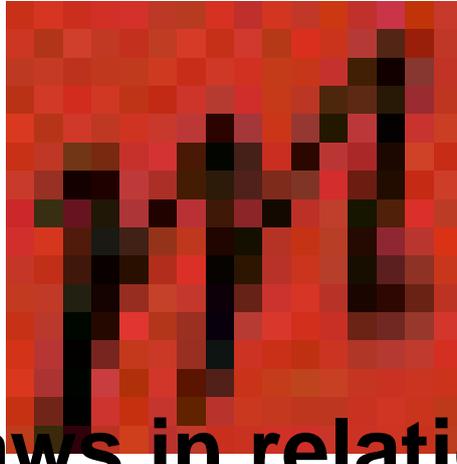


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II.4 On laws in relation to the nature of monarchical government

- The Spirit of Law - Book II. On laws which derive directly from the nature of the government -

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II.4 On laws in relation to the nature of monarchical government

Intermediate powers which are subordinate and dependent constitute the nature of monarchical government : in other words, where one man alone governs by fundamental laws. I said subordinate and dependent intermediate powers : in truth, in a monarchy the prince is the source of all power, political and civil. These fundamental laws necessarily suppose median channels through which the authority flows : for if there is nothing in a state but the fleeting and capricious will of one man alone, nothing, and consequently no fundamental law, can be fixed.

The most natural subordinate intermediate power is that of the nobility. It is in a sense part of the essence of monarchy, the fundamental maxim of which is : *No monarch, no nobility ; no nobility, no monarch*, but you have a despot.

Some people had the idea, in some states in Europe, of abolishing all seigniorial courts. They did not see that they were trying to do what the English Parliament has done. Abolish the prerogatives of the lords, the clergy, the nobility, and the cities in a monarchy, and you will soon have a popular state, or else a despotic state.

The tribunals of a great European state have for several centuries been constantly striking at the patrimonial justice dispensed by lords and ecclesiastics. We do not wish to censure such wise magistrates, but we leave it to be determined to what degree their constitution can be changed.

I am not obsessed with the privileges of ecclesiastics, but I would like for their jurisdiction to be fixed once and for all. The question is not whether it was a good idea to establish it, but if it is established, whether it is part of the country's laws, and whether it is everywhere relative ; whether, between two powers recognized as independent, the conditions ought not to be reciprocal, and whether it is not the same thing to a good subject to defend the prince's justice, or the limits which it has in all times recognized.

The power of the clergy is as appropriate in a monarchy, especially those which incline toward despotism, as it is dangerous in a republic. Where would Spain and Portugal be since they lost their laws without this power which alone checks arbitrary authority ? It is always a useful barrier when there is none other ; for as despotism inflicts terrible suffering on humankind, even the evil which limits it is a benefit.

As the sea, which seems it wants to cover the entire earth, is bounded by the grasses and the smallest stones along the shore, so monarchs whose power appears limitless come to a stop at the smallest obstacles, and subordinate their natural pride to protest and prayer.

The English, in order to favor freedom, have removed all the intermediate authorities that made up their monarchy. They are quite right to preserve that freedom ; should they ever lose it, they would be one of the most enslaved peoples on earth.

Mr. Law, through an equal ignorance of republican and monarchical constitutions, was one of the greatest promoters of despotism yet seen in Europe. Besides the unusually abrupt, uncommon, and unprecedented changes he made, he wanted to suppress the intermediate ranks and abolish the political bodies : he was dissolving the monarchy with his fictional reimbursements, [1] and seemed to want to redeem the constitution itself.

It is not enough to have intermediate ranks in a monarchy : there must also be a repository of laws. This repository can only lie in the political bodies, which announce the laws when they are made, and recall them when they are forgotten. The ignorance natural to nobility, its inattention, and its contempt for civil government, require the existence of a body that can constantly rescue the laws from the dust in which they are buried. The prince's council is not a

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suitable repository. It is by its nature the repository of the temporary will of the prince who executes, and not the repository of the fundamental laws. Besides, the monarch's council is forever changing : it is not permanent ; it cannot possibly be large ; it does not enjoy a high enough level of confidence from the people : it is therefore not in a position to guide them in difficult times, nor to restore them to obedience.

In despotic states, there are no fundamental laws, nor is there any repository of laws. That is why religion usually has such strength in those countries : it is because it provides a sort of repository and stability ; and if it is not religion, it is the customs that are revered in lieu of laws.

[1] Ferdinand king of Aragon made himself a grand master in the orders, and that alone altered the constitution.