

Book XXIII. Of Laws in the Relation They Bear to the Number of
Inhabitants

1. Of Men and Animals with respect to the Multiplication of their
Species.

Delight of human kind, [1] and gods above;
Parent of Rome, propitious Queen of Love;

For when the rising spring adorns the mead,
And a new scene of nature stands display'd;
When teeming buds, and cheerful greens appear,
And western gales unlock the lazy year;
The joyous birds thy welcome first express,
Whose native songs thy genial fire confess:
Then savage beasts bound o'er their slighted food,
Struck with thy darts, and tempt the raging flood:
All nature is thy gift, earth, air, and sea;
Of all that breathes the various progeny,
Stung with delight, is goaded on by thee.
O'er barren mountains, o'er the flow'ry plain,
The leafy forest, and the liquid main,
Extends thy uncontroll'd and boundless reign.
Thro' all the living regions thou dost move,
And scatter'st where thou go'st the kindly seeds of love.

The females of brutes have an almost constant fecundity. But in the human species, the manner of thinking, the character, the passions, the humour, the caprice, the idea of preserving beauty, the pain of child-bearing, and the fatigue of a too numerous family, obstruct propagation in a thousand different ways.

2. Of Marriage. The natural obligation of the father to provide for his children has established marriage, which makes known the person who ought to fulfil this obligation. The people[2] mentioned by Pomponius Mela[3] had no other way of discovering him but by resemblance.

Among civilised nations, the father is that person on whom the laws, by the ceremony of marriage, have fixed this duty, because they find in him the man they want.[4]

Among brutes this is an obligation which the mother can generally perform; but it is much more extensive among men. Their children indeed have reason; but this comes only by slow degrees. It is not sufficient to nourish them; we must also direct them: they can already live; but they cannot govern themselves.

Illicit conjunctions contribute but little to the propagation of the species. The father, who is under a natural obligation to nourish and educate his children, is not then fixed; and the mother, with whom the obligation remains, finds a thousand obstacles from shame, remorse, the constraint of her sex, and the rigour of laws; and besides, she generally wants the means.

Women who have submitted to public prostitution cannot have the convenience of educating their children: the trouble of education is incompatible with their station; and they are so corrupt that they can have no protection from the law.

It follows from all this that public continence is naturally connected with the propagation of the species.

3. Of the Condition of Children. It is a dictate of reason that when there is a marriage, children should follow the station or condition of the father; and that when there is not, they can belong to the mother only.[5]

4. Of Families. It is almost everywhere a custom for the wife to pass into the family of the husband. The contrary is without any inconvenience established at Formosa, [6] where the husband enters into the family of the wife.

This law, which fixes the family in a succession of persons of the same sex, greatly contributes, independently of the first motives, to the propagation of the human species. The family is a kind of property: a man who has children of a sex which does not perpetuate it is never satisfied if he has not those who can render it perpetual.

Names, whereby men acquire an idea of a thing which one would imagine ought not to perish, are extremely proper to inspire every family with a desire of extending its duration. There are people among whom names distinguish families: there are others where they only distinguish persons: the latter have not the same advantage as the former.

5. Of the several Orders of lawful Wives. Laws and religion sometimes establish many kinds of civil conjunctions; and this is the case among the Mahometans, where there are several orders of wives, the children of whom are distinguished by being born in the house, by civil contracts, or even by the slavery of the mother, and the subsequent acknowledgment of the father.

It would be contrary to reason that the law should stigmatise the children for what it approved in the father. All these children ought, therefore, to succeed, at least if some particular reason does not oppose it, as in Japan, where none inherit but the children of the wife given by the emperor. Their policy demands that the gifts of the emperor should not be too much divided, because they subject them to a kind of service, like that of our ancient fiefs.

There are countries where a wife of the second rank enjoys nearly the same honours in a family as in our part of the world are granted to an

only consort: there the children of concubines are deemed to belong to the first or principal wife. Thus it is also established in China. Filial respect, [7] and the ceremony of deep mourning, are not due to the natural mother, but to her appointed by the law.

By means of this fiction they have no bastard children; and where such a fiction does not take place, it is obvious that a law to legitimize the children of concubines must be considered as an act of violence, as the bulk of the nation would be stigmatised by such a decree. Neither is there any regulation in those countries with regard to children born in adultery. The recluse lives of women, the locks, the inclosures, and the eunuchs render all infidelity to their husbands so difficult, that the law judges it impossible. Besides, the same sword would exterminate the mother and the child.

6. Of Bastards in different Governments. They have therefore no such thing as bastards where polygamy is permitted; this disgrace is known only in countries in which a man is allowed to marry but one wife. Here they were obliged to stamp a mark of infamy upon concubinage, and consequently they were under a necessity of stigmatising the issue of such unlawful conjunctions.

In republics, where it is necessary that there should be the purest morals, bastards ought to be more degraded than in monarchies.

The laws made against them at Rome were perhaps too severe; but as the ancient institutions laid all the citizens under a necessity of marrying, and as marriages were also softened by the permission to repudiate or make a divorce, nothing but an extreme corruption of manners could lead them to concubinage.

It is observable that as the quality of a citizen was a very considerable thing in a democratic government, where it carried with it the sovereign power, they frequently made laws in respect to the state

of bastards, which had less relation to the thing itself and to the honesty of marriage than to the particular constitution of the republic. Thus the people have sometimes admitted bastards into the number of citizens, in order to increase their power in opposition to the great.[8] Thus the Athenians excluded bastards from the privilege of being citizens, that they might possess a greater share of the corn sent them by the King of Egypt. In fine, Aristotle informs us that in many cities where there was not a sufficient number of citizens, their bastards succeeded to their possessions; and that when there was a proper number, they did not inherit.[9]

7. Of the Father's Consent to Marriage. The consent of fathers is founded on their authority, that is, on the right of property. It is also founded on their love, on their reason, and on the uncertainty of that of their children, whom youth confines in a state of ignorance and passion in a state of ebriety.

In the small republics, or singular institutions already mentioned, they might have laws which gave to magistrates that right of inspection over the marriages of the children of citizens which nature had already given to fathers. The love of the public might there equal or surpass all other love. Thus Plato would have marriages regulated by the magistrates: this the Lacedæmonian magistrates performed.

But in common institutions, fathers have the disposal of their children in marriage: their prudence in this respect is always supposed to be superior to that of a stranger. Nature gives to fathers a desire of procuring successors to their children, when they have almost lost the desire of enjoyment themselves. In the several degrees of progeniture, they see themselves insensibly advancing to a kind of immortality. But what must be done, if oppression and avarice arise to such a height as to usurp all the authority of fathers? Let us hear what Thomas Gage says in regard to the conduct of the Spaniards in the West Indies.[10]

"According to the number of the sons and daughters that are marriageable, the father's tribute is raised and increased, until they provide husbands and wives for their sons and daughters, who, as soon as they are married, are charged with tribute; which, that it may increase, they will suffer none above fifteen years of age to live unmarried. Nay, the set time of marriage appointed for the Indians is at fourteen years for the man, and thirteen for the woman; alleging that they are sooner ripe for the fruit of wedlock, and sooner ripe in knowledge and malice, and strength for work and service, than any other people. Nay, sometimes they force those to marry who are scarcely twelve and thirteen years of age, if they find them well-limbed and strong in body, explaining a point of one of the canons, which alloweth fourteen and fifteen years. Nisi malitia suppleat ætatem."

He saw a list of these taken. It was, says he, a most shameful affair. Thus in an action which ought to be the most free, the Indians are the greatest slaves.

8. The same Subject continued. In England the law is frequently abused by the daughters marrying according to their own fancy without consulting their parents. This custom is, I am apt to imagine, more tolerated there than anywhere else from a consideration that as the laws have not established a monastic celibacy, the daughters have no other state to choose but that of marriage, and this they cannot refuse. In France, on the contrary, young women have always the resource of celibacy; and therefore the law which ordains that they shall wait for the consent of their fathers may be more agreeable. In this light the custom of Italy and Spain must be less rational; convents are there established, and yet they may marry without the consent of their fathers.

9. Of young Women. Young women who are conducted by marriage alone to liberty and pleasure, who have a mind which dares not think, a heart which dares not feel, eyes which dare not see, ears which dare not hear,

who appear only to show themselves silly, condemned without intermission to trifles and precepts, have sufficient inducements to lead them on to marriage: it is the young men that want to be encouraged.

10. What it is that determines Marriage. Wherever a place is found in which two persons can live commodiously, there they enter into marriage. Nature has a sufficient propensity to it, when unrestrained by the difficulty of subsistence.

A rising people increase and multiply extremely. This is, because with them it would be a great inconvenience to live in celibacy; and none to have many children. The contrary of which is the case when a nation is formed.

11. Of the Severity of Government. Men who have absolutely nothing, such as beggars, have many children. This proceeds from their being in the case of a rising people: it costs the father nothing to give his heart to his offspring, who even in their infancy are the instruments of this art. These people multiply in a rich or superstitious country, because they do not support the burden of society, but are themselves the burden. But men who are poor, only because they live under a severe government; who regard their fields less as the source of their subsistence than as a cause of vexation; these men, I say, have few children: they have not even subsistence for themselves. How then can they think of dividing it? They are unable to take care of their own persons when they are sick. How then can they attend to the wants of creatures whose infancy is a continual sickness?

It is pretended by some who are apt to talk of things which they have never examined that the greater the poverty of the subjects, the more numerous their families: that the more they are loaded with taxes, the more industriously they endeavour to put themselves in a station in which they will be able to pay them: two sophisms, which have always destroyed and will for ever be the destruction of monarchies.

The severity of government may be carried to such an extreme as to make the natural sentiments destructive of the natural sentiments themselves. Would the women of America have refused to bear children had their masters been less cruel?[11]

12. Of the Number of Males and Females in different Countries. I have already observed that there are born in Europe rather more boys than girls.[12] It has been remarked that in Japan there are born rather more girls than boys:[13] all things compared, there must be more fruitful women in Japan than in Europe, and consequently it must be more populous.

We are informed that at Bantam there are ten girls to one boy.[14] A disproportion like this must cause the number of families there to be to the number of those of other climates as 1 to 5 1/2 which is a prodigious difference. Their families may be much larger indeed; but there must be few men in circumstances sufficient to provide for so large a family.

13. Of Seaport Towns. In seaport towns, where men expose themselves to a thousand dangers, and go abroad to live or die in distant climates, there are fewer men than women: and yet we see more children there than in other places. This proceeds from the greater ease with which they procure the means of subsistence. Perhaps even the oily parts of fish are more proper to furnish that matter which contributes to generation. This may be one of the causes of the infinite number of people in Japan[15] and China,[16] where they live almost wholly on fish.[17] If this be the case, certain monastic rules, which oblige the monks to live on fish, must be contrary to the spirit of the legislator himself.

14. Of the Productions of the Earth which require a greater or less Number of Men. Pasture-lands are but little peopled, because they find employment only for a few. Corn-lands employ a great many men, and vineyards infinitely more.

It has been a frequent complaint in England[18] that the increase of pasture-land diminished the inhabitants; and it has been observed in France that the prodigious number of vineyards is one of the great causes of the multitude of people.

Those countries where coal-pits furnish a proper substance for fuel have this advantage over others, that not having the same occasion for forests, the lands may be cultivated.

In countries productive of rice, they are at vast pains in watering the land: a great number of men must therefore be employed. Besides, there is less land required to furnish subsistence for a family than in those which produce other kinds of grain. In fine, the land which is elsewhere employed in raising cattle serves immediately for the subsistence of man; and the labour which in other places is performed by cattle is there performed by men; so that the culture of the soil becomes to man an immense manufacture.

15. Of the Number of Inhabitants with relation to the Arts. When there is an agrarian law, and the lands are equally divided, the country may be extremely well peopled, though there are but few arts; because every citizen receives from the cultivation of his land whatever is necessary for his subsistence, and all the citizens together consume all the fruits of the earth. Thus it was in some republics.

In our present situation, in which lands are unequally distributed, they produce much more than those who cultivate them are able to consume; if the arts, therefore, should be neglected, and nothing minded but agriculture, the country could not be peopled. Those who cultivate, or employ others to cultivate, having corn to spare, nothing would engage them to work the following year; the fruits of the earth would not be consumed by the indolent; for these would have nothing with which they could purchase them. It is necessary, then, that the arts should be established, in order that the produce of the land may be consumed by

the labourer and the artificer. In a word, it is now proper that many should cultivate much more than is necessary for their own use. For this purpose they must have a desire of enjoying superfluities; and these they can receive only from the artificer.

The machines designed to abridge art are not always useful. If a piece of workmanship is of a moderate price, such as is equally agreeable to the maker and the buyer, those machines which would render the manufacture more simple, or, in other words, diminish the number of workmen, would be pernicious. And if water-mills were not everywhere established, I should not have believed them so useful as is pretended, because they have deprived an infinite multitude of their employment, a vast number of persons of the use of water, and great part of the land of its fertility.

16. The Concern of the Legislator in the Propagation of the Species.

Regulations on the number of citizens depend greatly on circumstances. There are countries in which nature does all; the legislator then has nothing to do. What need is there of inducing men by laws to propagation when a fruitful climate yields a sufficient number of inhabitants? Sometimes the climate is more favourable than the soil; the people multiply, and are destroyed by famine: this is the case of China. Hence a father sells his daughters and exposes his children. In Tonquin, [19] the same causes produce the same effects; so we need not, like the Arabian travellers mentioned by Renaudot, search for the origin of this in their sentiments on the metempsychosis. [20]

For the same reason, the religion of the Isle of Formosa does not suffer the women to bring their children into the world till they are thirty-five years of age: [21] the priestess, before this age, by bruising the belly procures abortion.

17. Of Greece and the Number of its Inhabitants. That effect which in certain countries of the East springs from physical causes was produced

in Greece by the nature of the government. The Greeks were a great nation, composed of cities, each of which had a distinct government and separate laws. They had no more the spirit of conquest and ambition than those of Switzerland, Holland, and Germany have at this day. In every republic the legislator had in view the happiness of the citizens at home, and their power abroad, lest it should prove inferior to that of the neighbouring cities.[22] Thus, with the enjoyment of a small territory and great happiness, it was easy for the number of the citizens to increase to such a degree as to become burdensome. This obliged them incessantly to send out colonies,[23] and, as the Swiss do now, to let their men out to war. Nothing was neglected that could hinder the too great multiplication of children.

They had among them republics, whose constitution was very remarkable. The nations they had subdued were obliged to provide subsistence for the citizens. The Lacedæmonians were fed by the Helotes, the Cretans by the Periecians, and the Thessalians by the Penestes. They were obliged to have only a certain number of freemen, that their slaves might be able to furnish them with subsistence. It is a received maxim in our days, that it is necessary to limit the number of regular troops: now the Lacedæmonians were an army maintained by the peasants: it was proper, therefore, that this army should be limited; without this the freemen, who had all the advantages of society, would increase beyond number, and the labourers be overloaded.

The politics of the Greeks were particularly employed in regulating the number of citizens. Plato fixes them at five thousand and forty,[24] and he would have them stop or encourage propagation, as was most convenient, by honours, shame, and the advice of the old men; he would even regulate the number of marriages in such a manner that the republic might be recruited without being overcharged.[25]

If the laws of a country, says Aristotle, forbid the exposing of children, the number of those brought forth ought to be limited.[26] If

they have more than the number prescribed by law, he advises to make the women miscarry before the foetus be formed.[27]

The same author mentions the infamous means made use of by the Cretans to prevent their having too great a number of children -- a proceeding too indecent to repeat.

There are places, says Aristotle again[28] where the laws give the privilege of being citizens to strangers, or to bastards, or to those whose mothers only are citizens; but as soon as they have a sufficient number of people this privilege ceases. The savages of Canada burn their prisoners; but when they have empty cottages to give them, they receive them into their nation.

Sir William Petty, in his calculations, supposes that a man in England is worth what he would sell for at Algiers.[29] This can be true only with respect to England. There are countries where a man is worth nothing; there are others where he is worth less than nothing.

18. Of the State and Number of People before the Romans. Italy, Sicily, Asia Minor, Gaul, and Germany were nearly in the same state as Greece; full of small nations that abounded with inhabitants, they had no need of laws to increase their number.

19. Of the Depopulation of the Globe. All these little republics were swallowed up in a large one, and the globe insensibly became depopulated: in order to be convinced of this, we need only consider the state of Italy and Greece before and after the victories of the Romans.

"You will ask me," says Livy,[30] "where the Volsci could find soldiers to support the war, after having been so often defeated. There must have been formerly an infinite number of people in those countries, which at present would be little better than a desert, were it not for a few soldiers and Roman slaves."

"The Oracles have ceased," says Plutarch, "because the places where they spoke are destroyed. At present we can scarcely find in Greece three thousand men fit to bear arms."

"I shall not describe," says Strabo, [31] "Epirus and the adjacent places, because these countries are entirely deserted. This depopulation, which began long ago, still continues; so that the Roman soldiers encamp in the houses they have abandoned." We find the cause of this in Polybius, who says that Paulus æmilius, after his victory, destroyed seventy cities of Epirus, and carried away a hundred and fifty thousand slaves.

20. That the Romans were under the Necessity of making Laws to encourage the Propagation of the Species. The Romans, by destroying others, were themselves destroyed: incessantly in action, in the heat of battle, and in the most violent attempts, they wore out like a weapon kept constantly in use.

I shall not here speak of the attention with which they applied themselves to procure citizens in the room of those they lost, [32] of the associations they entered into, the privileges they bestowed, and of that immense nursery of citizens, their slaves. I shall mention what they did to recruit the number, not of their citizens, but of their men; and as these were the people in the world who knew best how to adapt their laws to their projects, an examination of their conduct in this respect cannot be a matter of indifference.

21. Of the Laws of the Romans relating to the Propagation of the Species. The ancient laws of Rome endeavoured greatly to incite the citizens to marriage. The senate and the people made frequent regulations on this subject, as Augustus says in his speech related by Dio. [33]

Dionysius Halicarnassus [34] cannot believe that after the death of three

hundred and five of the Fabii, exterminated by the Veientes, there remained no more of this family than one single child; because the ancient law, which obliged every citizen to marry and to educate all his children, was still in force.[35]

Independently of the laws, the censors had a particular eye upon marriages, and according to the exigencies of the republic engaged them to it by shame and by punishments.[36]

The corruption of manners that began to take place contributed vastly to disgust the citizens with marriage, which was painful to those who had no taste for the pleasures of innocence. This is the purport of that speech which Metellus Numidicus, when he was censor, made to the people:[37] "If it were possible for us to do without wives, we should deliver ourselves from this evil: but as nature has ordained that we cannot live very happily with them, nor subsist without them, we ought to have more regard to our own preservation than to transient gratifications."

The corruption of manners destroyed the censorship, which was itself established to destroy the corruption of manners: for when this depravation became general, the censor lost his power.[38]

Civil discords, triumvirates, and proscriptions weakened Rome more than any war she had hitherto engaged in. They left but few citizens,[39] and the greatest part of them unmarried. To remedy this last evil, Cæsar and Augustus re-established the censorship, and would even be censors themselves.[40] Cæsar gave rewards to those who had many children.[41] All women under forty-five years of age who had neither husband nor children were forbidden to wear jewels or to ride in litters;[42] an excellent method thus to attack celibacy by the power of vanity. The laws of Augustus were more pressing;[43] he imposed new penalties on such as were not married,[44] and increased the rewards both of those who were married and of those who had children. Tacitus calls these

Julian laws;[45] to all appearance they were founded on the ancient regulations made by the senate, the people, and the censors.

The law of Augustus met with innumerable obstacles, and thirty-four years after it had been made the Roman knights insisted on its being abolished.[46] He placed on one side such as were married, and on the other side those who were not: these last appeared by far the greatest number; upon which the citizens were astonished and confounded.

Augustus, with the gravity of the ancient censors, addressed them in this manner:[47]

"While sickness and war snatch away so many citizens, what must become of this state if marriages are no longer contracted? The city does not consist of houses, of porticos, of public places, but of inhabitants. You do not see men like those mentioned in Fable starting out of the earth to take care of your affairs. Your celibacy is not owing to the desire of living alone; for none of you eats or sleeps by himself. You only seek to enjoy your irregularities undisturbed. Do you cite the example of the Vestal Virgins? If you preserve not the laws of chastity, you ought to be punished like them. You are equally bad citizens, whether your example has an influence on the rest of the world, or whether it be disregarded. My only view is the perpetuity of the republic. I have increased the penalties of those who have disobeyed; and with respect to rewards, they are such as I do not know whether virtue has ever received greater. For less will a thousand men expose life itself; and yet will not these engage you to take a wife and provide for children?"

He made a law, which was called after his name, Julia and Papia Poppæa, from the names of the consuls for part of that year.[48] The greatness of the evil appeared even in their being elected: Dio tells us that they were not married, and that they had no children.[49]

This decree of Augustus was properly a code of laws, and a systematic body of all the regulations that could be made on this subject. The Julian laws were incorporated in it, and received greater strength.[50] It was so extensive in its use, and had an influence on so many things, that it formed the finest part of the civil law of the Romans.

We find parts of it dispersed in the precious fragments of Ulpian,[51] in the Laws of the Digest, collected from authors who wrote on the Papian laws, in the historians and others who have cited them, in the Theodosian code which abolished them, and in the works of the fathers, who have censured them, without doubt from a laudable zeal for the things of the other life, but with very little knowledge of the affairs of this.

These laws had many heads,[52] of which we know thirty-five. But to return to my subject as speedily as possible, I shall begin with that head which Aulus Gellius informs us was the seventh, and relates to the honours and rewards granted by that law.[53]

The Romans, who for the most part sprang from the cities of the Latins, which were Lacedæmonian colonies,[54] and had received a part of their laws even from those cities,[55] had, like the Lacedæmonians, such veneration for old age as to give it all honour and precedence. When the republic wanted citizens, she granted to marriage and to the number of children the privileges which had been given to age.[56] She granted some to marriage alone, independent of the children which might spring from it: this was called the right of husbands. She gave others to those who had any children, and larger still to those who had three children. These three things must not be confounded. These last had those privileges which married men constantly enjoyed; as, for example, a particular place in the theatre;[57] they had those which could only be enjoyed by men who had children, and which none could deprive them of but such as had a greater number.

These privileges were very extensive. The married men who had the most children were always preferred, whether in the pursuit or in the exercise of honours,[58] The consul who had the most numerous offspring was the first who received the fasces;[59] he had his choice of the provinces:[60] the senator who had most children had his name written first in the catalogue of senators, and was the first in giving his opinion in the senate.[61] They might even stand sooner than ordinary for an office, because every child gave a dispensation of a year.[62] If an inhabitant of Rome had three children, he was exempted from all troublesome offices.[63] The freeborn women who had three children, and the freedwomen who had four, passed out of that perpetual tutelage[64] in which they had been held by the ancient laws of Rome.[65]

As they had rewards, they had also penalties.[66] Those who were not married could receive no advantage from the will of any person that was not a relative;[67] and those who, being married, had no children, could receive only half.[68] The Romans, says Plutarch, marry only to be heirs, and not to have them.[69]

The advantages which a man and his wife might receive from each other by will were limited by law.[70] If they had children of each other, they might receive the whole; if not, they could receive only a tenth part of the succession on the account of marriage; and if they had any children by a former venter, as many tenths as they had children.

If a husband absented himself from his wife on any other cause than the affairs of the republic, he could not inherit from her.[71]

The law gave to a surviving husband or wife two years to marry again,[72] and a year and a half in case of a divorce. The fathers who would not suffer their children to marry, or refused to give their daughters a portion, were obliged to do it by the magistrates.[73]

They were not allowed to betroth when the marriage was to be deferred for more than two years:[74] and as they could not marry a girl till she

was twelve years old, they could not be betrothed to her till she was ten. The law would not suffer them to trifle to no purpose;[75] and under a pretence of being betrothed, to enjoy the privileges of married men.

It was contrary to law for a man of sixty to marry a woman of fifty.[76] As they had given great privileges to married men, the law would not suffer them to enter into useless marriages. For the same reason, the Calvisian Senatus Consultum declared the marriage of a woman above fifty with a man less than sixty to be unequal:[77] so that a woman of fifty years of age could not marry without incurring the penalties of these laws. Tiberius added to the rigour of the Papian law,[78] and prohibited men of sixty from marrying women under fifty; so that a man of sixty could not marry in any case whatsoever, without incurring the penalty. But Claudius abrogated this law made under Tiberius.[79]

All these regulations were more conformable to the climate of Italy than to that of the North, where a man of sixty years of age has still a considerable degree of strength, and where women of fifty are not always past child-bearing.

That they might not be unnecessarily limited in the choice they were to make, Augustus permitted all the freeborn citizens who were not senators[80] to marry freedwomen.[81] The Papian law forbade the senators marrying freedwomen,[82] or those who had been brought up to the stage; and from the time of Ulpian,[83] free-born persons were forbidden to marry women who had led a disorderly life, who had played in the theatre, or who had been condemned by a public sentence. This must have been established by a decree of the senate. During the time of the republic they had never made laws like these, because the censors corrected this kind of disorder as soon as it arose, or else prevented its rising.

Constantine made a law[84] in which he comprehended, in the prohibition of the Papian law, not only the senators, but even such as had a considerable rank in the state, without mentioning persons in an inferior station: this constituted the law of those times. These marriages were therefore no longer forbidden, except to the free-born comprehended in the law of Constantine. Justinian, however, abrogated the law of Constantine,[85] and permitted all sorts of persons to contract these marriages; and thus we have acquired so fatal a liberty.

It is evident that the penalties inflicted on such as married contrary to the prohibition of the law were the same as those inflicted on persons who did not marry. These marriages did not give them any civil advantage;[86] for the dowry[87] was confiscated after the death of the wife.[88]

Augustus having adjudged the succession and legacies of those whom these laws had declared incapable, to the public treasury,[89] they had the appearance rather of fiscal than of political and civil laws. The disgust they had already conceived at a burden which appeared too heavy was increased by their seeing themselves a continual prey to the avidity of the treasury. On this account, it became necessary, under Tiberius, that these laws should be softened;[90] that Nero should lessen the rewards given out of the treasury to the informers;[91] that Trajan should put a stop to their plundering;[92] that Severus should also moderate these laws;[93] and that the civilians should consider them as odious, and in all their decisions deviate from the literal rigour.

Besides, the emperors enervated these laws[94] by the privileges they granted of the rights of husbands, of children, and of three children. More than this, they gave particular persons a dispensation from the penalties of these laws.[95] But the regulations established for the public utility seemed incapable of admitting an alleviation.

It was highly reasonable that they should grant the rights of children to the vestals,[96] whom religion retained in a necessary virginity:

they gave, in the same manner, the privilege of married men to soldiers,[97] because they could not marry. It was customary to exempt the emperors from the constraint of certain civil laws. Thus Augustus was freed from the constraint of the law which limited the power of enfranchising,[98] and of that which set bounds to the right of bequeathing by testament.[99] These were only particular cases; but, at last, dispensations were given without discretion, and the rule itself became no more than an exception.

The sects of philosophers had already introduced in the empire a disposition that estranged them from business -- a disposition which could not gain ground in the time of the republic,[100] when everybody was employed in the arts of war and peace. Hence arose an idea of perfection, as connected with a life of speculation; hence an estrangement from the cares and embarrassments of a family. The Christian religion coming after this philosophy fixed, if I may make use of the expression, the ideas which that had only prepared.

Christianity stamped its character on jurisprudence; for empire has ever a connection with the priesthood. This is visible from the Theodosian code, which is only a collection of the decrees of the Christian emperors.

A panegyrist of Constantine[101] said to that emperor, "Your laws were made only to correct vice and to regulate manners: you have stripped the ancient laws of that artifice which seemed to have no other aim than to lay snares for simplicity."

It is certain that the alterations made by Constantine took their rise either from sentiments relating to the establishment of Christianity, or from ideas conceived of its perfection. From the first proceeded those laws which gave such authority to bishops, and which have been the foundation of the ecclesiastical jurisdiction; hence those laws which weakened paternal authority[102] by depriving the father of his property

in the possessions of his children. To extend a new religion, they were obliged to take away the dependence of children, who are always least attached to what is already established.

The laws made with a view to Christian perfection were more particularly those by which the penalties of the Papian laws were abolished; the unmarried were equally exempted from them, with those who, being married, had no children.

"These laws were established," says an ecclesiastical historian, [103] "as if the multiplication of human species was an effect of our care; instead of being sensible that the number is increased or diminished according to the order of Providence."

Principles of religion have had an extraordinary influence on the propagation of the human species. Sometimes they have promoted it, as among the Jews, the Mahometans, the Gaurs, and the Chinese; at others they have put a damp to it, as was the case of the Romans upon their conversion to Christianity.

They everywhere incessantly preached continency; a virtue the more perfect because in its own nature it can be practised but by very few.

Constantine had not taken away the decimal laws which granted a greater extent to the donations between man and wife, in proportion to the number of their children. Theodosius, the younger, abrogated even these laws. [104]

Justinian declared all those marriages valid which had been prohibited by the Papian laws. [105] These laws required people to marry again: Justinian granted privileges to those who did not marry again. [106]

By the ancient institutions, the natural right which every one had to marry and beget children could not be taken away. Thus when they

received a legacy, [107] on condition of not marrying, or when a patron made his freedman swear [108] that he would neither marry nor beget children, the Papian law annulled both the condition and the oath. [109] The clauses on continuing in widowhood established among us contradict the ancient law, and descend from the constitutions of the emperors, founded on ideas of perfection.

There is no law that contains an express abrogation of the privileges and honours which the Romans had granted to marriages, and to a number of children. But where celibacy had the pre-eminence, marriage could not be held in honour; and since they could oblige the officers of the public revenue to renounce so many advantages by the abolition of the penalties, it is easy to perceive that with yet greater ease they might put a stop to the rewards.

The same spiritual reason which had permitted celibacy soon imposed it even as necessary. God forbid that I should here speak against celibacy as adopted by religion; but who can be silent when it is built on libertinism; when the two sexes, corrupting each other even by the natural sensations themselves, fly from a union which ought to make them better, to live in that which always renders them worse?

It is a rule drawn from nature, that the more the number of marriages is diminished, the more corrupt are those who have entered into that state; the fewer married men, the less fidelity is there in marriage; as when there are more thieves, more thefts are committed.

22. Of the Exposing of Children. The Roman policy was very good in respect to the exposing of children. Romulus, says Dionysius Halicarnassus, [110] laid the citizens under an obligation to educate all their male children, and the eldest of their daughters. If the infants were deformed and monstrous, he permitted the exposing them, after having shown them to five of their nearest neighbours.

Romulus did not suffer them to kill any infants under three years old:[111] by which means he reconciled the law that gave to fathers the right over their children of life and death with that which prohibited their being exposed.

We find also in Dionysius Halicarnassus[112] that the law which obliged the citizens to marry, and to educate all their children, was in force in the 277th year of Rome; we see that custom had restrained the law of Romulus which permitted them to expose their younger daughters.

We have no knowledge of what the law of the Twelve Tables (made in the year of Rome 301) appointed with respect to the exposing of children, except from a passage of Cicero, [113] who, speaking of the office of tribune of the people, says that soon after its birth, like the monstrous infant of the law of the Twelve Tables, it was stifled; the infant that was not monstrous was therefore preserved, and the law of the Twelve Tables made no alteration in the preceding institutions.

"The Germans," says Tacitus, [114] "never expose their children; among them the best manners have more force than in other places the best laws." The Romans had therefore laws against this custom, and yet they did not follow them. We find no Roman law that permitted the exposing of children; [115] this was, without doubt, an abuse introduced towards the decline of the republic, when luxury robbed them of their freedom, when wealth divided was called poverty, when the father believed that all was lost which he gave to his family, and when this family was distinct from his property.

23. Of the State of the World after the Destruction of the Romans. The regulations made by the Romans to increase the number of their citizens had their effect while the republic, in the full vigour of her constitution, had nothing to repair but the losses she sustained by her courage, by her intrepidity, by her firmness, her love of glory and of virtue. But soon the wisest laws could not re-establish what a dying

republic, what a general anarchy, what a military government, what a rigid empire, what a proud despotic power, what a feeble monarchy, what a stupid, weak, and superstitious court had successively pulled down. It might, indeed, be said that they conquered the world only to weaken it, and to deliver it up defenceless to barbarians. The Gothic nations, the Getes, the Saracens and Tartars by turns harassed them; and soon the barbarians had none to destroy but barbarians. Thus, in fabulous times, after the inundations and the deluge, there arose out of the earth armed men, who exterminated one another.

24. The Changes which happened in Europe with regard to the Number of the Inhabitants. In the state Europe was in one would not imagine it possible for it to be retrieved, especially when under Charlemagne it formed only one vast empire. But by the nature of government at that time it became divided into an infinite number of petty sovereignties, and as the lord or sovereign, who resided in his village or city, was neither great, rich, powerful, nor even safe but by the number of his subjects, every one employed himself with a singular attention to make his little country flourish. This succeeded in such a manner that notwithstanding the irregularities of government, the want of that knowledge which has since been acquired in commerce, and the numerous wars and disorders incessantly arising, most countries of Europe were better peopled in those days than they are even at present.

I have not time to treat fully of this subject, but I shall cite the prodigious armies engaged in the Crusades, composed of men of all countries. Puffendorf says that in the reign of Charles IX there were in France twenty millions of men.

It is the perpetual reunion of many little states that has produced this diminution. Formerly, every village of France was a capital; there is at present only one large one. Every part of the state was a centre of power; at present all has a relation to one centre, and this centre is in some measure the state itself.

25. The same Subject continued. Europe, it is true, has for these two ages past greatly increased its navigation; this has both procured and deprived it of inhabitants. Holland sends every year a great number of mariners to the Indies, of whom not above two-thirds return; the rest either perish or settle in the Indies. The same thing must happen to every other nation concerned in that trade.

We must not judge of Europe as of a particular state engaged alone in an extensive navigation. This state would increase in people, because all the neighbouring nations would endeavour to have ashare in this commerce, and mariners would arrive from all parts. Europe, separated from the rest of the world by religion, [116] by vast seas and deserts, cannot be repaired in this manner.

26. Consequences. From all this we may conclude that Europe is at present in a condition to require laws to be made in favour of the propagation of the human species. The politics of the ancient Greeks incessantly complain of the inconveniences attending a republic, from the excessive number of citizens; but the politics of this age call upon us to take proper means to increase ours.

27. Of the Law made in France to encourage the Propagation of the Species. Louis XIV appointed particular pensions to those who had ten children, and much larger to such as had twelve. [117] But it is not sufficient to reward prodigies. In order to communicate a general spirit, which leads to the propagation of the species, it is necessary for us to establish, like the Romans, general rewards, or general penalties.

28. By what means we may remedy a Depopulation. When a state is depopulated by particular accidents, by wars, pestilence, or famine, there are still resources left. The men who remain may preserve the spirit of industry; they may seek to repair their misfortunes, and calamity itself may make them become more industrious. This evil is

almost incurable when the depopulation is prepared beforehand by interior vice and a bad government. When this is the case, men perish with an insensible and habitual disease; born in misery and weakness, in violence or under the influence of a wicked administration, they see themselves destroyed, and frequently without perceiving the cause of their destruction. Of this we have a melancholy proof in the countries desolated by despotic power, or by the excessive advantages of the clergy over the laity.

In vain shall we wait for the succour of children yet unborn to re-establish a state thus depopulated. There is not time for this; men in their solitude are without courage or industry. With land sufficient to nourish a nation, they have scarcely enough to nourish a family. The common people have not even a property in the miseries of the country, that is, in the fallows with which it abounds. The clergy, the prince, the cities, the great men, and some of the principal citizens insensibly become proprietors of all the land which lies uncultivated; the families who are ruined have left their fields, and the labouring man is destitute.

In this situation they should take the same measures throughout the whole extent of the empire which the Romans took in a part of theirs; they should practise in their distress what these observed in the midst of plenty; that is, they should distribute land to all the families who are in want, and procure them materials for clearing and cultivating it. This distribution ought to be continued so long as there is a man to receive it, and in such a manner as not to lose a moment that can be industriously employed.

29. Of Hospitals. A man is not poor because he has nothing, but because he does not work. The man who without any degree of wealth has an employment is as much at his ease as he who without labour has an income of a hundred crowns a year. He who has no substance, and yet has a trade, is not poorer than he who, possessing ten acres of land, is

obliged to cultivate it for his subsistence. The mechanic who gives his art as an inheritance to his children has left them a fortune, which is multiplied in proportion to their number. It is not so with him who, having ten acres of land, divides it among his children.

In trading countries, where many men have no other subsistence but from the arts, the state is frequently obliged to supply the necessities of the aged, the sick, and the orphan. A well-regulated government draws this support from the arts themselves. It gives to some such employment as they are capable of performing; others are taught to work, and this teaching of itself becomes an employment.

The alms given to a naked man in the street do not fulfil the obligations of the state, which owes to every citizen a certain subsistence, a proper nourishment, convenient clothing, and a kind of life not incompatible with health.

Aurungzebe, being asked why he did not build hospitals, said, "I will make my empire so rich that there shall be no need of hospitals." [118] He ought to have said, "I will begin by rendering my empire rich, and then I will build hospitals."

The riches of the state suppose great industry. Amidst the numerous branches of trade it is impossible but that some must suffer, and consequently the mechanics must be in a momentary necessity.

Whenever this happens, the state is obliged to lend them a ready assistance, whether it be to prevent the sufferings of the people, or to avoid a rebellion. In this case hospitals, or some equivalent regulations, are necessary to prevent this misery.

But when the nation is poor, private poverty springs from the general calamity, and is, if I may so express myself, the general calamity itself. All the hospitals in the world cannot cure this private poverty;

on the contrary, the spirit of indolence, which it constantly inspires, increases the general, and consequently the private, misery.

Henry VIII, [119] resolving to reform the Church of England, ruined the monks, of themselves a lazy set of people, that encouraged laziness in others, because, as they practised hospitality, an infinite number of idle persons, gentlemen and citizens, spent their lives in running from convent to convent. He demolished even the hospitals, in which the lower people found subsistence, as the gentlemen did theirs in the monasteries. Since these changes, the spirit of trade and industry has been established in England.

At Rome, the hospitals place every one at his ease except those who labour, except those who are industrious, except those who have land, except those who are engaged in trade. I have observed that wealthy nations have need of hospitals, because fortune subjects them to a thousand accidents; but it is plain that transient assistances are much better than perpetual foundations. The evil is momentary; it is necessary, therefore, that the succour should be of the same nature, and that it be applied to particular accidents.

1. Dryden, *Lucr.*

2. *The Garamantes.*

3. *Book i. 8.*

4. *Pater est quem nuptiæ demonstrant.*

5. For this reason, among nations that have slaves, the child almost always follows the station or condition of the mother.

6. Father Du Halde, i, p. 165.
7. Ibid, ii, p. 121.
8. Aristotle, Politics, vi. 4.
9. Ibid., iii. 5.
10. Thomas Gage, A New Survey of the West Indies, p. 345, 3rd ed.
11. Ibid., p. 97, 3rd ed.
12. Book xvi. 4.
13. See Kempfer, who gives a computation of the people of Meaco.
14. Collection of Voyages that Contributed to the Establishment of the East India Company, i, p. 347.
15. Japan is composed of a number of isles, where there are many banks, and the sea is there extremely full of fish.
16. China abounds in rivers.
17. See Father Du Halde, ii, pp. 139, 142. ff.
18. The greatest number of the proprietors of land, says Bishop Burnet, finding more profit in selling their wool than their corn, inclosed their estates; the commons, ready to perish with hunger, rose up in arms; they insisted on a division of the lands; the young king even wrote on this subject. And proclamations were made against those who inclosed their lands. -- Abridgment of the History of the Reformation, pp. 44. 83.

19. Dampier, *Voyages*, ii, p. 41.
20. *Ibid.*, p. 167.
21. See the *Collection of Voyages that Contributed to the Establishment of the East India Company*, v, part I, pp. 182, 188.
22. In valour, discipline, and military exercises.
23. The Gauls, who were in the same circumstances, acted in the same manner.
24. *Laws*, v.
25. *Republic*, v.
26. *Politics*, vii. 16.
27. *Ibid.*
28. *Ibid.*, iii. 5.
29. Sixty pounds sterling.
30. *Book vi*. 12.
31. *Book vii*, p. 496.
32. I have treated of this in the *Considerations on the Causes of the Rise and Declension of the Roman Grandeur*, 13.
33. *Book lvi*.
34. *Book ii*.

35. In the year of Rome 277.

36. See what was done in this respect in Livy, xlv; the Epitome of Livy, lix; Aulus Gellius, i. 6; Valerius Maximus, ii. 9.

37. It is in Aulus Gellius, i. 6.

38. See what I have said in Book v. 19.

39. Cæsar, after the Civil War, having made a survey of the Roman citizens, found there were no more than one hundred and fifty thousand heads of families. -- Florus, Epitome of Livy, dec. 12.

40. See Dio, xliii., and Xiphilinus in August.

41. Dio, lib. xliii.; Suetonius, Life of Cæsar, 22; Appian, On the Civil War, ii.

42. Eusebius, Chronicle.

43. Dio, liv. 16.

44. In the year of Rome 736.

45. Julius rogationes. -- Annals, iii. 25.

46. In the year of Rome 762. -- Dio, lvi. i.

47. I have abridged this speech, which is of tedious length; it is to be found in Dio, lvi.

48. Marcus Papius Mutilus and Q. Poppæus Sabinus. -- Dio, lvi.

49. Ibid.

50. Ulpian, Fragment, tit. 14, distinguishes very rightly between the Julian and the Papian law.

51. James Godfrey has made a collection of these.

52. The 35th is cited in Leg. 19, ff. de ritu nuptiarum.

53. Book ii. 15.

54. Dionysius Halicarnassus.

55. The deputies of Rome, who were sent to search into the laws of Greece, went to Athens, and to the cities of Italy.

56. Aulus Gellius, ii. 15.

57. Suetonius, Life of Augustus, 44.

58. Tacitus, ii. 51: Ut numerus liberorum in candidatis præpolleret, quod lex jubebat.

59. Aulus Gellius, ii. 15.

60. Tacitus, Annals, xv. 19.

61. See Leg. 6, § 5, De Decurion.

62. See Leg. 2, ff. de minorib.

63. Leg. i, § 3, Leg. 2, ff. de vacatione et excusat. munerum.

64. Ulpian, Fragment., tit. 29, § 3.

65. Plutarch, Numa.

66. See the Ulpian, Fragment., tit. 14, 15, 16, 17, 18, which compose one of the most valuable pieces of the ancient civil law of the Romans.

67. Sozomenus, i. 9. They could receive from their relatives. -- Ulpian, Fragment., tit. 16, § i.

68. Sozomenus, i. 9; and Leg. unic., Cod. Theod. de infirm, poenis cælib. et orbit.

69. Of the Love of Fathers towards their Children.

70. See a more particular account of this in Ulpian. Fragment., tit. 15, 16.

71. Ibid., tit. 16, § 1.

72. Ibid., tit. 14. It seems the first Julian laws allowed three years. -- Speech of Augustus, in Dio, lvi; Suetonius, Life of Augustus, 34. Other Julian laws granted but one year: the Papian law gave two. -- Ulpian, Fragment., tit. 14. These laws were not agreeable to the people; Augustus, therefore, softened or strengthened them as they were more or less disposed to comply with them.

73. This was the 35th head of the Papian law. -- Leg. 19, ff.de ritu nuptiarum.

74. See Dio, liv, year 736; Suetonius, in Octavio, 34.

75. Dio, liv; and in the same Dio, the speech of Augustus, lvi.

76. Ulpian, Fragment., tit. 16, and Leg. 27, Cod. de nuptiis.

77. Ulpian, Fragment., tit. 16, § 3.

78. See Suetonius, *Life of Claudius*, 23.
79. *Ibid.*, 23, and Ulpian, *Fragment.*, tit. 16, § 3.
80. Dio, liv; Ulpian, *Fragment.*, tit. 13.
81. Augustus's speech, in Dio, lvi.
82. Ulpian, *Fragment.*, 13, and the Leg. 44. ff. de ritu nuptiarum.
83. Ulpian, *Fragment.*, tit. 13 and 16.
84. See Leg. 1, Cod. de nat. lib.
85. Nov. 117.
86. Leg. 37. § 7, ff. de operib. libertorum, § 7; Ulpian, *Fragment.*, tit. 16, § 2.
87. Ulpian, *Fragment.*, tit. 16, § 2.
88. See book xxvi. 13.
89. Except in certain cases. See the Ulpian, *Fragment.*, tit. 18, and the only law in Cod. de Caduc. tollend.
90. *Relatum de moderanda Papia Poppæa*. -- Tacitus, *Annals*, iii. 25.
91. He reduced them to the fourth part. -- Suetonius, *Life of Nero*, 10.
92. See Pliny, *Panegyric*.
93. Severus extended even to twenty-five years for the males, and to twenty for the females, the time fixed by the Papian law, as we see by

comparing Ulpian, Fragment., tit. 16, with what Tertullian says, Apol., 4.

94. P. Scipio, the censor, complains, in his speech to the people, of the abuses which were already introduced, that they received the same privileges for adopted as for natural children. -- Aulus Gellius, v. 19.

95. See the Leg. 31, ff. de ritu nuptiarum.

96. Augustus in the Papian law gave them the privilege of mothers. See Dio, lvi. Numa had granted them the ancient privilege of women who had three children, that is, of having no guardian. -- Plutarch, Numa.

97. This was granted them by Claudius. -- Dio, lx.

98. Leg. apud eum, ff. de manumissionib. § 1.

99. Dio, lvi.

100. See, in Cicero, Offices, i, his sentiments on the spirit of speculation.

101. Nazarius, in panegyrico Constantini, 321.

102. See Leg. 1, 2, 3, Cod. Theod. de bonis maternis, maternique generis, &c., and Leg. unic., Cod. Theod. de bonis quæ filiis famil. acquiruntur.

103. Sozomenus, i. 9.

104. Leg. 2, 3, Cod. Theod. de jur. liber.

105. Leg. Sancimus, Cod. de nuptiis.

106. Nov. 127, cap. iii; Nov. 118, cap. v.

107. Leg. 54 ff. de condit. et demonst.

108. Leg. 5, § 4, de jure patronatus.

109. Paulus, Sentences, iii. tit. 4, § 15.

110. Antiquities of Rome, ii.

111. Ibid.

112. Book ix.

113. De Leg., iii. 19.

114. De Moribus Germanorum, 19.

115. There is no title on this subject in the Digest; the title of the Code says nothing of it, any more than the Novels.

116. Mahometan countries surround it almost on every side.

117. The edict of 1666 in favour of marriages.

118. See Sir John Chardin, Travels through Persia, viii.

119. See Burnet, History of the Reformation.