

Book XX. Of Laws in Relation to Commerce, Considered in its Nature and Distinctions

1. Of Commerce. The following subjects deserve to be treated in a more extensive manner than the nature of this work will permit. Fain would I glide down a gentle river, but I am carried away by a torrent.

Commerce is a cure for the most destructive prejudices; for it is almost a general rule that wherever we find agreeable manners, there commerce flourishes; and that wherever there is commerce, there we meet with agreeable manners.

Let us not be astonished, then, if our manners are now less savage than formerly. Commerce has everywhere diffused a knowledge of the manners of all nations: these are compared one with another, and from this comparison arise the greatest advantages.

Commercial laws, it may be said, improve manners tor the same reason that they destroy them. They corrupt the purest morals.[1] This was the subject of Plato's complaints; and we every day see that they polish and refine the most barbarous.

2. Of the Spirit of Commerce. Peace is the natural effect of trade. Two nations who traffic with each other become reciprocally dependent; for if one has an interest in buying, the other has an interest in selling; and thus their union is founded on their mutual necessities.

But if the spirit of commerce unites nations, it does not in the same manner unite individuals. We see that in countries[2] where the people move only by the spirit of commerce, they make a traffic of all the humane, all the moral virtues; the most trifling things, those which humanity would demand, are there done, or there given, only for money.

The spirit of trade produces in the mind of a man a certain sense of

exact justice, opposite, on the one hand, to robbery, and on the other to those moral virtues which forbid our always adhering rigidly to the rules of private interest, and suffer us to neglect this for the advantage of others.

The total privation of trade, on the contrary, produces robbery, which Aristotle ranks in the number of means of acquiring; yet it is not at all inconsistent with certain moral virtues. Hospitality, for instance, is most rare in trading countries, while it is found in the most admirable perfection among nations of vagabonds.

It is a sacrilege, says Tacitus, for a German to shut his door against any man whomsoever, whether known or unknown. He who has behaved with hospitality to a stranger goes to show him another house where this hospitality is also practised; and he is there received with the same humanity.[3] But when the Germans had founded kingdoms, hospitality had become burdensome. This appears by two laws of the code of the Burgundians;[4] one of which inflicted a penalty on every barbarian who presumed to show a stranger the house of a Roman; and the other decreed that whoever received a stranger should be indemnified by the inhabitants, every one being obliged to pay his proper proportion.

3. Of the Poverty of the People. There are two sorts of poor; those who are rendered such by the severity of government: these are, indeed, incapable of performing almost any great action, because their indigence is a consequence of their slavery. Others are poor, only because they either despise or know not the conveniences of life; and these are capable of accomplishing great things, because their poverty constitutes a part of their liberty.

4. Of Commerce in different Governments. Trade has some relation to forms of government. In a monarchy, it is generally founded on luxury; and though it be also founded on real wants, yet the principal view with which it is carried on is to procure everything that can contribute to

the pride, the pleasure, and the capricious whims of the nation. In republics, it is commonly founded on economy. Their merchants, having an eye to all the nations of the earth, bring from one what is wanted by another. It is thus that the republics of Tyre, Carthage, Athens, Marseilles, Florence, Venice, and Holland engaged in commerce.

This kind of traffic has a natural relation to a republican government: to monarchies it is only occasional. For as it is founded on the practice of gaining little, and even less than other nations, and of remedying this by gaining incessantly, it can hardly be carried on by a people swallowed up in luxury, who spend much, and see nothing but objects of grandeur.

Cicero was of this opinion, when he so justly said, "I do not like that the same people should be at once both the lords and factors of the whole earth." [5] For this would, indeed, be to suppose that every individual in the state, and the whole state collectively, had their heads constantly filled with grand views, and at the same time with small ones; which is a contradiction.

Not but that the most noble enterprises are completed also in those states which subsist by economical commerce: they have even an intrepidity not to be found in monarchies. And the reason is this:

One branch of commerce leads to another, the small to the moderate, the moderate to the great; thus he who has gratified his desire of gaining a little raises himself to a situation in which he is not less desirous of gaining a great deal.

Besides, the grand enterprises of merchants are always necessarily connected with the affairs of the public. But, in monarchies, these public affairs give as much distrust to the merchants as in free states they appear to give safety. Great enterprises, therefore, in commerce are not for monarchical, but for republican, governments.

In short, an opinion of greater certainty, as to the possession of property in these states, makes them undertake everything. They flatter themselves with the hopes of receiving great advantages from the smiles of fortune; and thinking themselves sure of what they have already acquired, they boldly expose it in order to acquire more; risking nothing, but as the means of obtaining.

I do not pretend to say that any monarchy is entirely excluded from an economical commerce; but of its own nature it has less tendency towards it: neither do I mean that the republics with which we are acquainted are absolutely deprived of the commerce of luxury; but it is less connected with their constitution.

With regard to a despotic state, there is no occasion to mention it. A general rule: A nation in slavery labours more to preserve than to acquire; a free nation, more to acquire than to preserve.

5. Of Nations that have entered into an economical Commerce. Marseilles, a necessary retreat in the midst of a tempestuous sea; Marseilles, a harbour which all the winds, the shelves of the sea, the disposition of the coasts, point out for a landing-place, became frequented by mariners; while the sterility of the adjacent country determined the citizens to an economical commerce.[6] It was necessary that they should be laborious to supply what nature had refused; that they should be just, in order to live among barbarous nations, from whom they were to derive their prosperity; that they should be moderate, to the end that they might always taste the sweets of a tranquil government; in fine, that they should be frugal in their manners, to enable them to subsist by trade -- a trade the more certain as it was less advantageous.

We everywhere see violence and oppression give birth to a commerce founded on economy, while men are constrained to take refuge in marshes, in isles, in the shallows of the sea, and even on rocks themselves. Thus it was that Tyre, Venice, and the cities of Holland were founded.

Fugitives found there a place of safety. It was necessary that they should subsist; they drew, therefore, their subsistence from all parts of the world.

6. Some Effects of an extensive Navigation. It sometimes happens that a nation, when engaged in an economical commerce, having need of the merchandise of one country, which serves as a capital or stock for procuring the commodities of another, is satisfied with making very little profit, and frequently none at all, in trading with the former, in expectation of gaining greatly by the latter. Thus, when the Dutch were almost the only nation that carried on the trade from the south to the north of Europe; the French wines which they imported to the north were in some measure only a capital or stock for conducting their commerce in that part of the world.

It is a known fact that there are some kinds of merchandise in Holland which, though imported from afar, sell for very little more than they cost upon the spot. They account for it thus: a captain who has occasion to ballast his ship will load it with marble; if he wants wood for stowage, he will buy it; and, provided he loses nothing by the bargain, he will think himself a gainer. Thus it is that Holland has its quarries and its forests.

Further, it may happen so that not only a commerce which brings in nothing shall be useful, but even a losing trade shall be beneficial. I have heard it affirmed in Holland that the whale fishery in general does not answer the expense; but it must be observed that the persons employed in building the ships, as also those who furnish the rigging and provisions, are jointly concerned in the fishery. Should they happen to lose in the voyage, they have had a profit in fitting out the vessel. This commerce, in short, is a kind of lottery, and every one is allured with the hopes of a prize. Mankind are generally fond of gaming; and even the most prudent have no aversion to it, when the disagreeable circumstances attending it, such as dissipation, anxiety, passion, loss

of time, and even of life and fortune, are concealed from their view.

7. The Spirit of England with respect to Commerce. The tariff or customs of England are very unsettled with respect to other nations; they are changed, in some measure, with every parliament, either by taking off particular duties, or by imposing new ones. They endeavour by these means still to preserve their independence. Supremely jealous with respect to trade, they bind themselves but little by treaties, and depend only on their own laws.

Other nations have made the interests of commerce yield to those of politics; the English, on the contrary, have ever made their political interests give way to those of commerce. They know better than any other people upon earth how to value, at the same time, these three great advantages -- religion, commerce, and liberty.

8. In what Manner economical Commerce has been sometimes restrained. In several kingdoms laws have been made extremely proper to humble the states that have entered into economical commerce. They have forbidden their importing any merchandise, except the product of their respective countries; and have permitted them to traffic only in vessels built in the kingdom to which they brought their commodities.

It is necessary that the kingdom which imposes these laws should itself be able easily to engage in commerce; otherwise it will, at least, be an equal sufferer. It is much more advantageous to trade with a commercial nation, whose profits are moderate, and who are rendered in some sort dependent by the affairs of commerce; with a nation whose larger views and whose extended trade enables them to dispose of their superfluous merchandise; with a wealthy nation, who can take off many of their commodities, and make them a quicker return in specie; with a nation under a kind of necessity to be faithful, pacific from principle, and that seeks to gain, and not to conquer: it is much better, I say, to trade with such a nation than with others, their constant rivals, who

will never grant such great advantages.

9. Of the Prohibition of Commerce. It is a true maxim that one nation should never exclude another from trading with it, except for very great reasons. The Japanese trade only with two nations, the Chinese and the Dutch. The Chinese[7] gain a thousand per cent upon sugars, and sometimes as much by the goods they take in exchange. The Dutch make nearly the same profits. Every nation that acts upon Japanese principles must necessarily be deceived; for it is competition which sets a just value on merchandise, and establishes the relation between them.

Much less ought a state to lay itself under an obligation of selling its manufactures only to a single nation, under a pretence of their taking all at a certain price. The Poles, in this manner, dispose of their corn to the city of Danzig; and several Indian princes have made a like contract for their spices with the Dutch.[8] These agreements are proper only for a poor nation, whose inhabitants are satisfied to forego the hopes of enriching themselves, provided they can be secure of a certain subsistence; or for nations whose slavery consists either in renouncing the use of those things which nature has given them, or in being obliged to submit to a disadvantageous commerce.

10. An Institution adapted to economical Commerce. In states that carry on an economical commerce, they have luckily established banks, which by their credit have formed a new species of wealth: but it would be quite wrong to introduce them into governments whose commerce is founded only on luxury. The erecting of banks in countries governed by an absolute monarch supposes money on the one side, and on the other power: that is, on the one hand, the means of procuring everything, without any power; and on the other, the power, without any means of procuring at all. In a government of this kind, none but the prince ever had, or can have, a treasure; and wherever there is one, it no sooner becomes great than it becomes the treasure of the prince.

For the same reason, all associations of merchants, in order to carry on a particular commerce, are seldom proper in absolute governments. The design of these companies is to give to the wealth of private persons the weight of public riches. But in those governments this weight can be found only in the prince. Nay, they are not even always proper in states engaged in economical commerce; for, if the trade be not so great as to surpass the management of particular persons, it is much better to leave it open than, by exclusive privileges, to restrain the liberty of commerce.

11. The same Subject continued. A free port may be established in the dominions of states whose commerce is economical. That economy in the government which always attends the frugality of individuals is, if I may so express myself, the soul of its economical commerce. The loss it sustains with respect to customs it can repair by drawing from the wealth and industry of the republic. But in a monarchy a step of this kind must be opposite to reason; for it could have no other effect than to ease luxury of the weight of taxes. This would be depriving itself of the only advantage that luxury can procure, and of the only curb which, in a constitution like this, it is capable of receiving.

12. Of the Freedom of Commerce. The freedom of commerce is not a power granted to the merchants to do what they please: this would be more properly its slavery. The constraint of the merchant is not the constraint of commerce. It is in the freest countries that the merchant finds innumerable obstacles; and he is never less crossed by laws than in a country of slaves.

England prohibits the exportation of her wool; coals must be brought by sea to the capital; no horses, except geldings, are allowed to be exported; and the vessels of her colonies trading to Europe must take in water in England.[9] The English constrain the merchant, but it is in favour of commerce.



13. What it is that destroys this Liberty. Wherever commerce subsists, customs are established. Commerce is the exportation and importation of merchandise, with a view to the advantage of the state: customs are a certain right over this same exportation and importation, founded also on the advantage of the state. Hence it becomes necessary that the state should be neutral between its customs and its commerce, that neither of these two interfere with each other, and then the inhabitants enjoy a free commerce.

The farming of the customs destroys commerce by its injustice and vexations, as well as by the excess of the imposts: but independent of this, it destroys it even more by the difficulties that arise from it, and by the formalities it exacts. In England, where the customs are managed by the king's officers, business is negotiated with a singular dexterity: one word of writing accomplishes the greatest affairs. The merchant needs not lose an infinite deal of time; he has no occasion for a particular commissioner, either to obviate all the difficulties of the farmers, or to submit to them.

14. The Laws of Commerce concerning the Confiscation of Merchandise. The Magna Charta of England forbids the seizing and confiscating, in case of war, the effects of foreign merchants, except by way of reprisals. It is an honour to the English nation that they have made this one of the articles of their liberty.

In the late war between Spain and England, the former made a law which punished with death those who brought English merchandise into the dominions of Spain; and the same penalty on those who carried Spanish merchandise into England.[10] An ordinance like this cannot, I believe, find a precedent in any laws but those of Japan. It equally shocks humanity, the spirit of commerce, and the harmony which ought to subsist in the proportion of penalties; it confounds all our ideas, making that a crime against the state which is only a violation of civil polity.

15. Of seizing the Persons of Merchants. Solon made a law that the Athenians should no longer seize the body for civil debts.[11] This law he received from Egypt. It had been made by Boccoris, and renewed by Sesostris.[12]

This law is extremely good with respect to the generality of civil affairs; but there is sufficient reason for its not being observed in those of commerce.[13] For as merchants are obliged to entrust large sums, frequently for a very short time, and to pay money as well as to receive it, there is a necessity that the debtor should constantly fulfil his engagements at the time prefixed; and hence it becomes necessary to lay a constraint on his person.

In affairs relating to common civil contracts, the law ought not to permit the seizure of the person; because the liberty of one citizen is of greater importance to the public than the ease or prosperity of another. But in conventions derived from commerce, the law ought to consider the public prosperity as of greater importance than the liberty of a citizen; which, however, does not hinder the restrictions and limitations that humanity and good policy demand.

16. An excellent Law. Admirable is that law of Geneva which excludes from the magistracy, and even from the admittance into the great council, the children of those who have lived or died insolvent, except they have discharged their father's debts. It has this effect: it creates a confidence in the merchants, in the magistrates, and in the city itself. There the credit of the individual has still all the weight of public credit.

17. A Law of Rhodes.[14] The inhabitants of Rhodes went further. Sextus Empiricus observes that among those people a son could not be excused from paying his father's debts by renouncing the succession. This law of Rhodes was calculated for a republic founded on commerce. Now I am inclined to think that reasons drawn from commerce itself should make

this limitation, that the debts contracted by the father since the son's entering into commerce should not affect the estate or property acquired by the latter. A merchant ought always to know his obligations, and to square his conduct by his circumstances and present fortune.

18. Of the Judges of Commerce. Xenophon, in his book of Revenues, would have rewards given to those overseers of commerce who despatched the causes brought before them with the greatest expedition. He was sensible of the need of our modern jurisdiction of a consul.

The affairs of commerce are but little susceptible of formalities. They are the actions of a day, and are every day followed by others of the same nature. Hence it becomes necessary that every day they should be decided. It is otherwise with those actions of life which have a principal influence on futurity, but rarely happen. We seldom marry more than once; deeds and wills are not the work of every day; we are but once of age.

Plato[15] says that in a city where there is no maritime commerce there ought not to be above half the number of civil laws: this is very true. Commerce brings into the same country different kinds of people; it introduces also a great number of contracts and species of wealth, with various ways of acquiring it.

Thus in a trading city there are fewer judges, and more laws.

19. That a Prince ought not to engage himself in Commerce.

Theophilus,[16] seeing a vessel laden with merchandise for his wife Theodora, ordered it to be burned. "I am emperor," said he, "and you make me the master of a galley. By what means shall these poor men gain a livelihood if we take their trade out of their hands?" He might have added. Who shall set bounds to us if we monopolise all ourselves? Who shall oblige us to fulfil our engagements? Our courtiers will follow our example; they will be more greedy and more unjust than we: the people

have some confidence in our justice, they will have none in our opulence: all these numerous duties, the cause of their wants, are certain proofs of ours.

20. The same Subject continued. When the Portuguese and Castilians bore sway in the East Indies, commerce had such opulent branches that their princes did not fail to seize them. This ruined their settlements in those parts of the world.

The viceroy of Goa granted exclusive privileges to particular persons. The people had no confidence in these men; and the commerce declined, by the perpetual change of those to whom it was entrusted; nobody took care to improve it, or to leave it entire to his successor. In short, the profit centred in a few hands, and was not sufficiently extended.

21. Of the Commerce of the Nobility in a Monarchy. In a monarchical government, it is contrary to the spirit of commerce that any of the nobility should be merchants. "This," said the Emperors Honorius and Theodosius, [17] "would be pernicious to cities; and would remove the facility of buying and selling between the merchants and the plebeians."

It is contrary to the spirit of monarchy to admit the nobility into commerce. The custom of suffering the nobility of England to trade is one of those things which has there mostly contributed to weaken the monarchical government.

22. A singular Reflection. Persons struck with the practice of some states imagine that in France they ought to make laws to engage the nobility to enter into commerce. But these laws would be the means of destroying the nobility, without being of any advantage to trade. The practice of this country is extremely wise; merchants are not nobles, though they may become so. They have the hopes of obtaining a degree of nobility, unattended with its actual inconveniences. There is no surer way of being advanced above their profession than to manage it well, or

with success; the consequence of which is generally an affluent fortune.

Laws which oblige every one to continue in his profession, and to devolve it upon his children, neither are nor can be of use in any but despotic kingdoms; where nobody either can or ought to have emulation.[18]

Let none say that every one will succeed better in his profession when he cannot change it for another: I say that a person will succeed best when those who have excelled hope to rise to another.

The possibility of purchasing honour with gold encourages many merchants to put themselves in circumstances by which they may attain it. I do not take it upon me to examine the justice of thus bartering for money the price of virtue. There are governments where this may be very useful.

In France the dignity of the long robe, which places those who wear it between the great nobility and the people, and without having such shining honours as the former, has all their privileges; a dignity which, while this body, the depositary of the laws, is encircled with glory, leaves the private members in a mediocrity of fortune; a dignity in which there are no other means of distinction but by a superior capacity and virtue, yet which still leaves in view one much more illustrious: the warlike nobility, likewise, who conceive that, whatever degree of wealth they are possessed of, they may still increase their fortunes; who are ashamed of augmenting, if they begin not with dissipating, their estates; who always serve their prince with their whole capital stock, and when that is sunk make room for others, who follow their example; who take the field that they may never be reproached with not having been there; who, when they can no longer hope for riches, live in expectation of honours; and when they have not obtained the latter, enjoy the consolation of having acquired glory: all these things together have necessarily contributed to augment the grandeur of this kingdom; and if for two or three centuries it has been

incessantly increasing in power, this must be attributed not to Fortune, who was never famed for constancy, but to the goodness of its laws.

23. To what Nations Commerce is prejudicial. Riches consist either in lands or in movable effects. The soil of every country is commonly possessed by the natives. The laws of most states render foreigners unwilling to purchase their lands; and nothing but the presence of the owner improves them: this kind of riches, therefore, belongs to every state in particular; but movable effects, as money, notes, bills of exchange, stocks in companies, vessels, and, in fine, all merchandise, belong to the whole world in general; in this respect, it is composed of but one single state, of which all the societies upon earth are members. The people who possess more of these movable effects than any other on the globe are the most opulent. Some states have an immense quantity acquired by their commodities, by the labour of their mechanics, by their industry, by their discoveries, and even by chance. The avarice of nations makes them quarrel for the movables of the whole universe. If we could find a state so unhappy as to be deprived of the effects of other countries, and at the same time of almost all its own, the proprietors of the lands would be only planters to foreigners. This state, wanting all, could acquire nothing; therefore, it would be much better for the inhabitants not to have the least commerce with any nation upon earth, for commerce in these circumstances must necessarily lead them to poverty.

A country that constantly exports fewer manufactures or commodities than it receives will soon find the balance sinking; it will receive less and less, until, falling into extreme poverty, it will receive nothing at all.

In trading countries the specie, which suddenly vanishes, quickly returns; because those nations that have received it are its debtors. But it never returns into those states of which we have just been speaking, because those who have received it owe them nothing.

Poland will serve us for an example. It has scarcely any of those things which we call the movable effects of the universe, except corn, the produce of its lands. Some of the lords possess entire provinces; they oppress the husbandmen, in order to have greater quantities of corn, which they send to strangers, to procure the superfluous demands of luxury. If Poland had no foreign trade, its inhabitants would be happier. The grandees, who would have only their corn, would give it to their peasants for subsistence; as their too extensive estates would become burdensome, they would divide them among their peasants; every one would find skins or wool in their herds or flocks, so that they would no longer be at an immense expense in providing clothes; the great, who are ever fond of luxury, not being able to find it but in their own country, would encourage the labour of the poor. This nation, I affirm, would then become more flourishing, at least if it did not become barbarous; and this the laws might easily prevent.

Let us next consider Japan. The vast quantity of what they receive is the cause of the vast quantity of merchandise they send abroad. Things are thus in as nice an equilibrium as if the importation and exportation were but small. Besides, this kind of exuberance in the state is productive of a thousand advantages; there is a greater consumption, a greater quantity of those things on which the arts are exercised; more men employed, and more numerous means of acquiring power; exigencies may also happen that require a speedy assistance, which so opulent a state can better afford than any other. It is difficult for a country to avoid having superfluities; but it is the nature of commerce to render the superfluous useful, and the useful necessary. The state will be, therefore, able to afford necessaries to a much greater number of subjects.

Let us say, then, that it is not those nations who have need of nothing that must lose by trade; it is those who have need of everything. It is not such people as have a sufficiency within themselves, but those who are most in want, that will find an advantage in putting a stop to all

commercial intercourse.

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1. Cæsar said of the Gauls that they were spoiled by the neighbourhood and commerce of Marseilles; insomuch that they who formerly always conquered the Germans had now become inferior to them. -- De Bello Gall., vi. 23.

2. Holland.

3. Et qui modo hospes fuerat, monstrator hospitii. -- De Moribus Germanorum, 21. See Cæsar, De Bello Gall. vi. 21.

4. Tit. 38.

5. Cicero, De Rep., iv.

6. Justin, xliiii. 3.

7. Father Du Halde, ii, p. 170.

8. This was first established by the Portuguese. -- Pirard, Voyages, part II, 15.

9. Acts of Navigation, 1660. It is only in time of war that the merchants of Boston and Philadelphia send their vessels directly to the Mediterranean.

10. Published in Cadiz in March, 1740.

11. Plutarch, Against Lending Upon Usury, 4.

12. Diodorus, i, part II, 79.



13. The Greek legislators were to blame in preventing the arms and plough of any man from being taken in pledge, and yet permitting the taking of the man himself. -- Ibid.

14. Hypotiposes, i. 14.

15. Laws, viii.

16. Zonaras.

17. Leg., Nobiliores, Cod. de Comm.; Leg. ult. de rescind, vendit.

18. This is actually very often the case in such governments.