Discourse on the Benefits Conferred by the Laws

In which it is shown that a good man should not always take advantage of the benefits conferred on him by the laws

Magnificent and most honored Lord Bailiff, most honored Lords of the Council of this City, learned and respected members of the Academy, my most honored colleagues, listeners of no matter what rank, sex and age.

If to have commenced is to have done half the work, as an antique saying puts it,[1] to have done half is to have finished. Yet [472] in taking up today the topic half of which I treated a year ago on a similar occasion, I fear that I face no fewer obstacles to overcome, no fewer—and perhaps more—prejudices to confront, than if I was still at the starting point. I am like one who easily agrees to a principle based on reasons to which he sees no objection, then at other times just as easily contradicts himself when he recognizes certain consequences arising from his agreement that he had not noticed. One should abandon the clearly contradictory maxims to which one adhered without knowing why, but which in practice one has become used to following with a certain pleasure. One then looks for what is needed in order to question or, rather, entirely to reject certain awkward truths, which have emerged to dispel our easy error. If anyone followed what I previously said, I would like

1. As attributed by Lucian to Hesiod, in *Hermotim.,* Vol. I, p. 506, Amsterdam Edit. Plato goes further, saying that to have begun is to have done more than half, *De Legibus,* Book VI, vol. ii, p. 753, Edit. H. Steph. See Erasmus, *Adages,* for the proverb: *Principium, dimidium totius.*

to think that some will have been almost persuaded that mere legal permission—the mere silence of the laws—which is finally nothing but an impunity, does not prevent many things permitted by the laws from being truly bad and dishonest. But when you hear me roundly condemn the exercise of certain positive privileges granted by the laws, privileges of which virtually no one hesitates to take advantage, I do not know whether you will at once decide this is a folly, no matter how clear its links to what you recognized were sound principles, [473] and then rebel, without more ado, against arguments which you had found striking.

Whatever the case, it will not deter me from following my plan, or from taking my ideas as far as they will go. Men's fickleness, whims and prejudices must not prevent us from following our argument through, nor from proposing some important truths when there is the opportunity. We would deem that we had done all too little, were we to leave things standing as they were in our previous discourse. To do so would be to content oneself with having attacked only the most obvious prejudices, leaving the more subtle ones undisturbed, that is, those which are the most difficult to dispel. Thus today, in completing my functions as Rector for this solemn occasion, let us—if it is possible—finally disabuse those who, under the shelter of human laws, believe themselves authorized to ride roughshod over the laws of God and of nature. Let us show, for this purpose, *that in good conscience one cannot always take advantage of benefits conferred by the most explicit civil laws.*

There are some totally unjust laws from which, it follows, only injustices can flow. There are laws, in themselves quite just and created for sound reasons, but that confer benefits from which the interested parties sometimes cannot profit without injustice. There are laws the benefits of which we can always enjoy without doing harm to anyone; yet what strict justice then allows, some other virtue in certain cases forbids. Such will be the order and structure of this discourse.

I

[474] I repeat, first, that there can be, that there have in fact been, and that there are still some totally unjust laws. Such laws, in consequence, always lack the virtue of rendering just and equitable the enjoyment of the benefits they confer. It was long believed that among the ancient Romans a law of the Twelve Tables, that is, one of those famous laws developed with such care and circumspection, expressly permitted the creditors of an insolvent debtor to kill and dismember him, each taking a part of the debtor's body.[2] This is a clear example of a law as cruel as it is absurd, one that is contrary even to the interests of those whom the legislator intended to favor. However, some years ago, a famous Dutch jurisconsult [Mr de Bynkershoek, *Observ. Jur. Civil,* Book I, chap. I] restored the honor of the *Decemvirs* of Ancient Rome. With critical advantage over the wise men of Roman Antiquity themselves, for whom the archaic terms of the Twelve Tables could not but remain obscure, even though the Latin of those times was their native tongue, he demonstrated to us in an entirely plausible manner that in the law in question, the legislator had sought to permit not the killing of the debtor, but his sale at auction, [475] such that the creditors could share the price of his freedom amongst themselves. Nevertheless, it remains that distinguished scholars, philosophers no less than jurisconsults—whether a Quintilian [*Instit. Orat.,* Book III, chap. vi, p. 261] or a Cecilius, whether a Favorin [see Aulus Gellius, *Noct. Att.,* Book XX, chap. i], an Aulus Gellius or a Tertullian [*Apologet.,* chap. iv]—found nothing

2. These are the terms of the law, as Aulus Gellius recorded them: *TERTIIS. (inquit) NUNDINIS.PARTIS.SECANTO.SI.PLUS.MINUS.VE.SECUERUNT.SE. FRAUDE.ESTO, Noct. Artic.,* Book XX, chap. i. In his Preface on Vol. 3 of the *Thesaurus Juris,* p. 24, Mr Otto sacrifices the humanity and the good sense of the *Decemvirs* who composed the Twelve Tables to the elevated idea he has of some authors of much later centuries. He could not bring himself to believe that the latter had misunderstood the terms of this law, even though Aulus Gellius recognizes, in the same place, that there were in the Twelve Tables many things the sense of which had long been lost. It is not even the sole instance of ancient authors who, for all their skill, went astray in explaining words in their own language. One has only to see one of the letters of the celebrated Tanneouy Le Fèvre, Book I, Epist. iv.

strange in the supposition of civil laws created in such a style as to afford inhuman privileges, contrary to the most evident laws of nature, as Quintilian gives us to believe.[3] And this was not the only instance that they had noticed.

Here is another example, well attested, even if it went unnoted until recently, and which, if not of the same kind, nonetheless has something very harsh about it.[4] Among these same Romans, up until the time of Praetor Cajus Aquilius Gallus, in other words for more than three centuries following the establishment of the laws of the Twelve Tables, one had to take every care not to use—even in jest—the consecrated terms of *stipulations* or formal promises. Suppose one father had said to another, in conversation or at a festival, when nothing was further from the issue than discussion of serious business: "Do you want to marry your daughter with my son?," if the other person had responded, by [476] way of joking and banter: "I so wish," then the former had only to take him at his actual word. The party for his son was found. It was futile for the girl's father to claim that he had neither intended nor given reason to believe that he had any such marriage in view; it was futile for him to prove that the words by which he had supposedly committed himself meant nothing more, in the circumstances in which they were uttered, than if he'd spoken them in his sleep. No joking was tolerated, and the judge would without further trial find against him. It was obligatory to go through with what an impertinent plaintiff wanted, one who under the pretext of an apparent agreement, extorted an imaginary promise as unjustly and with all the violence of a highway robber. Such was, for some centuries, the superstitious attachment of the Roman courts to the letter of the law and its formulas, and this despite a manifest intention to allow these words a usage quite other than that which they had at law. Even when the Praetor, of whom I spoke, had recog-

3. *Sunt enim quaedam non laudabilia naturae. Sed Jure concessa: ut in XII. Tabulis, debitoris corpus inter creditores dividi licuit, quam legem mos publicus repudiavit. Instit. Orat.,* Book III, chap. vi, p. 173. Edit. Obrecht.

4. It is Mr Noodt who discovered this. See his *Julius Paulus,* chap. xi, *in fin.,* and his treatise *De forma emendandi Doli mali,* chap. vi.

nized the injustice and the need for a remedy, he dared not act directly; he contented himself with avoiding the plea by allowing an exemption from fraud for the party whom the other was bold enough to summons to fulfil a promise that had not in fact been made.

Since then, on other matters, we still find laws no less contrary to equity. Judge for [477] yourselves, whether the following law does not deserve to be described in this way. A man purchases some wine that he must measure and collect within a certain limit of time. This he fails to do within the time. The seller, who wishes to use the barrels, can then, according to Roman law, pour the wine away; nothing more is asked of him than that he warns the purchaser. The jurisconsult Ulpian, whose opinion was authority on this matter, openly admits that it would be better not to go to this extreme; that there would be other courses of action more fitting in order not to deprive one of the two persons of the use of his goods, and at the same time conserve the other's goods; that the barrel owner could hire other barrels, at the expense of the person who owns the wine, or sell the wine for his own account as profitably as possible.[5] Nonetheless, Ulpian dispenses with all this, and grants the owner of the barrels complete freedom to empty them, without regard for the loss of the wine, and without concerning himself as to whether the one to whom the wine belongs has encountered obstacles that prevented him from coming to collect it.

Let us leave the Romans there, and pass on to other peoples. Here we shall see, beyond doubt, some no less palpable examples of laws that scarcely conform to justice and equity, the maxims of which these peoples, all things considered, have not cared to consult. First to be pre-

5. *Licet autem venditori vel effundere vinum, si diem ad metiendum praestituit, nec intra diem admensum est. Effundere autem non statim poterit, prius quam testando denunciet emtori, ut aut tollat vinum, aut sciat futurum ut vinum effunderetur. Si tamen, quum posset effundere, non effundit, laudandus est potius, . . . commodius est autem, conduci vasa, nec reddi vinum, nisi, quanti conduxerit, ab emtore reddatur, aut vendi vinum bona fide, id est quantum sine ipsius incommodo fieri potest, operam dare, ut quam minimo detrimento sit ea res emtori.* Digest, Book XVIII, De peric. & commod. rei. vend. Leg. I, §.3. See the dissertation of Mr Brenckman, de Eurematicis &c, chap. xii, §.16, n. 14.

sented is that supremely barbarian law or custom [478] concerning the goods of those who have been shipwrecked. Imagine two vessels driven by a furious storm and about to go down. The men on one of these vessels, to avoid drowning, discharge the cargo as quickly as possible, jettisoning their most valuable goods into the sea. The others do not have even this chance, their vessel suddenly being smashed on a reef. However, the storm abates, and the former's vessel arrives at safe harbor, without further ill than the loss of cargo; the others, whose vessel has perished, manage to survive by swimming, or in a skiff. By a fortunate chance, the effects of both are washed up on the shore. They lay claim to these, justifying their right. There is no room for doubt that what has come ashore is truly what they had on board their vessels. But the ruler of that coast, more cruel than the winds and the waves, seizes or allows certain people to seize this sad collection that the ocean seemed to have delivered to him only so he might have the pleasure of restoring it to the rightful owners. In the circumstance where humanity should be moved to console these wretched men, indeed to aid them with one's own goods, instead they are stripped of what was left of their [479] own. [See what I have said on Pufendorf, Book IV, chap. xiii, §.4, note 2, third Edition.] If we do not distinguish here between the subject or citizen and the foreigner, what has become of the bond of the civil pact that called for protection and special assistance? What if we indulge in robbing foreigners, by withholding that which the ocean had restored to them? Is not this a relic of the savagery of those ancient times when all those who were not fellow citizens believed they were right to treat one another as enemies; when it was no affront to ask unknown travelers: "Are you bandits, sirs? Are you pirates?," and no dishonor for them to reply: "Indeed we are"?[6] Perhaps you imagine that this was an established custom only among pagans and infidels. [See Grotius, *Droit de la Guerre et de la Paix,* Book II, chap. vii, §.1, note 3; and Selden, *Mar. Claus,* Book I, chap. xxxv, *in fin.*] But no, it is under Christianity that

6. This is what Thucydides teaches us, taking his proof from the ancient poets. See Homer, *Odyss.* Book II, verse 71 et seq., Book IX, verse 252 et seq., and *Hymn. in Apoll.,* verse 452.

we see it most generally adopted.[7] And whilst the Siamese have a law explicitly forbidding it [see in Moteri's *Dictionary,* under "Siam," the article "Manners and customs of the Siamese"], there are as yet few Christian states in which consideration has been given to limit the rights of the State Treasury over things that have escaped shipwreck, such that those who have lost their goods have time enough to come and reclaim them.[8] What is more, we learn of certain places along the Baltic Sea, where Protestant preachers pray [480] to God in his temple that He may please bless the right of shipwreck, as they call it.[9] What strange prayers, no matter how one views them, and scarcely worthy of a minister of this holy doctrine, which breathes only justice and charity!

Do you want another similar example? It is easy to provide one. A man has been robbed. The thief is arrested, together with the stolen goods. It is known from whom he stole them; he admits everything. The owner asks for return of the goods. But, instead of returning them to him, the Treasury or the judges seize the goods. This custom, still practiced in some places, was explicitly authorized under a law of the Saxons [*Specul. Saxon.,* Book II, artic. 25 and 31]. And, even though it was modified by allowing the owner of the stolen goods a year and a

7. Bodin, in his treatise *De la République,* speaks of this *droit de Bris,* or of *Warech* (a word from the German), as of something whose usage was, in his time, "common to all those carrying goods by sea." And on this he records a response of the Supreme Commander Anne de Montmerency to the Ambassador of the Emperor, Book I, chap. x, p. 247, French Edit., Genev. 1608 (pp. 267, 268 of the Latin Edit., Francf. 1622). Some German authors say that this custom was observed also with respect to shipwrecks occurring on the Rhine, and other rivers. See Hertius, dissert. *De Superiorit. Territor,* §.56, Vol. I, Comm. & Opusc., and Nicol. Henelius, *Otii Vratislav.* chap. xxxvii.

8. In Holland, one year and six months are allowed. Even when this time has elapsed, the original owners can still easily repurchase their goods at a low price. See Vinnius, on the *Institutes,* Book II, title I, §.47; and on the practices in other nations, Loccenius, *De Jure Maritimo,* Book I, chap. vii, §.10.

9. Mr Thomasius speaks of this as if it was well known and proven, in his dissertation *De Statu Imperii potestate legislatoria &c,* §.42; and another German professor names the island of Nordstrand, in the Duchy of Schleswig, as one of the places where this practice has been recorded. See Mr Weber, in a note on Pufendorf, *De Offic. Hom. & Civ.,* Book I, chap. v, §.3, where it appears the author himself had this practice in view.

day to come and reclaim them, the Emperor Charles-Quint was right to abolish this law [*Ordin. Crim.,* arts. 207, 218], together with that other law of which we spoke. The injustice of it is no less evident [see Pufendorf, Book III, chap. i, §.2, with note 3]; and though some color could be found to disguise it, nothing is more contrary to good policy than such a usage. Of itself, it tends to unsettle certainty [481] of possession with respect to all movable property, and virtually assures impunity to rogues. For, in the end, who would pursue a thief from whom he has small hope of snatching back his goods, save with help from the public forces, when—in the event that the thief is caught—all the owner can expect is the distress of seeing his recovered goods pass irretrievably into the hands of another, who has no more right to them?

Shall I add, to broaden the range of examples, that there have been countries where the princes and great lords had acquired over their vassals the right—was it infamous or grotesque?—to take the place of the newly-married husband on the wedding night? This was once established in Scotland by an explicit law, one that was abolished only after a long space of time;[10] and even then, they changed the privilege into a kind of tribute,[11] which is still in existence, like a perpetual monument to the ancient usage, of which proofs are found elsewhere, even among the canonicate.[12]

10. It was Evenus III who made this law, as recorded by Buchanan: *Ut rex ante nuptias Sponsarum Nobilium, Nobiles Plebejarum praelibarent pudicitiam: ut Plebejarum uxores cum Nobilitate communes essent, Hist. Scot.,* Book IV, fol. 37, Edit. Edimburg. 1582.

11. Milcolumb III (or Malcolm), at the request of his wife, Queen Marguerite, allowed new husbands to buy back the wedding night, by paying their lord half-a-marc of silver: *Uxoris etiam precibus dedisse fertur, ut primam novae nuptae noctem, quae Proceribus per gradus quosdam, lege Regis Eugenii* (it is the same name as Evenus) *debebatur, sponsus dimidiata argenti marca redimere posset: quam pensionem adhuc Marchetas mulierum vocant.,* Buchanan, Book VII, fol. 74. Polydor. Virgil, *Hist. Angl.,* Book X, p. 223, edit. Lugd. Bat. 1649. Hector Boethius, *Hist. Scot.* This tribute is still called "marchet" or "maidenrents." See the *Laws of Scotland,* Edit. Edimburg., 1609, Book IV, chap. xxxi, with notes, and the *Glossary* of Du Cange, under the word "marcheta," where he reports other similar examples.

12. The canons of Lyon, and, before them the counts: see Choppin, *Ad Leg. And.,*

We shall also note that in England (so difficult is it even under the best ordered governments to rescind bad laws once they are established) [482], a husband who in the sight and knowledge of all, has been away from his home for several years, provided that he has not been outside the realm or the island as a whole, is obliged by the laws to recognize as his own a child born to his wife during this long absence. [See Eduard Chamberlayn, *Notit. Angl.,* Part I, chap. xvi; and Meteren, *Hist. des Pais-Bas*; in the description of the *Laws and Police of England,* Book III, fol. 271, of the French Translation.] This undeniably favors, on the basis of groundless presumptions, the unfaithful mother and the actual father, to the prejudice of the husband who has suffered a savage outrage at their hands. It does legitimate children a visible wrong by allowing the bastard child to compete with them for the succession.

If these examples do not suffice, I do not know what more is needed to persuade you that laws or received customs sometimes accord rights and privileges that are always unjust. All those found to be of such a nature (and perhaps more than we might expect will be uncovered, if everyone examines the laws and customs of his own country), all those which appear such, no matter how well authorized by human tribunals, are surely the result of a shameful indulgence, exploitation of which could be approved neither before God, nor before men who have sound ideas of justice and equity.[13] This much is self-evident; and what I said in the previous discourse excuses me from pausing here to prove it.

Book I, *De Jurisd. Andegav.,* chap. xxxi, no. 2; Camil. Boreli, *Conf.* I, no. 150. This right was called *jus luxanda coxae,* right of thighage, also known by another more expressive name. See Nicol. Henelius, *Otii Vrastislav.,* chap. xlvii, p. 401.

13. Quintilian, the father or grandfather of the rhetorician, introduces a husband who, having killed his wife caught *in flagrante delicto,* as was formerly permitted among several nations, comes to reproach himself; Quintilian draws out from this the maxim that what the laws permit does not always set the conscience at rest: *Mori volo, quia uxorem meam occidi, qualemcumque. Licuit, scio: Sed non semper ad animam pertinent jura. Occidere adulteros lex permittit: ego mihi sit irascor, tamquam nefas fecerim. Declamat.* CCCXXXV, p. 691, Ed. Burm.

II

But there is more. It can happen, and often does, that laws directly [483] or indirectly conferring certain benefits contain nothing unjust in themselves, and yet to enjoy those benefits would be unjust. This proposition, which at first sight seems contradictory, will become crystal clear once we have drawn attention to the principles on which it rests.

Not everything that is just is susceptible, by its nature, of being prescribed by the civil laws, as we have sufficiently established in the preceding discourse. But even regarding what lies within the ambit of the civil laws, things cannot always be regulated in the manner most conforming to the immutable laws of justice that apply to everything and everywhere. A law has no point if it is not implemented; but far beyond this, such an unimplemented law is then harmful, because it provides grounds for disregarding the legislator's authority even with respect to other laws. Now, if we wished to take this to the last detail, if it was necessary to recognize the very least injustices and to eliminate them by public authority, it would be very difficult, not to say impossible, ever to complete the task. Moreover, it is very important to reduce the number of law suits as far as we can; their multiplication remains a real problem, more so than the freedom that allows the rules of justice to be observed only up to a certain point. Danger also follows from allowing the slightest exception to certain laws, and above all from granting those judges having authority to pursue cases in their own right the power to allow exceptions. Rather, these laws must be let stand [484] in all their force, even when particular circumstances might place the present case beyond the sphere intended by the legislator. The diversity of characters and manners, times, places and other circumstances, requires laws sometimes to accord their authority to certain just things, and sometimes to withhold it. Every legislator generally proposes, or should propose, like Solon the famous Athenian,[14] to make laws that are not necessarily the best laws in themselves, but the best that the citizens, or the subjects, are capable of receiving. And no matter how wise the lawmak-

14. Plutarch, in *Vit. Solon,* Vol. I, p. 86, C. Ed. Wech.

ing, it is always true to say, with the Roman orator, that the laws redress injustices in one way, but the philosophers correct them in another. The laws restrict themselves to that which is crude and palpable, as it were; the philosophers (and each person must be his own philosopher, as each can be) dissect everything, to the very limits of an attentive and penetrating reason.[15] It is thus the duty of each person to make good the unavoidable imperfection of the most excellent laws, the authors of which could not, even had they wished to, exempt whomsoever it might be from observing that part of justice and equity which they were constrained to leave outside their jurisdiction. For the rest, they force no one to take advantage either of the impunity the laws allow [485] or of the benefits they confer in this respect; they do not prevent you renouncing these.[16] And there are many cases where men have publicly renounced their impunity or benefits, although the public interest and the end of the laws do not allow such acts of renunciation to be cited in the regular course of justice. In short, the civil laws are themselves most often just, but they do not embrace all that is just. If they sometimes refuse their protection to those who suffer injustices, if indeed they seem to accord a certain right to those who commit injustices, this is without prejudice to what each person must do willingly, in compliance with the inviolable rules of virtue, and independently of the authority of human legislators.

Examples are not lacking that let us appreciate the truth of what I have just said, and by means of which one will easily judge like cases that will present themselves in relation to other matters.

If there is some duty that the law of nature prescribes without fail or exception to all men, it is undeniably the duty to keep one's word, to do exactly that which one has knowingly and freely agreed upon with

15. *Sed aliter Leges, aliter Philosophi tollunt astusias: Leges, quatenus manu tenere possunt; Philosophi, quatenus ratione & intelligentia.* Cicero, *De Offic.,* Book III, chap. xvii. The poet Persius says that it is not for a Praetor, or a judge, to prefer precise rules of conduct: *Non Praetoris erat stultis dare tenuia rerum / Officia, atque usum rapidae permittere vita., Sat.* V, vers. 93, 94.

16. This is what Pliny the Younger gives us to understand, in a passage of Letter xvi of Book II, which will be cited toward the end of this discourse.

another, and without there being anything in the matter itself that could annul the agreement. Nonetheless, it has not been judged appropriate always to enforce the word that has been given, and there have been sound reasons for proceeding in this way. It would be bad policy, I admit, to allow no action at law for any sort of [486] promise or contract, as has been the practice in certain countries.[17] Given how most men are made, this would have the immediate effect of banishing confidence and commerce from the world. If you entirely remove constraint, there will be few people with whom one wishes, or is safely able, to enter into an agreement other than one that is executed immediately by both parties. But in order to prevent surprises and the remorse of an agreement too casually entered into, one may very well recognize promises and conventions as being valid only when they are made in a certain manner or bear on certain things. It is then for each person to take appropriate precautions; and if one runs the risk of sometimes being deceived, one now at least has a means of knowing those who are capable of deception, and those in whom one must no longer trust. This is the touchstone of a sincere probity. Thus, under Roman law, when it was not a question of contracts having a specific name and whose obligatory nature was fully authorized at law, if you say to someone: "I give you this so that you give me that," the agreement is sound and valid.[18] [See *Digest.,* Book II, title xiv, *De Pactis,* Leg. VII, §§.1, 2 et seq. Leg. XLV, & Book XIX, title iv, *De Permutat. rerum,* Leg. I, §.2.] But if one says: "I shall give you this so that you give me that," it is not sound and valid, whether [487] such a promise is written or spoken. However, if in the form of a question one said: "Will you give me this, and I shall give you

17. See Grotius, *Droit de la Guerre et de la Paix,* Book II, chap. xviii, §.10; and Pufendorf, *Droit de la Nature et des Gens,* Book V, chap. ii, §.3, note 1.

18. Such that whoever gave his word in this way had, with regard to such contracts, the freedom to withdraw his word, before the other party had fully executed his part, even when the latter had committed no fault, and was ready to perform the agreement; an evident inequality, contrary to the end of agreements and natural equity. See what I said on Grotius, *Droit de la Guerre et de la Paix,* Book II, chap. xii, §.1, note 8. It is also to be observed that a simple agreement (*pactum nudum*) remained null and without force, even when it had been sworn.

that?," and if the other party, being present, had answered: "Yes," then there is a promise that has full force. In good faith, are we to think that formerly (for this futile subtlety no longer holds today, even in countries where the Roman law is followed), are we to think that formerly a good man found himself obliged or exempt from keeping his word, depending on whether he had adopted, in giving his word, this or that turn of phrase which, finally, carried the same sense as when one was in fact talking and acting seriously? Such was indeed the view of the sages: Seneca is quite clear on this.[19] And is it not apparent that they moved past the pure formalities of the *stipulations,* and that they renounced the right to exploit a formal error, from the moment when one party counted on the word of the other, and the latter showed that he could count on that word without need for further surety? It is simply that, then, they wished not to be subject to any sort of constraint, but rather to account for any breach of faith only before the invisible tribunal that each had in his heart. Therefore the Roman jurisconsults themselves recognize that, in such a case and [488] others similar, natural obligation retains its full force.[20] And, apart from various exceptions which, in those times, involved nullification of agreements on grounds of some formal error,[21] agreements of this sort achieved their effect indirectly, according to the Praetorian law, on all occasions when one had undertaken to demand nothing of that which was due, no matter what the

19. This philosopher places the breach of an agreement on the same level as the indiscretion of those who reveal the confidences that a friend has shared with them; and he gives these as examples of things which are dishonest, even though permitted under the laws: *Sed lex, inquit, non permittendo exigere, vetuit. Multa legem non habent, nec actionem, ad quae consuetudo vitae humanae, lege omni valentior, dat aditum. Nulla lex jubet amicorum secreta non eloqui, nulla lex fidem, etiam inimico, praestare. Quae lex ad id praestandum nos, quod alicui promisimus, adligat? Querat tamen cum eo, qui arcanum sermonem non continuerit, & fidem datam, nec servatam, indignabor. De Benefic.,* Book V, chap. xxi.

20. *Puta, quadam earum [usurarum] ex stipulatione, quadam ex pacto naturaliter debebantur, Digest,* Book XLVI, Title iii, *De Solution. & liberationibus,* Leg. V, §.2. *Is natura debet, quem jure Gentium dare oportet, cujus fidem sequenti sumus,* Book L, Title xvii, *Diversis Reg. Juris,* Leg. LXXIV, §.1.

21. See, on all these matters, the fine treatise of Mr Noodt, *De Pactis & Transactionib.,* chap. x, et seq.

reason; because at that time the promise tended to relieve an obligation, which could have given rise to a law suit. This is clear proof that the purpose of these laws, which declared other agreements null and void on the grounds of a formal error, was not to break the sacred bond of the given word, but simply to regulate things in a way that was believed to be best for public utility. The proof is also that the Emperors Diocletian and Maximian fixed the damages incurred when one was relieved in a contract at a level above half the fair price [*Cod.,* Book IV, title xliv, *De rescindend. vendit.,* Leg. II].

The privileges of minors, in relation to the nullity of agreements contracted without the approval of their guardians, are also undeniably very wisely delimited, and it would not have been appropriate for the judges to introduce exceptions. But does not good faith require exceptions? Do we not sometimes see young people who, though not yet at the age of majority fixed by the laws, are no less prudent and competent than many adult persons, and no less so than they themselves will ever be? May they not [489] engage with persons who do not believe them to be still dependent, in their dealings, on another's will, or who have no reason so to believe? But once they are known to be minors, if no fraud has been used toward them, nor any artifice, and even if they have acted entirely freely and in full knowledge, even if one has dealt with them solely for their pleasure, have they not manifestly renounced their benefit under the laws, by the very fact of seeking to enter a serious agreement while fully aware of their own legal status? Would it not be a signal act of deceit on their part to take advantage of the fact that they had been treated as competent to reason, and had been taken at their word? Have the laws, in order to prevent minors from being deceived, in fact helped them to be deceivers, and given them the means to profit at others' expense, by granting them full restitution or by providing no form of action against them at law?

The same may be said concerning the agreements contracted by women, without the authorization of husbands or some male relation. This sex, that in various ways we so underestimate in relation to ourselves, is sometimes more intelligent and circumspect in business than those from whom we wish women to take counsel. And the particular

virtue, that we have as it were assigned to the sex as its share, requires that women take every care to flee from whatever has the scent of infidelity.

In all this, I do not make exception for certain agreements in which there can be, and often is, [490] something immoral and illicit, but where this is only incidental to the agreement. Thus in gaming, for instance, where the laws allow the misfortunate gambler to demand return of his losses.[22] Society sees it as a gross injustice, as it has always been seen, and rightly so, that a man who has played willingly and lost fairly should have recourse to the courts to recover his money or refuse to pay up, on the grounds that he cannot be compelled to do so.

The severity of the laws of the Ancient Greeks and Romans against insolvent debtors was perhaps necessary [see Saumaise, *de Modo Usurarum,* chap. xvii, xviii], but I am not sure that in recent times we have not relaxed matters too far. Yet it was up to the creditors alone to be less severe; and I will be told that they sometimes needed to make exceptions that the legislator had not judged it appropriate to make. There is certainly a clear difference between a debtor in bad faith and a negligent or imprudent debtor; between a man who has made himself incapable of paying by his bad conduct and a man who is reduced to this incapacity as the result of a misfortune that renders him deserving of sympathy. When one lends to another, especially with interest, one takes or should take account of the possibility that a thousand unfortunate accidents can happen that make it impossible for the debtor to repay the debt. All that can be required of him is that he does not expose himself to such accidents. Is it therefore just, [491] when it is in no way his fault, to clap him in irons, to make him one's slave, either in perpetuity or (which often comes to the same thing) until he has paid? If the laws permitted it, even in this case, it is not—as Seneca aptly put it—that the legislators had been insufficiently bright to see that one cannot treat as identical, without grave injustice, those who have squandered their

22. See my *Traité du Jeu,* Book III, chap. ix; and what I said in defense of my principles in the *Journal des Savans,* August 1712, Paris Edit. (October 1712, Amsterdam Edit.), and in December 1713, Paris Edit. (February and March, Holland Edit.).

fortune in debauchery or gaming, and those who, as the result of a fire, a theft or some other accident, have at the same time lost both their creditor's goods and their own.[23] Rather, to teach men to be true in their commerce, it was thought better that a small number of people should run the risk of being excluded from offering a legitimate excuse, than that everyone should be able to find some specious pretext to avoid guilt.

But let us turn to examples of another kind. The law of prescription provides one that we should not omit. This law, no matter how odious it appears, no matter that it has been taxed with blatant and perpetual injustice by overly rigid casuists, nonetheless has as its fundamental goal—if one takes the trouble to see it—that of securing property in goods, a goal that clearly requires both that a possessor in good faith should, as such, enjoy the full rights of the true owner, and also that he should himself ultimately become the owner.[24] [492] Nor do I wish to treat as unjust the Roman laws which at one moment authorized prescription without evidence of good faith, but at another time required good faith only at the outset of possession. [See a dissertation of Mr Thomasius, *De perpetuitate debit. Pecuniar.,* §.32 et seq.] In view of the difficulty that would very often lie in proving that a man knew the property he was acquiring or possessed belonged to someone else, the legislator is quite justified in judging it appropriate not to take this circumstance into account, so as to obviate some vastly tangled law suits. Yet, whether or not the civil laws presume good faith on the part of the possessor, good faith is nevertheless necessary according to natural law, which always requires it, from the outset of possession up to the time when possession becomes ownership. The legislators neither would nor

23. *Quid tu tam imprudentes judicas majores nostros fuisse, ut non intelligerent, iniquissimum esse, eodem loro haberi eum, qui pecuniam, quam a creditore acceperat, libidine aut alea absumsit, & eum qui incendio, aut latrocinio, aut aliquo casu tristiore, aliena cum suis perdidit? Nullam excusationem receperunt, ut homines scirent, fidem utique praestandam. Satius enim erat a paucis etiam justam excusationem non accipi, quam ab omnibus aliquam tentari. De Benefic.,* Book VII, chap. xvi.

24. See what I said concerning this matter, on Pufendorf, *Droit de la Nature et des Gens,* Book IV, chap. xii, §.8, note 3.

could accord a true right either to retain a property known to belong to someone else, or to appropriate that property to oneself, even if you believed it to be yours, until a considerable time had elapsed, so that the former owner himself, with good grace, could renounce all his claims. If the laws uphold a possessor in bad faith, after expiry of the term of the prescription, they can no more render him the true owner in the sight of the tribunal of reason and conscience than they can so render a man who knows full well that he failed to deliver the sum against which another gave him a promissory note, on which score the latter is nonetheless obliged to make repayment, once the time has lapsed beyond which one loses the legal capacity to prove that the original sum was never accounted for. [See *Instit.,* Book III, title xxii, *De litterarum obligat.*]

This last case is notable, and merits a separate article. But here is something that [493] is just as striking. Before the Emperor Zeno, who ruled in the East at the end of the fifth century, if in certain cases one had demanded more than was owing, that is, not only if the sum owing was less than what was now demanded, but even if one had sought repayment at another time or place, then no matter how small the difference, under Roman law one lost one's case, on that ground alone.[25] [See *Instit.,* Book IV, title vi, *De actionibus,* §§.33, 34.] If one had demanded less, and if later one had realized that much more was owing, though the judges doubtless saw this too, they would not adjudge the creditor entitled to anything more than he had first asked. It is undeniably right to stop a false debt from being boldly substituted for a true debt; and every person must take care not to claim repayment greater than he can legitimately require. Yet is it right, for instance, that a man who is recognized as being legitimately owed nine hundred and ninety nine *écus* should entirely lose them, because he asked for one thousand? Is there ground for presuming that he was willing to risk the entire sum, and so large a sum at that, just to gain one *écu*? Is it not easy to make a mistake, when the additional amount is so slight? How does the debtor dare to

25. In what were termed *Stricti. juris,* or rigorous law. See the treatise of Mr Noodt, *De Jurisdict. & Imperio,* Book I, chap. xiii.

appropriate another's property, by sheltering behind an accident that would not have befallen the creditor, if the debtor had given satisfaction with good grace, as he was [494] supposed to do? If, because of this accident, the courts did not condemn the debtor to pay, it was because their powers were constrained by the laws, which, in order to avoid certain improprieties, imposed on the judges a scrupulous precision, neither the force nor the aim of which were finally to extinguish the debt. Proof of this is that the creditor, having had his request rejected, did not easily obtain a full restitution from the higher tribunal; if, notwithstanding this, he could cite strong reasons to show that his mistake was one of ignorance and that he had committed no fault, he was relieved just as if he had been a minor.[26] But supposing that the surplus of the true debt had been considerable, and that there was ground for presuming bad faith on the part of the plaintiff, was it not compensated by an equal presumption that he could at least raise with no less justification? Was the debtor, who had allowed himself to be cited in the original action, without offering what he truly owed, himself acting in good faith, and had he good grace on which to pride himself, to the detriment of the creditor? The same can be said of an excess demand that advanced the due date or altered the due place.

For those who demanded less than was owed to them, there was no indication that they intended to acquit the debtor of the amount that they had not included in their demand for repayment. A donation cannot be presumed, and must not [495] be presumed, in the absence of clear indications. And when one is in the mood to dispense liberalities, it would not be towards a person who wished to extort from you even greater liberalities by his refusal to pay the balance of that debt, part of which you had been willing for him to discount. Nor, moreover, in the present instance could the plaintiff be suspected of some evil design that

26. *Si quis agens, in intentione sua plus complexus fuerit, quam ad eum pertineat: caussâ cadebat, id est, rem amittebat, nec facile in integrum a Praetore restituebatur, nisi minor erat viginti quinque annis. . . . Sane si tam magna caussa justi erroris interveniebat, ut etiam constantissimus quisque labi posset; etiam majori viginti quinque annis succurrebatur . . . Plus autem quatuor modis petitur; re, tempore, loco, caussa. Institut.*, Book IV, Title vi, §.33.

would make him deserving of the slightest punishment. If at the very outset he did not state his claims in their full extent, what harm can that be to the debtor? It was for the latter to signal himself the mistake; he would have done so, had he taken care to render to each his own. And on his part it is a huge diversion, and a further injustice, to compel the creditor to commence another law suit.

But this is not the sole example of injustices committed in favor of laws that regulate the process of judgments. At all times and in all countries, there has been much abuse of the advantages that can be derived from formalities generally. These formalities, I admit, have their use and, sometimes, their necessity. They are required in greater or lesser number, depending on the times, the places and the issues: as few as possible, that is always the best. But it is certain that, in many places, by dint of multiplying formalities, the accessory has been made the principal, giving rise to many more problems, some of them considerable, than those to which one sought a remedy. This is a vast field for creating diversionary tricks.[27] Here you have a good means of muddling [496] the clearest cases, and of causing the most just of causes to lose; of dragging out trials; of imposing on one another ruinous expenses, from which only the judge and the lawyers benefit, and which often mean that in winning one's case one is winner of nothing. But let us leave to those whose task it is the responsibility of preventing what was established for the sake of order from degenerating into the occasion for disorder. It is enough to have brought it to your consideration that individuals are profoundly deluded in imagining that the observance or the omission of formalities of the bar, whatever they may be, can ever create a valid right to retain that which one owes, or to appropriate to oneself that which otherwise would legitimately have belonged to another. It is not the legal formalities and the procedures, nor even the judge's sentence, which make a thing belong to someone or come into their possession; it already belongs to him or has already been acquired

27. Pliny the Younger says that practitioners, such as himself, learn many tricks at the bar, even though they do not approve of them: *Mos enim, qui in Foro verisque litibus terimur, multum malitia, quamvis nolimus, addiscimus.* Book II, Epist. iii.

by him. The judge neither seeks nor is able to do other than to recognize that person's right, and to put or keep him in possession of that which was refused him, or about which he was challenged.[28] He who is forced to plead in order to have or to hold his property, could not lose it through the sole lack of some incidental thing, established with a view to enabling each more easily to obtain his own, but which, by accident, now impedes instead of serving this end. [497] The effect that the laws have tied to the omission of formalities does not fundamentally make the cause of the one better, nor that of the other worse; and it is not even the intention of the legislator, nor of the judges, to have things regarded in this way. It is no more than a matter of certain preliminaries that were deemed important enough for a case not to proceed further if these preliminaries had not been duly met, and to impose a sanction on whoever had not complied, in some respect or other, by not commencing discussion of the main issue. But since, supposing it well founded, an existing right is simply being recognized, it is recognized in full. If there is any fault on his part, the first and most considerable fault—or rather the only fault that here justifies the parties' going to law—is wholly that of the other pleader. It was the latter's duty to warn of the problem, and not to seek to profit from it. Given its inflexibility, the law depended on him, regarding what the legal officers could not themselves do, restricted as they are by the generality of the rules. The law waited for him to come to their aid, as he was required to do. If he had sound reasons to allege, he was to renounce this privilege, which was a separate matter. In short, all the incidentals, all the factors external to the case, everything that does not bear on the essence of the cause, detract so little from the right of the man who has right on his side that he is [498] not truly deprived of right even by a final negative

28. Here one can apply what the jurisconsult Ulpian says regarding a right of servitude that he judges inappropriate: *Sive perperam [pronuntiatum est, non debet ei Servitus cedi] quia per sententiam non debet servitus constitui, sed, quae est, declarari. Dig.* Book VIII, title viii, *Si Servitus vindicetur,* Leg. VIII, §.4. The Roman jurisconsults also recognized that a genuine debtor, although absolved by the judge's verdict, still remained a debtor *naturaliter*. See Grotius, *Droit de la Guerre et de la Paix,* Book III, chap. ii, §.5, note 2.

verdict on the principal question.[29] It would be in vain should all the courts of the world condemn a man who is not wrong; their error, no matter what its source, could not alter the nature of things. Evil always remains evil; injustice, unjust. If the victorious pleader has in bad faith denied the debt, or even if, no matter how blinded he might have been by self-regard and self-interest, he was sufficiently aware to suspect and, however slightly, to recognize the injustice of his cause, he remains the debtor, and even more so than before. Doubly guilty, doubly responsible, both for the stubborn refusal to restore what belongs to another, and for all the damages and costs of the law suit. His debt only grows from one day to the next.

Sometimes, too, one loses one's initial case, solely because the actions on which it rests lack certain formalities, which have no relation to the right of the parties and which are established for quite another purpose than to order and assist the course of justice. A sovereign, for example, has need of revenue from taxation. To achieve this simply and imperceptibly, he has a certain imprint made on paper that, as a result, commands quite a high price. He then orders that all contracts should henceforth be written on such paper, failing which they will not be recognized at law. Let us suppose that a man, in making a loan, did not think of this, and makes do with a note written on ordinary paper. Do you believe that, as a result, he has anything less than the full rights of a creditor because in this way he lacks an adequate guarantee of [499] the debt? Will you dare, unfaithful debtor, to deny what you have written; will you violate your word, detain another's goods, under the pretext that the judges do not constrain you to pay, in order to sanction a neglect of which you are at least as guilty as the man to whose detriment

29. "It is true, they say, this sum is owed to him, and right is on his side; but I shall lie in wait for him with this little formality; if he forgets it, he will never recover, and in consequence he loses his money, or else is incontestably deprived of his right; so now he will forget this formality. That is what I call a practitioner's conscience. A fine maxim for the courtroom, useful to the public, imbued with reason, wisdom and equity, it will be precisely the contrary of the maxim that said that form overrides content." La Bruyère, *Caractères, ou Moeurs de ce Siècle,* ch. *De quelques usages,* pp. 216, 217, Vol. II, Edit. Amst., 1731.

you now seek to enrich yourself? The legislator rightly supposed that there would be low and knavish spirits who would have no scruple in turning this kind of punishment to their own advantage; and it is for fear of having to deal with such people that the legislator hoped to render others circumspect and meticulous in paying the tribute. But for all that, the legislator did not want the debt to be confiscated for your gain, and when it was a case of true confiscation, you would have no right to seek it for yourself.

Here we have some cases, of nearly every sort, in which a manifest injustice arises from enjoying the benefits conferred by a law that in itself is just. The paradox dissolves, and the duty of individuals is easily reconciled with the will of the legislator.

III

This is not yet all. Here is something that will make what I have just established seem less strange. *One must sometimes willingly renounce enjoyment of a benefit that is not only conferred by a just law, but also whose enjoyment is always just.*

If men are men, if they act as reasonable creatures, if they wish to conform to what their nature demands, if they are of a mind to show themselves worthy members of that universal society of which God is the author and protector, it is absolutely necessary that they be religious observers of justice, but not of justice alone. There are other virtues which, while free from [500] all constraint, nonetheless carry a clear and imperative obligation. Conversely, this obligation is all the stronger for being free of coercion, since the man who imposes it thereby relies more on one's willingness to fulfil the obligation. Yes, humanity, compassion, charity, beneficence, liberality, generosity, patience, gentleness, love of peace, these are not empty names, nor are they indifferent things; they are not even new commandments contained in the Gospel. Rather, they are sentiments which all reasonable persons in all times have counted among their duties; they are dispositions that one cannot but admire and praise in others, even in an enemy, though one may not feel them in one's own heart nor wish to make the effort to install them there.

Human laws, far from exempting us from such virtues, furnish a thousand occasions for their practice. Let us indicate some of these.

A merchant and man of virtue finds himself reduced by misfortune of circumstances to an incapacity to meet a payment whose term has fallen due. If the creditor forces him, there is no way he can avoid bankruptcy; so here we have a ruined man. If he is given time, there is reason to hope that he will put his affairs to rights. This creditor is rich; he can, without inconvenience to himself, manage without this sum which, compared to what he has at his disposal, is inconsiderable. Were he to lose it, will he be so hard-hearted as to ruin a man whom he can save?

Another wealthy man has had possession for the period required by the law of prescription [501] of a property that he acquired by legitimate title, without ever having the slightest suspicion that it belonged to someone other than the man from whom he obtained it in this way. So his right is established beyond any doubt. The former owner, who has since reappeared, has no claim; and, strictly speaking, nothing is owed to him. The same laws of justice that had given him a right in the property in question to the exclusion of all other claims have transferred this right to the present possessor in good faith by virtue of his length of possession. But notwithstanding this, this new master will not be at ease until he restores the right to the other man who lost it through no fault of his own, and who will benefit greatly from its restitution. If ever there was a time to be generous, this is it. And given that it is generosity towards one who is in dire straits, compassion and charity are now allied with generosity.

A legitimate heir is deprived of an inheritance by a will in which defects are found, by virtue of which he could have it annulled if he wished, something he could indeed do without giving anyone grounds for appeal. No matter how sure he is that this defective document nonetheless expresses the testator's true and unforced wish, it is not this wish that, of itself, should here be his rule of conduct. The formalities and other conditions without which a will is regarded as null and void were not established only to prevent frauds and trickery; another aim, perhaps the principal one, is to set limits to how one can dispose of one's estate after death, so that the expectations of those that the laws recog-

nize for the succession are not easily thwarted. The testator could dispose of his estate to their detriment only by an [502] act that conforms to the law, the heirs having done nothing to indicate their renouncing the right to have the will declared invalid. In this way, when they ask for the will to be annulled, no injustice is involved, whether toward the living or toward the dead. But let us suppose that the inheritance is a trifle for the legitimate heir, and that in allowing it to pass to the person specified in the will, he enables the latter to live in comfort, he affords the man and his family a means of serving society far more fully than they could otherwise have done. Will he envy so many human creatures, like him made in the image of the supreme benefactor, refusing them an advantage that he can so easily procure for them, an advantage that he should procure for them by acting in a more direct way than providence might do? If the circumstances do not involve the specified heir, a legatee can find himself in this situation: the legacy will have been made to him on just grounds, say for important services that he rendered to the deceased. So, again, let the will then be annulled, but let the legacy stand, and let justice cede its rights in favor of humanity.

To this point I have supposed persons worthy of the good that is done them when one relinquishes one's legal right. But there are also cases in which one is called to make this sacrifice even in favor of unworthy subjects.

A person has caused you harm by their gross and inexcusable imprudence. Nothing is more just than to seek reparation, and the imprudence makes this entirely legitimate. But were you to pursue such reparation, or demand it to the full, the man who has to meet the cost would, in so doing, be reduced to the utmost wretchedness; whereas, in [503] acquitting him in whole, or in part, you would be inconvenienced only a little or not at all. Oh man, so often liable to need the understanding of your fellows, on this occasion show some understanding yourself; excuse the fault, forget it, if this is possible; but at least, since it is up to you alone, do not pursue its ruinous consequences for another man. Respect in the other man the fragility of your own nature, and do not fail to exercise gentleness and charity, since these acts will shine all the more and be the more deserving.

You have been maliciously slandered, you have been insulted. Will your first move be to seek satisfaction through the magistrate, satisfaction which often you may not need? If your reputation is sound, if you have nothing with which to reproach yourself, the offender's barbs will fall back on him alone. The best means of revenge, if revenge were permitted, is scorn. It will at least spare you anxiety and disturbance of mind on account of a harm that in fact is imaginary, when it entails no real damage.

I wish there was something more than mere words that the wind carries away in an instant. Let me suppose that someone has stolen from you, or withheld from you, or demanded from you, contrary to all right and reason, something which most legitimately and most incontestably belongs to you. Ah! best let it go, as far as you can without too much trouble, without some irritating inconvenience; give it up, sacrifice something, rather than calling someone before the courts, or letting yourself be called. It is as true for a law suit as it is for war: it is always an [504] evil; necessity alone can justify those who expose themselves to it. When I think of the ease with which so many people go to court, often for trifles, I do not know what it is about them that amazes me most, whether a lack of concern for their duty, or a lack of care for their true interests. What is one who pleads in court? Let us imagine him in the best possible light; let us leave aside the bad faith, the devious mentality, the oblique paths, the tricks, the duplicities deployed to influence or corrupt the judges. Let us, instead, suppose a man who believes his case to be well-founded, as indeed it is, who wishes to uphold or pursue his right but only by legitimate means. So what is a plaintiff considered from this point of view? He is a man who can scarcely be of peaceful mind: the rival party's bad procedure irritates him; the more he has right on his side, the more he conceives a bitterness toward the other party, toward all who take the other's side, toward all who have some link, some relation with him. This is a man who has abandoned his business, his most productive and most pleasant occupations, in order to suffer so much distress, so much fatigue, so many rebuffs, so much deviousness, so many disappointments, such great expenses; and all this without knowing how long the case will continue, or whether he will

win his case, no matter how just it is, nor whether he will finally obtain damages which, when all is added up, never equal what it has cost him. And if he wins, then he now faces a deadly and constant source of hatreds, animosities and enmities that sometimes persist between families from generation to generation, and from which is born an infinity of evils. A Latin poet put it well: [505] "Is it possible that a person, who has first lost his case, could be so lacking in sense, so great an enemy to himself, as to want to spend twenty years in litigation?"[30] Let us say rather: is it possible that one would want to go to court when there is even the slightest chance of avoiding it, by compromising or by giving something up when one is not compelled to proceed by the state of one's affairs, or by some other pressing and necessary reason?

At this point I seem to hear someone protesting at the upshot of my entire discourse: "If this is so, we should close the law courts and demolish the tribunals of justice; no more judges, no more assessors, no more lawyers, no more *procureurs,* no more clerks, no more ushers, no more of those whose only occupation is to exploit the freedom people still believe is theirs to enjoy their legal benefits, and to exploit people's haste to have recourse to law." The objection appears strong: but the one thing I find annoying here is that this objection is not strongly enough embraced by those very people who silently agree, and so we cannot flatter ourselves that the prospect it envisages could in fact ever arise. Yes, please God that men may grow wise enough to render redundant all those professions, employments and institutions that are based only on men's follies! Please God that we may see the birth of a golden age in which, each one of us taking care to give offence to none, but on the contrary being eager to do good to whosoever needs it, we may be disposed to forgive the faults of others, to behave toward everyone in the same [506] manner that we would wish others to behave towards us, and to embrace and search out every possible means to avoid disputes, or to resolve them amicably in the shortest possible time! But be reassured, you who are alarmed by the very thought of so happy a

30. *Ah! miser & demens, viginti litigat annis / Quisquam, cui vinci, Gargiliane, licet?,* Martial, Book VII, *Epigr.* lxiv, I, 5.

revolution that you would regard as fatal for your own fortune. There will always be only too many quarrelsome and devious persons, who reduce the most pacific of men to the necessity of using, despite themselves, the instruments of justice. Egoism, interest, human passions are your good guarantee for your revenues. Only allow that the rare few who take their duty and their tranquillity to heart may avoid, insofar as they find it possible, having any dealings with you. May they be permitted to renounce their advantages.

Christianity prescribes this moderation in terms so strong that they have occasioned overstatement [Matth. V, 39, 40]. "Resist not evil, but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also." The least one can understand by this, and all that a sound and judicious criticism finds here, is this: that one must not [507] always take advantage of the law of an eye for an eye, a tooth for a tooth; and that, rather than proceeding to court to seek reparation for some trivial insult or to avoid losing some small possession, one must expose oneself to a further insult or to a new loss.

But here the pagans themselves, guided only by the light of reason, thought and acted in a manner that leaves many Christians covered in confusion. Among the pagans this was a common saying: "that right pursued too rigidly is a great impediment and a supreme injustice."[31] Cicero offers the following rule: "that, in many cases, one must give up one's right; abstain from litigation, to the extent that one can do so without inconvenience, and perhaps somewhat further still."[32] Pliny the Younger missed no occasion to desist from enjoying benefits the law granted to him. We see him at one time making the donations or other charges imposed on him by a codicil that the laws of those times

31. *Verum illud, Chreme, Dicunt, jus summum saepe est malititia,* Terent., *Heaut.,* Act IV, sc. v, verses 47, 48. *Ex quo illud, summum ius, summa iniuria, factum est jam tritum sermone proverbium.,* Cicero, *De Offic.,* Book I, chap. x. See on this the interpreters.

32. *Convenit autem . . . aequum & facilem [esse]; multa multis de jure suo cedentum; a litibus vero, quantum liceat, & nescio an paulo plus etiam, quam liceat, abhorrentem. De Offic.,* Book II, chap. xviii.

deemed null and void on the ground that it had not been confirmed in the subsequent will;[33] at another time, we see him granting freedom and a legacy to a slave, who had no claim to either, because of the defective manner in which the testator had expressed himself;[34] [508] at yet another time we see him relinquishing to his country [the city of Como], instituted as inheritor conjointly with himself, his portion of the inheritance, and a considerable portion, that he could have kept to himself as entirely within his right;[35] finally we see him allowing even his slaves to make a form of will, and then executing their dispositions with the utmost punctiliousness.[36]

Let us conclude (for it is time to finish, and we can do so), let us conclude with Aristotle that "it is not exactly the same thing, to be a good citizen and to be a good man."[37] The latter title has a far greater reach than the former. One may do nothing that is against the laws, one may act only in accordance with the laws and, notwithstanding this, still fall short in an infinity of things that true probity demands.

33. This is what Pliny says to a friend who warned him of the nullity of the codicil: *Tu quidem, pro cetera tua diligentia, admones me, Codicillos Aciliani, qui me ex parte instituit heredem, pro non scriptis habendos, quia non sint confirmati testamento. Quod jus ne mihi quidem ignotem est, quum sit iis etiam notum, qui nihil aliud sciunt: sed ego propriam quamdam legem mihi dixi, ut defunctorum voluntates, etiamsi jure deficerent, quali perfectas tuerer? . . . Nihil est, quod obstet illi meae legi, cui publicae leges non repugnant.* Book II, Epist. xvi, num. 1, 2, 4, Edit. Cellar.

34. *Scribis, mihi Sabinam, quae nos reliquis heredes, Modestum servum suum nusquam liberum esse jussisse; eidem tamen sic adscripsisse legatum: Modesto, quem liberum esse Jussi. Quaeris, quid sentiam. Contuli cum prudentibus. Convenit inter omnes, nec libertatem deberi, quia non sit data; nec legatum, quia servo suo dederit. Sed mihi manifestus error videtur. . . . Neque enim minus apud nos honestas, quam apud alios necessitas valet. Moretur ergo in libertate, sinentibus nobis, fruator legato quasi omnia diligentissime caverit. Cavit enim, quae heredes bene elegit.* Book IV, Epist. x.

35. *Nec heredem institui, nec praecipere posse Rempublicam, constat. Saturnius autem, qui nos reliquit heredes, quadrantem Reipublica nostra, deinde pro quadrante praeceptionem quadringentorum millium dedit. . . . Mihi autem defuncti voluntas (verior quam in partem Jurisconsulti, quod sum dicturus, accipiunt) antiquior jure est, utique in eo quod ad communem patriam voluit parvenire.* Book V, Epist. vii, num. 1, 2.

36. *Alterum [solatium] quum permitto servis quoque quasi testamenta facere, eaque, ut legitima, custodio, Mandant, rogantque, quod visum, pareo ocius: Suis dividunt, donant; relinquunt dumtaxat intra domum.* Book VIII, Epist. xvi, num. 2.

37. *Ethic. ad Nicomach.,* Book V, chap. v, p. 61. Vol. I, Ed. Paris.

But how to find some link here with the solemnity of the present occasion? How to draw from what we have said what is needed to address a small exhortation to these young people? I glimpse something that will not be too far off our topic.

My children, we prescribe rules for your studies, we teach you lessons, we set you tasks: you have to be assiduous in your exercises, to listen attentively to your masters, to try to retain what they teach you, to do exactly what they command. But that is not enough. If you have it in your heart to acquire all [509] the knowledge that is useful and necessary to you, you have also to work for yourselves, and make time for that in the leisure that you are allowed. Although, at your age, you have a great need to be pushed and guided almost constantly, you can nonetheless take some small steps on your own, should you wish to. And there are some among you, who must be ready to move ahead a little, beyond the master's gaze. No matter what care is given you, however well you employ the time needed to work in a manner that will please your masters, there will often be more than enough time left for you to relax. And it is very dangerous lest you then become attached to things that are bad and harmful in themselves, or that will turn you against work from which but little is gained, unless you love it. If you study only to complete the set tasks, if you do not early accustom yourself to taking your pleasure in your work, you will never reach the point of exercising with honor the employments at which you aim. As you grow older, sources of distraction will multiply, and temptations will be stronger and more numerous; yet it is then that you will have greater need, from one day to the next, to study under your own discipline, with commitment and eagerness. So we can do no more than [510] point the way. It will then be up to you to walk, to take care not to stop and not to wander. The best teachers in the world will then be able to do no more than introduce you to the sciences, give you some openings, and show the method to adopt. All this amounts to little, if one does not use it to go further by oneself, if one rests content with the basic elements, and with a mediocre routine which has cost you next to no effort but which you follow shamefacedly, to the great detriment of society, whose interests you could and should have furthered. If the re-

wards that we shall now distribute, according to custom, to those of you who have achieved some distinction, led to no improvement, they would not have been put to good use, and this would be nothing but an empty childish ceremony. May God grant that we have no reason to regret the time we commit to it! May you surpass our hopes, and indeed our wishes, if it is possible!

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