

In Rome, when someone who was not of age was caught in a robbery, the praetor had him whipped at his will, as was done in Lacedaemonia. All this came from a more distant past. The Lacedaemonians had drawn these usages from the Cretans, and Plato,[20] who wants to prove that the Cretan institutions were made for war, cites this one: "The faculty of bearing pain in individual combats and in petty thefts that have to be concealed."

As civil laws depend on political laws because they are made for one society, it would be well if, when one wants to transfer a civil law from one nation to another, one examines beforehand whether they both have the same institutions and the same political right.

Thus, when the laws on robbery passed from the Cretans to the Lacedaemonians, as they passed to them along with the government

[18] See what is said by Favorinus according to Aulus Gellius [*NA*], bk. 20, chap. 1 [20.1.9–19].

[19] Compare what Plutarch says in *Vit. Lycurgus* [17–18.3] with the laws in the *Digest* [*Corpus Juris Civilis*, *Digest* 47, 2 (2, 3)]; *de furtis* and the *Institutes*, bk. 4, tit. 1, paras. 1–3 [*Corpus Juris Civilis*, *Institutes* 4.1.1–3; *de obligationibus quae ex delicto nascuntur*].

[20] [Plato] *Laws*, bk. 1 [633b].

and even the constitution, these laws were as sensible for one of these peoples as they were for the other. But when they were carried from Lacedaemonia to Rome, as they did not find the same constitution, they were always foreign to it and had no link with the other civil laws of the Romans.

CHAPTER 14

That laws must not be separated from the circumstances in which they were made

An Athenian law wanted all the useless people to be put to death when the town was besieged.[21] This was an abominable political law which was a consequence of an abominable right of nations. Among the Greeks, the inhabitants of a captured town lost their civil liberty and were sold as slaves; the capture of a town brought about its entire destruction. And this is the origin not only of these unyielding defenses and unnatural actions, but also of the atrocious laws that were sometimes made.

The Roman laws wanted doctors to be punishable for their negligence or incompetence.[22] In this case, they condemned a doctor to deportation when his rank was somewhat elevated and condemned him to death when his rank was lower. It is otherwise with our laws. The Roman laws were not made in the same circumstances as ours; in Rome, those who wanted to meddle in medicine did; but, among us, doctors are obliged to study and to take certain degrees, so they are deemed to know their art.

[21] "Those useless on account of age are to be killed" [L.]. Syrianus, *Scholia ad Hermogenis* [*Commentarium in librum "Peri staseon"*; p. 167, #16–25].

[22] [*Corpus Juris Civilis*, *Digest* 48.8 (3.5)] *ad legem Corneliam de sicariis et venefis*; *Institutes*, bk. 4, tit. 3, para. 7 [*Corpus Juris Civilis*, *Institutes* 4.3.7]; *de lege Aquilia*.

CHAPTER 15

That it is sometimes well for a law to correct itself

The law of the Twelve Tables permitted one to kill someone who robbed at night,[23] as well as someone who robbed during the day who, upon being followed, put up a defense; but it wanted the one who killed the robber to cry out and summon the citizens,[24] and this is a thing that laws which permit one to do justice oneself should always require. It is the cry of innocence which, at the moment of action, summons witnesses, summons judges. The people must know about the action and must know of it at the moment it is done; at a time when everything speaks, appearances, faces, passions, silences, and when every word condemns or justifies. A law that can become so contrary to the security and the liberty of the citizens should be executed in the presence of the citizens.

[23] See law 4 [*Corpus Juris Civilis*, *Digest* 9.2.4(1)]; *ad Legem Aquiliam*.
[24] Ibid. [*Corpus Juris Civilis*, *Digest* 9.2.4(1); *ad Legem Aquiliam*]. See the decree of Tassillon added to the *Lex Baiuwariorum*, art. 4 [*Additiones legis Baiuwariorum*, *Additio quinta* 4.3]; *de popularibus legibus*.

CHAPTER 16

Things to observe in the composition of laws

Those who have a comprehensive enough genius to be able to give laws to their own nation or to another should pay certain attentions to the way they are formed.

Their style should be concise. The laws of the Twelve Tables are a model of precision; children learned them by heart.[25] The *Novellae* of Justinian are so diffuse that they had to be abridged.[26]

The style of the laws should be simple; direct expression is always better understood than indirect. There is no majesty in the laws of the Eastern Empire; its princes are made to speak like rhetoricians. When the style of the laws is inflated, they are regarded only as a work of ostentation.

[25] "As required songs" [L.]. Cicero, *De legibus*, bk. 2 [2.23.59].
[26] This was the work of Irnerius.

It is essential for the words of the laws to awaken the same ideas in all men. Cardinal Richelieu agreed that one could accuse a minister before the king,[27] but he wanted one to be punished if the things one proved were not worthy of consideration, which kept everyone from speaking any truth whatsoever against the minister because what is worthy of consideration is entirely relative and what is worthy of consideration for one is not so for another.

The law of Honorius punished by death any one who bought as a serf a freed man and any who wanted to cause him distress.[28] Such a vague expression must not be used; the distress one causes a man depends entirely on the degree of his sensitivity.

When the law has to impose some measure,[c] one must, as much as possible, avoid doing so at a price in silver. A thousand causes change the value of the money, and with the same denomination one no longer has the same thing. One knows the story of the impertinent man in Rome[29] who slapped everyone he met and had them given the twenty-five sous of the law of Twelve Tables.

When the ideas of things have been well fixed in a law, one must not return to vague expressions. In the criminal ordinance of Louis XIV,[30] after an exact enumeration of royal cases, these words are added, "And those the royal judges have judged in all times"; this brings back the arbitrariness that had just been left behind.

Charles VII says that he learns that parties make an appeal three, four, and six months after the judgment, contrary to the custom in the countries of customary law;[31] he orders them to appeal immediately unless there is a fraud or deceit by the prosecutor[32] or a great and obvious cause to take up the appeal. The conclusion of this law destroys

[27] *Testament politique* [Cardinal Richelieu, pt. 1, chap. 8, sec. 7, p. 316; 1947 edn].
[28] "Or whoever might wish to disquiet one who had been granted emancipation" [L.], *Codex Theodosianus. Constitutiones Sirmondianae*, vol. 1, p. 737 [tit. 19, deemed spurious, not included in the standard edition, Mommsen, 1905].
[29] Aulus Gellius [*NA*], bk. 20, chap. 1 [20.1.13].
[30] In the testimony for this ordinance one can find their motives for it [1670. August. *Recueil général des anciennes lois françaises*, *Bourbons*, #623, tit. 1, "De la compétence des juges," #11; 18, 374]. [It should be noted that M.'s quotation is not from the law in question, but represents his own interpretation; see the note at the passage, 18, 374.]
[31] In his ordinance of Montel-les-Tours, in 1453 [Laurière, 14, 284, Charles VII. *Recueil général des anciennes lois françaises*, #213, art. 18; 9, 212].
[32] One could punish the prosecutor without the necessity for disturbing public order.

[c] The French word is *vexation*, here meaning a kind of tax, although we usually translate it as "harassment."

its beginning, and it destroyed it so well that subsequently one pursued appeals for thirty years.[33]

The law of the Lombards does not want a woman who has taken the habit of a religious order, although she has not taken her vows, to be able to marry,[34] "for," it says, "if a spouse who has engaged a woman to himself only by a ring cannot without committing a crime marry another, there is even stronger reason for the spouse of god or the blessed virgin . . ." I say that in laws one must reason from reality to reality and not from reality to figure or from figure to reality.

A law of Constantine wants the testimony of the bishop alone to suffice, without other witnesses being heard.[35] This prince took a short cut: he judged the business by persons and persons by their rank.

The laws should not be subtle; they are made for people of middling understanding; they are not an art of logic but the simple reasoning of a father of the family.

When exceptions, limitations, modifications, are not necessary in a law, it is much better not to include them in it. Such details plunge one into new details.

One must not make a change in a law without a sufficient reason. Justinian ordered that a husband could be repudiated without the wife losing her dowry, if he had not been able to consummate the marriage in two years.[36] He changed the law and gave three years to the poor unfortunate man.[37] But, in such a case, two years is as good as three and three is no better than two.

When one goes so far as to give a reason for a law, this reason must be worthy of it. A Roman law decides that a blind person cannot plead because he cannot see the ornaments of the magistracy.[38] To give such a bad reason when so many good ones present themselves must have been deliberate.

The jurist Paul says that the child is born perfect in the seventh month and that the ratio of Pythagorean numbers seems to prove it.[39] It

[33] The ordinance of 1667 made rulings about this [1667. April, *Recueil général des anciennes lois françaises, Bourbons*, #503, 18, 103–180].
[34] [*Leges Langobardum*] bk. 2, tit. 37 [2.37.1, Liut. 30].
[35] In the *Codex Theodosianus. Constitutiones Sirmondianae*, vol. 1 [tit. 1, p. 477; 1952 edn].
[36] Law 1, *Code* [*Corpus Juris Civilis, Code* 5.17.10]; *de repudiis et iudicio et moribus sublato.*
[37] See *Authentica, sed hodie* [*Corpus Juris Civilis, Novellae* 22.6; *Code* 5.17.10]; at *Code de repudiis et iudicio et moribus sublato.*
[38] Law 1 [*Corpus Juris Civilis, Digest* 3.1.1]; *de postulando.*
[39] [Paul the Jurist] *Sententiarum*, bk. 4, tit. 9 [4.9.5].

is singular to judge these things by the ratio of Pythagorean numbers.[f]

Some French jurists have said that, when the king acquired a country, the churches there became subject to the right of regale, because the king's crown is round. I shall not discuss at all the rights of the king, or whether, in this case, the reason of the civil or of the ecclesiastical law should yield to the reason of the political law; but I shall say that such respectable rights should be defended by serious maxims. Who has ever seen the real rights of a rank founded on the configuration of the sign of that rank?

Davila[40] says that Charles IX was declared of age in the *parlement* of Rouen at the beginning of his fourteenth year, because the laws want one to reckon the time from moment to moment where the restitution and administration of the ward's goods are concerned; but, where the acquisition of honors is concerned, it regards the year begun as a year completed. I take care not to censure a provision which does not yet seem to have had drawbacks; I shall only say that the reason alleged by the Chancelier de l'Hôpital was not the true one; the governing of peoples is far from being only an honor.

In the matter of presumption, that of law is better than that of man. French law regards as fraudulent all acts done by a merchant in the ten days preceding his bankruptcy;[41] this is a presumption of law. Roman law inflicted penalties on the husband who kept his wife after her adultery, unless he determined to do so from fear of the outcome of a suit or from neglect of his own shame, and this is the presumption of man. The judge had to presume the motives for the husband's conduct and determine it by a very obscure way of thinking. When the judge presumes, judgments become arbitrary; when the law presumes, it gives a fixed rule to the judge.

The law of Plato, as I have said, wanted one to punish the one who killed himself not to avoid ignominy, but from weakness.[42] This law was defective because in the only case where one could not draw from the criminal the admission of the motive that made him act, it wanted the judge to base his determination on these motives.

[40] [Enrico Caterina Davila] *Dell'istoria delle guerre civili di Francia*, p. 96 [bk. 3; 1, 281–282; 1825 edn].
[41] It is from the month of November, 1702 [November 18, 1702, *Recueil général des anciennes lois françaises, Bourbons*, #1833; 20, 419–421].
[42] [Plato] *Laws*, bk. 9 [873c–d].

[f] The word *raison* denotes both "reason" and "ratio."

As useless laws weaken necessary laws, those that can be evaded weaken legislation. A law should have its effect, and departures from it must not be permitted by some private agreement.

The Falcidian law ordered among the Romans that the heir would always have a fourth of the inheritance; another law[43] permitted the testator to prohibit the heir from keeping this fourth part; this is trifling with the laws. The Falcidian law became useless for, if the testator wanted to favor his heir, the latter had no need of the Falcidian law, and if he did not want to favor his heir, he prohibited his heir from making use of the Falcidian law.

One must take care that laws are conceived so as not to run counter to the nature of things. In the proscription of the Prince of Orange, Philip II promised to give to the one who killed him, or to his heirs, twenty-five thousand ecus and nobility, and this on the word of the king and as servant of god. Nobility promised for such an action! Such an action ordered in one's capacity as a servant of god! All this upsets equally the ideas of honor, those of morality, and those of religion.

It is rare that one must prohibit something that is not bad on the pretense of an imagined perfection.

There must be a certain candor in the laws. Made to punish the wickedness of men, they should have the greatest innocence themselves. One can see in the law of the Visigoths that ridiculous requirement by which the Jews were obliged to eat everything accompanying the pork, but not the pork itself.[44] This was a great cruelty: they were subjected to a law contrary to their own; they were allowed to keep of their own only that which could be a sign by which they could be recognized.

[43] *Authentica, sed sum testator* [*Corpus Juris Civilis*, *Novellae* 1.2, 3; *Code*, 6.50.7].
[44] [*Lex Wisigothorum*] bk. 12, tit. 2, para. 16 [12.2.16].

CHAPTER 17

A bad way of giving laws

The Roman emperors, like our princes, manifested their wills by decrees and edicts, but, as our princes do not, they permitted judges or single individuals to interrogate them by letter on their disputes, and

their replies were called rescripts. The decretals of the popes are, properly speaking, rescripts. One senses that this is a bad sort of legislation. Those who demand laws in this way are bad guides for the legislator; the facts are always poorly presented. Trajan, says Julius Capitolinus,[45] often refused to give these sorts of rescripts, so that a decision, and often a particular favor, would not be extended to all cases. Macrinus had decided to abolish all these rescripts;[46] he could not suffer one to regard as laws the responses of Commodus, Caracalla, and all those other incompetent princes. Justinian thought otherwise, and he filled his compilation with them.

I would want those who read Roman laws to distinguish well these sorts of assumptions from senatus-consults, plebiscites, general constitutions of the emperors, and all the laws founded on the nature of things, on the frailty of women, on the weakness of minors, and on the public utility.

[45] See Julius Capitolinus, *Opillius Macrinus* [13.1].
[46] Ibid. [Julius Capitolinus, *Opillius Macrinus* 13.1].

CHAPTER 18

On ideas of uniformity

There are certain ideas of uniformity that sometimes seize great spirits (for they touched Charlemagne), but that infallibly strike small ones. They find in it a kind of perfection they recognize because it is impossible not to discover it: in the police the same weights, in commerce the same measures, in the state the same laws and the same religion in every part of it. But is this always and without exception appropriate? Is the ill of changing always less than the ill of suffering? And does not the greatness of genius consist rather in knowing in which cases there must be uniformity and in which differences? In China, the Chinese are governed by Chinese ceremonies, and the Tartars by Tartar ceremonies; they are, however, the people in the world which most have tranquility as their purpose. When the citizens observe the laws, what does it matter if they observe the same ones?

CHAPTER 19

On legislators

Aristotle sometimes wanted to satisfy his jealousy of Plato, sometimes his passion for Alexander. Plato was indignant at the tyranny of the people of Athens. Machiavelli was full of his idol, Duke Valentino. Thomas More, who spoke rather of what he had read than of what he had thought, wanted to govern all states with the simplicity of a Greek town.[47] Harrington saw only the republic of England, while a crowd of writers found disorder wherever they did not see a crown. The laws always meet the passions and prejudices of the legislator. Sometimes they pass through and are colored; sometimes they remain there and are incorporated.

[47] In his *Utopia* [Thomas More, *Utopia*, bk. 2, pp. 39–40; 1975 edn].