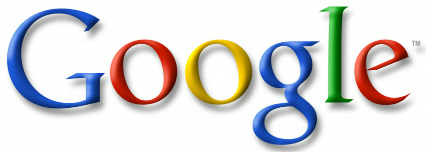

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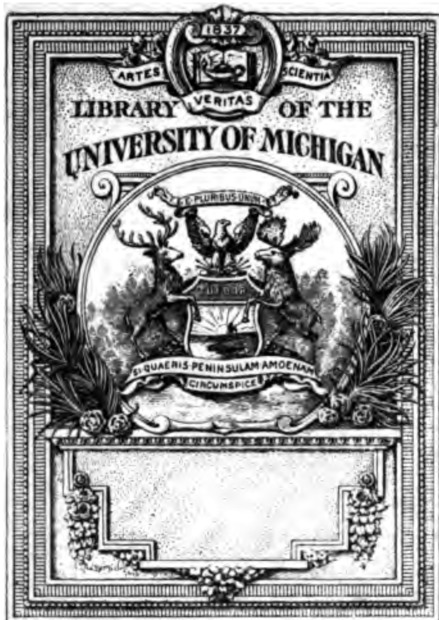
OF RESPONSIBILITY

EMILE FAGUET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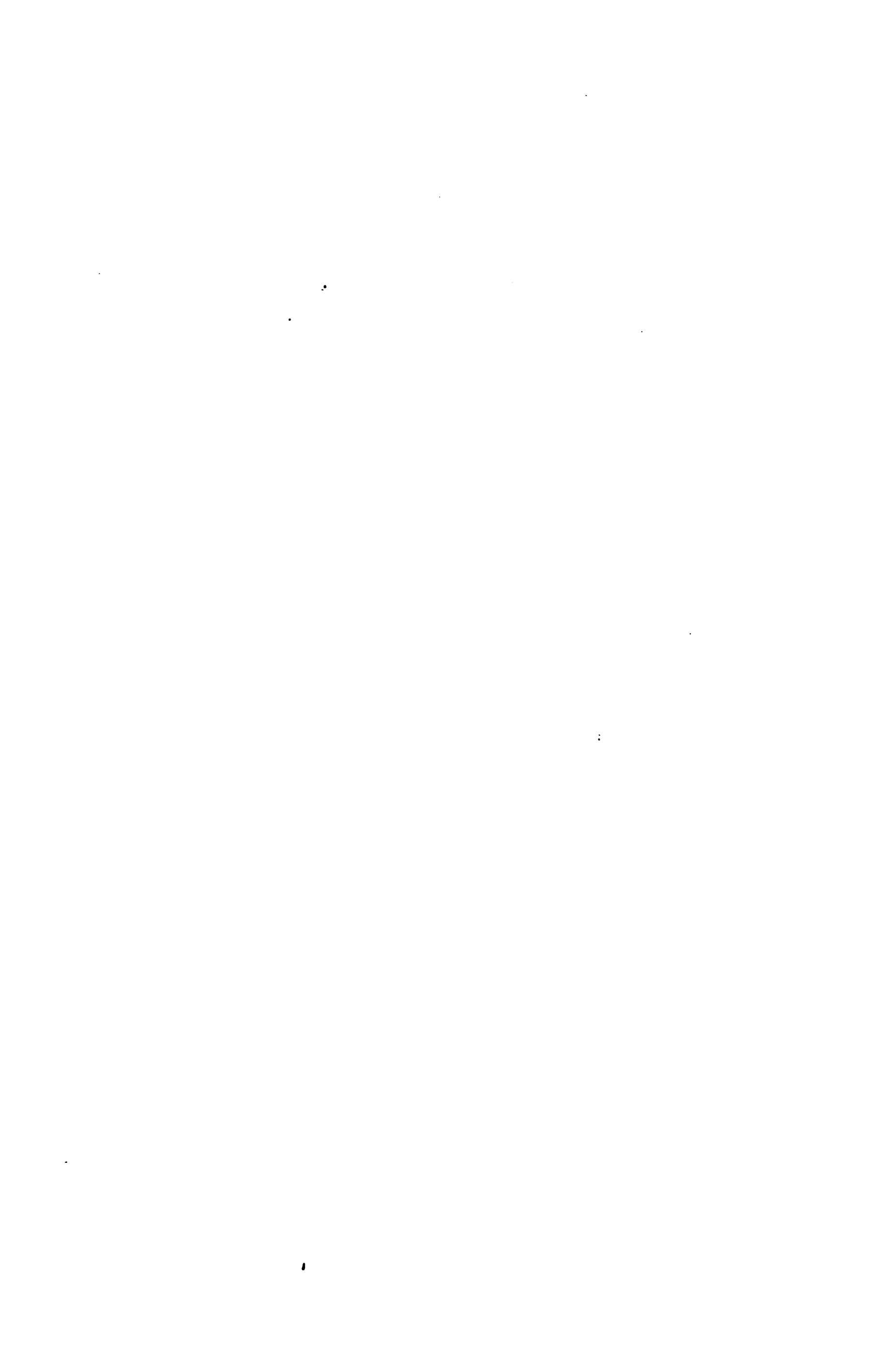

By Émile Faguet

Initiation into Philosophy
Initiation into Literature

THE DREAD OF RESPONSIBILITY

BY

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CONTENTS

CHAPTER	PAGE
I.—Legal Ideas and Customs	3
II.—Professions	106
III.—In the Family	145
IV.—In Political Customs	164
V.—For Each One of Us	216

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INTRODUCTION

M. Faguet has hitherto been known chiefly as the author of a brilliant destructive criticism of pure democracy and the socialistic tendency. In the present volume he supports his position by fresh examples, and in addition he outlines a constructive suggestion for a true aristocracy, a government, under democratic forms, by the really best.

The polity of the United States, as M. Faguet points out, is not a democracy at all; and he is doubtless amused by the circumstance that after nearly a century and a half of it we cannot tell whether its failure of perfection is due to its being too nearly a democracy or to its being too remote from one. M. Faguet finds in France the nearest approach to a pure democracy that the world has seen, except for fifty years in Athens, and

he believes that the course of events will be in the direction of a still closer approximation. Perhaps we shall see in actual operation the ideal of government entertained by Élie Reclus and his friends in 1870, who believed that France could best be administered if every citizen on his way to business each morning dropped into a suitable box his vote on all questions from foreign relations to the police regulation of ownerless cats. This ideal is not shared by M. Faguet, but he is far from opposing to it the alternative ideal of monarchy. He believes, on the contrary, in the possibility of restoring the sense of social responsibility, which, in his view, democracies abhor, by the creation of a literal aristocracy.

There is very perceptible in this country, in opposition to the extreme democratic theory, a wish to increase rather than to decrease personal official responsibility, to cut down the number of elective offices, and to lengthen terms. The work of the Short Ballot Organisation and the increasing popularity

of commission-government for cities and counties in widely separated parts of the country, are evidences of this wish. The maxim that self-government is better than good government is dearer to none than to Tammany Hall. Certainly no one but Tammany Hall and the progressives still believes it to be a public gain that the lower east side of New York City should turn out regularly on election day to vote itself a higher death-rate. Some form of government by the most fit we shall doubtless come to if society in its present form is to survive. The trouble with all aristocracies known to history, though many of them have done notable social service, is that they have been vitiated by the possession of great vested interests to protect. It has long been whispered and is now said aloud, by Professor Beard in his *Economic Interpretation of the Constitution of the United States*, that the fathers of the republic, the Constitutional Convention of 1787, were such an aristocracy, representing great groups of person-

alty interests which had been adversely affected under the Articles of Confederation; that the propertyless masses under the prevailing suffrage qualifications were excluded at the outset from participation through representatives in the work of framing the Constitution; and that the Constitution was ratified by the votes of probably not more than one-sixth per cent of the adult males.

Plato, whose ideal state was to be governed by an aristocratic class, not hereditary but perpetually recruited from the rest of the population, expressly barred his governors from owning private property, although anyone else in the state might do so. This notion seems to us at present merely romantic, but one of the most hopeful omens for our social future is the fact that there is actually growing among us a class of men who are willing to forego the financial rewards of great talents for the sake of serving the state. It looks as though we should be driven by our social and political embarrassments to seek these men more and more persistently, to

trust them farther, to give them longer terms of office and more absolute powers, and above all to protect them from the moods of Demos. We shall communicate with them not in terms of initiative and referendum, but as Socrates prayed to his god: "Give us what is good, whether we pray for it or not; and avert from us the evil, even if we pray for it."

But apart from an accidental aristocracy like this, consisting of specially fit individuals here and there, and evolved by social and ethical rather than by political forces, M. Faguet wants a political, constitutional aristocracy. His aristocracy is not to be one of wealth or of birth or even of talent, but one of social capacity. He defines an aristocratic element of the state as "a part which has enough of vitality, of cohesive power and of sense of responsibility to form a group, an association, an organisation, to become a living thing, that is to say, a collective person." Among aristocratic elements he names the bench, the bar, the

army, the chambers of commerce, the labour-syndicates. His practical comments on the possibility of reforms in this direction under the present constitution in France, his references to our own constitution, which, it must touch us to note, he admires, and his analysis of the psychology of democracy, should be of almost as much interest to us as to his own people.

M. Faguet has a strong objection to the way justice is administered in France, based on the ground, surprising to most Anglo-Saxons, that it is too favourable to the criminal. "Given," says he, "that of every hundred crimes, fifty remain unknown; that of the remaining fifty, 50 per cent of the authors are undiscovered; that of the remaining twenty-five, 75 per cent of the authors are acquitted; and you can calculate that a criminal when he commits a crime has 94 chances to 6 against being punished. This makes criminal industry much less aleatory than small shopkeeping, for 50 per cent of the small shopkeepers fail, while

only 6 per cent of the industrials of crime come to grief. . . . The profession of murder, while not offering (we must admit) absolute security, is at least one of the safest; public office and murder are the only trades that mean almost complete repose. This turns a great number of serious minds towards crime and public office, and away from industry."

Disgust with the slowness and inefficiency of our own criminal procedure has led some of our lawyers to view with envy the characteristic features of the Latin inquisitorial system. Mr. Taft encountered Roman law in the Philippines, and after study and experience of its workings, published a number of papers and addresses in which he set forth his view of the advantages of some of its methods, including that most abhorrent to Germanic ideas, the examination of defendants in criminal cases. Mr. Frederic R. Coudert, in an exceedingly discriminating and impartial article on French criminal procedure, printed in the *Yale Law Journal* for March, 1910, points out that the relax-

ation by statute here and in England of the strict rule against self-incrimination, by permitting a defendant to take the stand if he wishes, is a long step in the direction of the inquisitorial method. For an innocent man will in most cases be anxious to tell his own story, and though the statutes provide, and the judge must charge, that the failure of the defendant to testify is to raise no presumption against his innocence, still jurors are men. Everyone outside the courtroom received from the failure of Becker, accused of the murder of Rosenthal, to take the stand, a certain impression from which it would be strange if the jury alone were immune. In practice, the procedure of our police and magistrates' courts uses the inquisitorial system, at the dictation of necessity and common sense. "The rule against compelling examination of parties in criminal cases," says Mr. Coudert, "may well be thought to have outlived its usefulness. It is of no value to the innocent, and highly detrimental to society in its war against crime."

It seems therefore to men like Mr. Taft and Mr. Coudert that the inquisitorial system, while free from the charge of oppressiveness if honestly used, is still a more effective instrument for the suppression of crime than the common-law method, which gives the guilty an unfair advantage. But even armed with this instrument, French justice, according to M. Faguet, punishes only 6 per cent of the criminals. The accused in a French criminal court has advantages unknown to our defendants; he and his counsel have the last word, instead of the prosecution as with us, and cross-examination is not permitted, since all interrogation of witnesses is done by the judge. In addition to these advantages of procedure, he is the beneficiary of French good nature through the form of the verdict of *circonstances atténuantes* and of the recommendation to mercy, with which M. Faguet makes merry. The French jury arrives at its verdict by a majority vote, a method very often desiderated here in place of our extravagant demand

that twelve men shall be in absolute accord. But a drawback to the majority rule is the tendency to compromise, which results in many cases in the verdict of *circonstances atténuantes*, and gives the public the impression that the *circonstances* accompanied the deliberation rather than the crime. Our juries as a matter of fact act on the same tendency to compromise rather than to disagree, and express it by finding a lower degree of crime than the prosecution called for.

One criticism of criminal procedure as appropriate to our own as to the French is expressed in M. Faguet's brilliant and closely reasoned pages on the psychic responsibility of the criminal. The clumsy and blundering efforts of our law to reflect the attitude of modern psychology towards the delinquent are not, it appears, ours only. French justice also is halted by the apparent paradox that the more guilty a man is, the less he is responsible. The solution of the difficulty was not, of course, left to M. Faguet to discover, but his version of it has value and charm.

The reader must be cautioned on one or two minor points. In his haste M. Faguet says that English law is nothing but jurisprudence. He does not mean that; he means only to point out the very large place occupied by jurisprudence in English law as compared with French law. And when he says that the ancient republics had a profound contempt for "anyone who does any work," basing his view on Aristotle's well-known remarks, he allows the opinion of a reactionary of the decadence to outweigh the facts of the great period. As a corrective of this impression, the reader is referred to *The Greek Commonwealth*, where Mr. Zimmern, leaving Plato and Aristotle out of the picture, shows us the great public of workingman citizens that preserved Europe for Europeans at Salamis, that formed Pericles's constituency, and that with its own hands built the Parthenon.

E. J. P.

New York, March 20, 1914.

WHAT do they want? To be irresponsible. It is the history of the French people for a century and it will be their history indefinitely, unless this book reforms them, which I count on somewhat but not very much. They want to be irresponsible. They form their ideas of law in accordance with this design; they organise and practise their professions to this end; they have a family life governed by this thought; they have a social life controlled by this principle.

THE DREAD OF RESPONSIBILITY

I

LEGAL IDEAS AND CUSTOMS

THE whole system of law and the whole legal usage of the régime which followed 1789 are dominated by the idea that he who judges is irresponsible, and that no blame is to be cast upon him. In fact, the judge does not judge in equity but in accordance with the law. In other words, he is not a judge, he is a clerk. He is a man who in connection with a case declares the law which has foreseen that case and applies to it. He is a man who fits the case to the law, which means that the law applies exactly to the case,—"covers" it, as the Germans say,—and who gives his decision accordingly.

As a result he is absolutely irresponsible;

it is the law, not he, that renders the decision. The decision proceeds from the law automatically as it were. Whom can the loser blame? The judge? Evidently not. He can blame the law as much as he likes, but it is impossible to blame the judge. The judge is strictly irresponsible.

Someone may ask, would you prefer to have a judge judge in equity—that is, arbitrarily? That would be a fine state of things. Don't you know that when Savoy was united to the kingdom of France, the first favour the Savoyards asked of the king of France was to be no longer judged in equity but according to some law, no matter what? Anything would satisfy them provided it was no longer equity, which is always so perfectly inequitable. Would you wish to be a disciple of President Magnaud who, from about 1890 to 1900, made himself famous and even created a fanatical following by his doctrine and by his practice of judging in defiance of the law and of substituting the judge for the law whenever the judge (himself

namely) considered the law bad? Are you opposed to these maxims of Montesquieu?

The nearer a government approaches to a republic, the more fixed does the method of judging become. It was a vice of the republic of Sparta that the ephors judged arbitrarily, without having laws to guide them. At Rome the first consuls judged like the ephors; the disadvantages of the method were felt and precise laws were made. In despotic states there is no law; the judge is himself the canon. In monarchical states there is a law; where this is precise the judge follows it, and where it is not precise he seeks the spirit of it. In a republican government it is of the nature of the constitution that the judges follow the letter of the law. There is not a single citizen against whom a law can be *interpreted* when his goods, his honour, or his life is in question.

I do not dream of wishing that a judge should judge in equity, and I think it a good thing that he should judge in accordance with a precise law. I only wish to point out that everything has its bad side, and if judgment by the text has incomparable advantages (incomparable I think is the

word) the practice of judging by the text has also this drawback, that it discharges the judges completely from moral responsibility. It leaves them responsible for having understood or failed to understand the law, for having been successful or unsuccessful in applying the law to the case or the case to the law, and for failure to observe the forms; but that is all the responsibility it leaves them. In a word, it leaves them only an intellectual responsibility and it discharges them altogether from moral responsibility. This is perhaps only the drawback of a great good, but it is a great drawback.

Under the old régime the laws were so complicated and so confused that the judges, while resting on the law and taking a good deal of pride in resting on nothing else, and, as Montesquieu said, in "having nothing but eyes," judged in very large measure in equity. The result was that they had a large moral responsibility. They were what the English judges still are. English law is only jurisprudence, a col-

lection of precedents. Through these precedents, often contradictory as may be imagined, the English judge has a great latitude of interpretation, of theory, of "doctrine," inspired to be sure by the precedents, but freely and without any ground for servility. For since his predecessors made the law by the precedents they left, it is quite legitimate that he in turn should continue to make it by the mass of decisions which he works out and leaves behind him as fresh precedent. In fact the English judges have been legislators, and, partially but in large part, they are so still.

The English judge is rather like the Roman prætor, though I do not mean to identify the two. The Roman prætor was not only a man who laid down the law; he was a man who made the law. When he took office he published a sort of legislative manifesto—*edictum prætoris*—in which he enounced the general principles of law which he intended to follow. The prætors thus created successively a whole body of law—

the prætorian law—which was much more studied at Rome in the time of Augustus, and afterwards until Papinian, than the law of the legislators, and which was, when all is said, the real law from which the whole Roman code issued later.

I need not say that law thus made is the most vital sort of law, formed as it is, little by little, through cases and the application to them of the human reason, in the light of analogous cases in the past, and not born from this or that idea, often highly *a priori*, of a legislator.

At any rate the Roman prætors were judge-legislators, judges who both declared and made the law, and the English judges continue to resemble them.

Such judges have an enormous responsibility; they feel it, and they maintain their sense of duty to justice and of the dignity of their office by this very consciousness of responsibility. They feel that they are judging in equity, illuminated by acquaintance with a jurisprudence which is extensive,

very ancient, venerable, important, which they must know and which in fact they do know, consult, consider, revere. But they also judge to a considerable degree in equity, that is by reason, and their reason will make a contribution to the law of the land they cherish. They are traditionalists in two ways, as in fact everyone must be if he is not to remain only half a traditionalist; they are traditionalists backward by all the tradition of which they are the result, and forward by the tradition which they found.

Yes, all that must develop very strongly and confirm in them a deep feeling of responsibility.

Such are the prætors of Rome, the English judges, the judges of the old régime in France. Even to-day a very upright judge said to me:

"The texts are so numerous, so contradictory, and, in spite of their apparent rigidity, so malleable, that it is always possible to judge in equity."

"And you do?"

"Never, because to judge in equity is to

assume a responsibility which nobody cares to undertake."

"Fine!"

"Perhaps."

This terror of responsibility comes out clearly in the famous passage in Beccaria. He is in favour of judgment by the letter, of judgment by the simple juxtaposition of the case at bar and the text of the appropriate law, of a judge who has nothing but eyes. Why, certainly, and I have no idea of contradicting him, but notice how afraid he is of judgment by the spirit of the law, and above all note the grounds of his fear:

Nothing is more dangerous than the generally accepted maxim,—consult the spirit of the law. To adopt this maxim is to break all the dikes and toss the laws to the tides of opinion. Every man sees in his own way; the spirit of a law is therefore the result of the judge's good or bad logic, his easy or laborious digestion, the weakness of the defendant, the violence of the passions of the magistrate, his relations with the defendant, in a word, of all the little causes that change appearances and denature objects for a man.

If we adopted this principle, we should have a citizen's mind changing as he passed from one court to another, and we should place the lives of the unfortunate at the mercy of the bad reasoning or bad temper of the judge. We should see the same offences treated differently at different times by the same tribunal, because, instead of listening to the constant and invariable voice of law, judges would yield to the misleading instability of arbitrary interpretation.

Nothing is more true, and I repeat that I prefer the passive application of the law, both to judgment in equity and even to judgment by the spirit of the law; but note carefully what Beccaria is afraid of—it is the intervention of the judge in the process. He wants the judge to be merely a registering machine; he does not want him to be a man who reasons, who digests, who has passions, who has likings, who changes his mind. Very good, but he does not want him to be a man sensible to the shades of difference between one offence and another which, according to the text of the law, is the same, but which is by no means the same to the

eye of reason. He does not want him to weigh circumstances, to weigh the greater or less danger to society. In a word, he does not want him to have a critical faculty, but to be a machine for pasting the texts upon the case.

Why? In the interests of the defendant, answers Beccaria's phrase. It is possible, but still more in the interests of the judge, who is thus delivered from a great burden—that of judging. What does he want? To be irresponsible.

Add a consideration which I shall be accused of repeating, but which I do not think that I can repeat often enough. Who selects judges in France? The prince. Who pays them? The prince. Who favours their advancement or leaves them indefinitely at the bottom of the ladder? The prince. Then the "act of the prince"—that is, the will of the government—controls them, and they judge according to the will of the government, except in cases in which the government has no interest. In France

there is but one word for it: the government is the judge.

It was different under the old régime because the judges had a proprietary right to their office and were therefore independent; for there is no other way to be independent than to have a proprietary right. A venal office meant an independent magistrate. We all know how Montesquieu defended venality and how Voltaire attacked him for it.

Montesquieu said: "Venal offices are good in monarchical states because they make a family profession of work that would hardly be undertaken from virtue."

Voltaire cries: "What! make the divine function of dispensing justice, of disposing of the fortunes and lives of men, a family possession?"

To this I answer, this is not the chief reason that Montesquieu gave for his opinion, but even this reason is far from being so inconsiderable that one can refute it by a shrug of the shoulders. We have here

simply the aristocratic idea, which Voltaire, a headstrong despotist, never understood in the least. Montesquieu means: venality places a judicial appointment in a family, and you have a series of judges from father to son. All aristocracy rests on that. Among the senators of Rome and the senators of Venice the divine function of guarding the interests of the state was a family profession, and that is just the reason why it was so well performed. Does it surprise anyone that getting one's head broken on the field of battle is a family profession? It is nothing else in the French noble class and it is performed brilliantly enough. There is no other meaning, but there is all this in Montesquieu's remark, which is the most natural in the world to a man who knows what aristocracy is.

"This venality," Montesquieu goes on to say, "makes the state offices more permanent. Suidas observes very well that Anastasius made the empire into a species of aristocracy by selling all the magistracies."

Voltaire does not notice this passage, precisely because it contains Montesquieu's whole thought, and into that thought Voltaire cannot enter. For him the orders of the state do not and should not exist. There should be nothing but an absolute monarch and equal subjects. It goes without saying that consequently whatever creates an order that is a bridle to the fantasies of absolutism is to Montesquieu a good thing, to Voltaire a monstrosity. And if Voltaire does not quote this important text, it is doubtless because he said to himself: "Oh, well, that is Montesquieu's aristocratic hobby-horse. We needn't pay any attention to that. Skip it." And it was much easier to skip than thoroughly to discuss the question which is here raised—whether, namely, aristocracy is a good form of government or a bad.

Montesquieu continues by recognising that Plato would have none of this venality and that he maintained it was as though in a ship the richest man should be made pilot. But he bids us notice that Plato is speaking as

a citizen of a republic, and he, Montesquieu, as a subject of a monarchy. "Now in a monarchy, where, if the offices are not sold by public regulation, the indigence and greed of the courtiers would sell them just the same, chance will make better selections than the prince."

Here Montesquieu puts his finger on the very point, which is this: we have to choose between venal offices and venal judges. If the judge has a proprietary right to his office he will not be personally for sale; if his office is given him, he will be. In the first place, to get it he will often be forced to buy it, not from the proprietor since there is none, but from the minister in whose gift it is or from the people who influence that minister. And then to keep that office or to acquire a better and more lucrative one, he will always be at the disposal of those who give such things, and his divine function becomes the function of a lackey. We must choose between venal office and venal (or servile, which is the same thing) magistrates.

Voltaire replies, it seems to me, quite obliquely, as he always does, because the real question escapes him or because to sound it to the bottom is repugnant to his natural taste for the surface.

> Why [says he] is France the only monarchy in the universe soiled with the opprobrium of this venality erected to a law of the state? Why did this strange abuse wait for eleven centuries to appear? It is well known that the monster was born of a king both poor and prodigal, and of the vanity of certain citizens whose fathers had amassed money. This abuse has always been attacked by impotent outcries, because it would be necessary to redeem the offices sold. It would be a thousand times better, says a wise jurisconsult, to sell the treasures of all the convents and the plate of all the churches than to sell justice. When Francis I took the silver screen of St. Martin he injured no one. St. Martin did not complain; he got along very well without his screen. But to sell publicly the office of a judge and to make that judge swear that he did not buy it is a sacrilegious folly which has been one of our fashions.

If we subtract the conundrums there is nothing left of this passage but the pro-

position: it is monstrous to sell justice. But that is precisely what Montesquieu said, that to buy the right to dispense justice is the way to avoid selling it, because if you buy the right to sell it you are the proprietor of this right and have no longer any reason to sell your decisions and you do not sell them: whereas if you are not the proprietor of your office you are all the time buying it, by rendering decisions agreeable to those in whose gift it is. You are forever buying, and you pay in decisions. Either venal offices or venal judges.

Voltaire has so little understanding of the question that he terms "selling justice" precisely the process which keeps decisions from being for sale.

As for his very just remark that the French monarchy was the only one in Europe in which the magistrates were the proprietors of their office—that is not a monstrosity, it is a superiority. That amounts to saying that the magistracy of France was the only one in Europe that was an order of the state.

In every other country the magistracy is a corps of functionaries, like the customs officers. It does not judge: the government judges by means of it. In those countries there is no separation between the executive and the judiciary powers, and that (according to the Declaration of the Rights of Man of 1789, article 16) means despotism. But to Voltaire it is exactly despotism that is the true form of government, and this is what separates him from Montesquieu, to whom despotism is a monster and who, seeing in an independent magistracy a curb of despotism, whatever the historic origin of that independence, is satisfied to have the magistracy independent.

And if you, scandalised, should tell him that this is the case nowhere but in France, he would be capable of replying that therein France is not the last country in Europe but the first.

"The last!" Voltaire would cry, "because it is that in which despotism is most restrained."

"The first!" Montesquieu would answer, "because it is that in which there is the least despotism."

When discussion has produced its only result by bringing each of the disputants back to the point of departure of all his ideas, it stops.

Montesquieu adds something else on this same subject to which Voltaire made no reply. "Finally, the method of advancement by wealth inspires and supports industry, a thing much needed by this form of government [monarchy]. 'Idle as a Spaniard' is a proverb: offices are all gifts in Spain."

This needs explanation because it is badly expressed. Montesquieu means: a father is a manufacturer and makes a fortune; if he applied himself to succeed it was in order that he might buy a judgeship for his son and thereby advance him in the social hierarchy. This is an excellent stimulus to industry. In countries where men do not advance by this means from one class to a higher one they do not work, they intrigue. In Spain

all the offices are gifts, therefore nobody works to buy them. "Idle as a Spaniard."

And, as happens to men who keep all their ideas in sight at once, Montesquieu gives here the general idea of the whole régime. The greatest countries of the world are those in which there is an aristocracy, very traditional but always open, always being rejuvenated by recruits from the active and energetic sections of the lower classes. Now in France there are three aristocracies: the nobility, the least open but still open, since the king can and does create nobles; the clergy, absolutely open because it is recruited not by heredity but by coöptation—that is to say, by a sort of elective heredity; and the magistracy, which is partly hereditary, partly purchasable by men who have made money by work. These three aristocratic orders form together an aristocracy which, being very open, consists literally of the best. No country is more intelligently and fortunately aristocratic than France. It is the first country in the world.

This is what Voltaire has not answered, because as soon as it was a question of the doctrine of aristocracy, he ceased to understand. But it is easy to see the whole body of Montesquieu's ideas about venal offices.

Mirabeau was to say later, "There should be no classes in a state but beggars, robbers, and the salaried." This is the pure doctrine of socialism. It excludes the independent proprietor and worker because they are not beggars nor robbers nor drawers of salaries. There are to be no more independent workers; workers there will be, but they will be in the pay of the state.

To this doctrine Montesquieu would have replied in advance:

> Exactly: but I who am not a socialist, who do not want a government that does everything, that can do anything, and on which everything depends,—I, who want a government limited by personal freedom, must have independent workmen with their eye on property, who acquire property and by its means acquire social functions which they have won and not received as a gift from the state,—functions independent of

the state. For example, the magistracy achieved by industry and labour is one. My magistrates, a great social power, will not be beggars nor robbers nor drawers of salaries. I insist on the absence of salary because if they were salaried they would be beggars. Now beggars can judge very well; but in cases in which the government is in conflict with a private person, those receiving assistance from the government will exercise a perhaps incomplete impartiality.

These ideas of Montesquieu were supported, three years after the publication of the *Esprit des Lois*, in an almost original way and with more precision and vigour than by Montesquieu himself, by a young man who was to have an adventurous and thwarted future, but who at twenty-five promised well, Angliviel de La Beaumelle. In his first work, *Mes Pensées*, La Beaumelle said:

The sale of offices made all good Frenchmen murmur. It was introduced by the avarice of princes and the necessity of the time; the same causes have continued and now maintain it. I am sorry, for the honour of political science, that venality was not its work; it would have been one of its masterpieces. It is an admirable

thing that there should be a nation in which the right to judge is sold and where judgments are not bought, where industry is encouraged by office [Montesquieu's text appears again] and where office is not abased [and cannot be, since power has no hold on it]. This venality of judicial offices is one of the greatest advantages of the policy of France.

The revolution annexed the magistracy to the central power, and that means that it suppressed that order of the state as it did the two centres; and it means also that it decided that thereafter it should be the executive power that judged. It was a great step in advance if it is towards despotism that we are steering, as I believe we are; it was a great retrogression if liberty is our aim.

Now to return to that question of responsibility from which, as we shall see, we really have not strayed; from the point of view of responsibility what has the new régime accomplished? To one irresponsibility it has added another. The judges of the old régime were less covered than those

of the new because, though they judged, it is true, according to the law, they did so much less strictly than those of the new, as we have shown. The judges of the present régime are absolutely covered by the law, and the law is more precise, more multiple, less susceptible of interpretation. They have simply to declare the law and it is the law that is responsible. Now to this irresponsibility another is added: since these judges are the government engaged in judging, when the government tells them to judge in a certain manner they must judge in that manner, and it is the government, not they, that is responsible.

You remember that high magistrate who, when questioned before a committee of Parliament concerning a procedure perfectly contrary to law, replied, "the act of the prince!" He was judged severely by public opinion. Why? He had done nothing but relieve himself of a responsibility by placing it where it belongs according to the present system. He might have said: "We received

an order from the government and we obeyed that order. Is it a felony? Wherein? Are we an order of the state? Not at all. Are we the people itself judging, like the heliasts of Athens? Not at all. Are we delegates of the senate or of the knights, as were successively the judges of Rome, and therefore representatives of an order of the states? Not at all. Are we, as again at Rome, prætors named by the people? Not at all. We are appointed, paid, promoted, or left behind by the government. The government judges by means of us; we are merely instruments. When it wants to judge itself, that is evidently its right, and from the moment it exercises it we have only to keep still. Because of the method by which we are made what we are, we feel ourselves absolutely irresponsible. In the time of the first dynasty in France, if the provost had summoned someone to appear who had failed to do so, the provost went to him and said, 'I sent to find you and you did not deign to come; give me satisfaction for your contempt.' And they fought. Men

felt terribly responsible in those days. Do you think this is the way we should act towards the government when it commands and we do not find its order agreeable? What right have we? We cannot say to it 'who made you prince?' And it can say to us, 'who made you judges?' We have dependent power, delegated power, and our power may be recalled at any time by the hand that lent it to us. We are dependent by definition and therefore irresponsible, and we are charmed to be so, for we have not the point of honour of the provosts of the middle ages."

Here is another example of the feeling of their irresponsibility which French magistrates evidently entertain as soon as they have to consider a matter into which politics enters. A letter from the French bishops to the faithful in 1910 advises families against the secular schools for a number of reasons, and among others for this, that there are secular schools in which little boys and little girls are together not only in class and

for study but in recreation. Suit was brought by some teachers' society against Mgr. Cardinal Luçon, who signed the letter. The teachers won in the first instance. An appeal was taken. The court of appeal—the Court of Paris, January 14, 1911—decided again against Cardinal Luçon. One of its considerations was this:

Considering that they [the allegations contained in the letter of the bishops] add specially for the case of the mixed schools that children of both sexes are permitted to mingle, whereas the appellant [Cardinal de Luçon] is aware that in class as in recreation the boys and the girls are separated, that no schoolhouse is built and accepted unless it fulfils this condition. . . .

By the text of this consideration—"whereas the appellant is aware"—the Court of Paris formally taxed Mgr. Cardinal Luçon with lying, and it condemned him as a liar. The newspaper *The Cross* immediately made an inquiry (January, 1911) to learn whether there were really mixed secular schools in which the two sexes were together. They

found only two hundred, which they named with details.

There was one curious detail. In the majority of the communes where the thing occurred, matters were arranged in this way: the man-teacher took the big boys and girls and the woman-teacher the little ones, so that the division was made, as if by design, on the most dangerous possible lines. Of course it was only absurd, there was no bad intention. But as a fact, that was the condition.

In any case the mingling took place and Mgr. Luçon had not been a liar and the Court of Paris had falsely called him one. Before so lightheartedly declaring Mgr. Luçon a liar, what should the Court of Paris have done? It should have made an investigation to see whether he was lying, the very investigation that *The Cross* made afterward. Why did it not make this inquiry? Why was it contented—as from its utterance it evidently was—with plans of schoolhouses handed to it by the minister

of public instruction? As if those plans proved anything about the use of houses built after them; as if the reservation of part of a house for the man-teacher and part for the woman-teacher prevented the man-teacher from taking into his part all the older children without distinction of sex and leaving the younger ones without distinction of sex to the woman-teacher, which is just what frequently happened! I ask again, why did not the Court of Paris make this inquiry, and why did it so lightly declare Mgr. Luçon a liar?

Because when a matter of politics is in question, a French court feels no longer responsible. It thinks that in such cases it is the government that ought to judge and it should be nothing but its speaking-trumpet.

It seems to me that in this case we catch this practice in the act, for the procedure of the court is clear. There is a question of fact and therefore an inquiry to be made. It does not make it, but because

the matter is political it regards it as concerning the government. It says it is for the government to speak and it consults the department of public instruction. The department of public instruction replies, "Legends, fables, mythology; here are plans of schoolhouses, you see that it is physically impossible for the two sexes to be mingled." "Evidently," replies the court. Why does it say evidently? Why doesn't it ask whether in spite of the plans there is not actually somewhere the mingling which, theoretically, is impossible? Because it believes that the government has judged. It was a political question; it concerned the government; and the opinion or the desire or the caprice or the tendency of the government determined the decision. The court had nothing to do but to write it out. Mgr. Luçon had lied because the government seemed to desire a declaration that Mgr. Luçon was a liar. The irresponsibility of the bench in every political question seems to be a principle of law for the magistracy

of France in the nineteenth and twentieth centuries.

There is more—or just as much—in the same case. Mgr. Luçon had produced in his defence an opinion of Maître Hannotin, advocate of the Council of State and of the Court of Cassation, and it is on this very opinion of Maître Hannotin that the decision of the Court of Paris of January 4, 1911, rests to condemn Mgr. Luçon. In order to rest on it the decision cites it, and this is the way it rests on what it cites:

> Considering also that the opinion produced in his name [the name of Mgr. Luçon] declares that "in the village schools the girls and the boys are carefully separated"; and that thus by this article of the defence itself the denunciation [contained in the bishops' letter relating to the mingling of the sexes in the mixed schools] is acknowledged to be inexact and unjust. . . .

Now did Maître Hannotin say that in his opinion? Did he say that in the village schools the girls and the boys are carefully

separated? If he had said that, he would have been making a queer defence for Mgr. Luçon. What would he have said if he had been attacking him? However it is possible that he did say it. The force of truth sometimes drags a bit of accusation from the defence and a bit of defence from the prosecution. It is possible that he said it, but did he?

Good heavens, he said exactly the contrary. He said:

> What the pastoral letter has in view is not the village school in which a single teacher, man or woman, teaches at the same time girls and boys carefully separated from each other; it is the school where intentionally, systematically the two sexes are mingled.

This is what Maître Hannotin said. He put to one side, from scrupulous precision and also from justice, the poor little village schools where the teacher, man or woman, teaching six little boys and four little girls, is of necessity only one person, but still can maintain a separation, whether in class or in

recreation, and does in fact maintain it. He had seen the schools, very numerous as appeared from the inquiry of *The Cross*, where intentionally, systematically (why? for their personal convenience), the teachers, though there were two of them, mingled the sexes, the woman taking the younger boys and girls and the man taking the older ones.

Now what does the court do? It isolates the phrase in which Maître Hannotin concedes what he ought to, and it takes no account of the phrase in which his criticism lies. And it concludes that he acknowledged that the sexes are rigorously separated in the schools; and it gives us to understand that he acknowledged that in all the schools the sexes are rigorously separated. Note again that to come to this conclusion and to convey this impression the court was obliged to alter the text which it puts in quotation-marks, so that the quotation is not only truncated but changed. For the quotation reads, "In the village school the girls and

boys are carefully separated." The text of Maître Hannotin was,

> What the pastoral letter has in view is not the village school in which a single teacher, man or woman, teaches at the same time girls and boys carefully separated from each other; it is the school where . . .

the contrary takes place. So that in place of a verbal form indicating by itself that there are irreproachable schools and that there are others to be severely condemned, the court substitutes a verbal form which affirms that all the schools are irreproachable.

Thus by isolating a passage and, in addition, altering it, they end by making a man who said "yes" say "no." There are occasions, which unfortunately increase in number, when I regret that I am not Pascal.

At this point some people grow warm and say that the judges of France have no moral sense. That is a complete mistake. They have as much moral sense as anyone, but they have a peculiar conception of their office. They consider the bench as an

organ of the government, as forming a part of it. The bench is appointed by the government, it is paid by it, it forms part of it; it is the government that judges. Therefore in every cause in which the government is not concerned, the bench judges justly and according to law; but in every cause in which the government is concerned, it judges according to the opinion of the government and after having as a preliminary asked, received or assumed that opinion. It is not the bench, according to its own views, that can judge in such a cause; it is the real power, using the judiciary simply as its mouthpiece.

It will be objected that this is the same as saying that the government is never made judge except when it is both judge and party. Why, of course. When it is not a party it can let others judge in its stead, but when it is a party it does the judging itself because other judges might decide against it, which is inadmissible. Who says that? I, the bench; since I am part of the government,

I do not admit that the government is ever in the wrong, because I am the government. You can't ask me to condemn myself.

But it follows that in every case where an individual or a group of individuals is opposed to the state, he or it is beaten in advance.

Evidently.

Would it not be better if it were otherwise?

Perhaps, but to have it otherwise we should have to create a power between the state and the individual. That is just what does not exist. What has been created is a confusion between the judiciary and the executive powers; it is the executive as judge. Well, it judges very well in every case that does not touch it, and in every case that touches it, it decides for itself. And we, being confounded with it, being it, we beg it purely and simply to judge in our stead. And it would be the childish sport of petty journalists to reproach us with the singularity of our reasoning in political cases. As soon as a case comes up in which the government is

concerned, understand that we are no longer magistrates, we are officers of the king, we are the government judging, that is to say, defending itself. And our opinions are then nothing more than the remarks of a minister without portfolio, defending the policy of the ministry of which he is part; no one is going to reproach such an one with his paralogisms, his sophisms, his mutilated citations, his alterations of texts and his inversions.

This is very good reasoning, but what does it amount to? It amounts to the light-hearted transfer by the judges of judicial responsibility from their shoulders to the shoulders of government, at least in all cases in which the government is interested. The magistrate of the new régime scores off the magistrate of the old by having one responsibility the less. Remark, if you remember what was said above, that we have a total of two responsibilities the less. That is, two irresponsibilities for the bench: irresponsibility resulting from a strict application of the law, from automatic justice;

and irresponsibility resulting from dependence, from a breakdown of autonomy in relation to the central power.

It would naturally happen that these two irresponsibilities are superimposed one upon the other. It also happens sometimes that they conflict. A conflict of irresponsibilities, a conflict not of duties but of non-duties is a curious thing. It has been seen in a perfect instance. In July, 1906, the Court of Cassation decided for the second time the case of Captain Dreyfus. According to the law, if this court finds that the case was wrongly decided by the second court-martial, it can do nothing but send it before a third court-martial. It is true there is an article (445 of the Criminal Code) which admits of final decision, but it only applies, when the defendant is still living, to cases in which there no longer exists anything that can be termed crime or offence. For instance, if I have been accused of killing Paul and have been found guilty, and if it is proved later that Paul committed suicide, there is

no longer anything which, in regard to me or anyone else, can be termed crime or offence. Now this article did not apply to the Dreyfus case because, while it was possible that M. Dreyfus was innocent, it was incontestable that an act of treason had been committed in 1894; no one did contest it and it remained in the case. Again, as M. Dreyfus was living, the exception allowed by article 445 did not exist.

And for all these reasons the only lawful course of the Court of Cassation was to send M. Dreyfus before a third court-martial. This is what the attorney-general, M. Manan, said at the time of the first revision, although he was favourable to M. Dreyfus:

> In order for it to be possible in the first place for us [the public prosecutor] and in the next place for you [the court] to pronounce Dreyfus innocent, Dreyfus would have to be dead. The law leaves no doubt in that respect. It is enough to know the law, and to know the law it is only necessary to read it.

The only courses open, then, to the Court of Cassation, were either not to reverse or to reverse with new trial.

But the government had had enough of that interminable affair and had no need to say so to the Court of Cassation. The court knew it as everybody else did.

Now do you see the conflict of the two irresponsibilities? If the court conforms to the law it is irresponsible. "I am covered by the law, pitch into the law then. I wash my hands of my decision for it is the law, not I, that decides." If the Court, in obedience to the government or to the desires of the government, is not obedient to the law, it is irresponsible just the same. "I am the agent of the government; I wash my hands of my decisions; it is government that makes them through my mouth, not I."

"But it perverts the law, which is no more permitted to government than to you, since it is permitted to no one."

"That may be, but say so to government, not to me."

So the court was very much at its ease. But not entirely so, because, in this strange conflict, if it was surrounded by irresponsi-

bility on all sides it was nevertheless necessary that, in form, it should satisfy everybody, both the law and the prince; for although the judiciary in the new régime is only the agent of the prince, it is required by law to judge by law.

Thus, wishing to reverse without new trial, although according to the law it could only reverse with new trial, it had the happy thought of basing its action in reversing without new trial on the very text by which the law forbade it to do so. But for that purpose it had to pervert the law, and it did so in a very ingenious way. Instead of citing article 445 as it stands, "If the reversal of the sentence in the case where the condemned is living leaves nothing further that can be qualified as crime or offence, no new trial will be ordered," it cites it thus, "If the reversal of the sentence leaves nothing charged against the condemned which can be qualified as crime or offence, no new trial will be ordered."

You see the discrepancies. In the first

place, the text of the decision has "charged against the condemned," instead of "where the condemned is living," which is not at all the same thing.

Thus the court applied a law which it invented. The defenders themselves of M. Dreyfus recognise this and they only say, perhaps correctly, that quieting measures were necessary and that the action of the Court of Cassation was successful in that character. It is possible. Its decision revived the discussion but it avoided a third court-martial, and may thus have been a little more quieting than it was disturbing. But it had two results which were probably not aimed at. First, for all time, for all history, it left the Dreyfus affair open instead of closing it. Secondly, it condemned Dreyfus.

It left the Dreyfus affair open for all history, instead of closing it. In fact, people can go on saying forever: M. Dreyfus was found guilty by two courts-martial, the case having been sent back by the Court of Cassation, and then he was acquitted

by the Court of Cassation but by an avowed alteration of the law. The things at least balance and the case remains open. It can be discussed indefinitely. And in fact my opinion is that it will be discussed indefinitely and quite legitimately so, considering the last decision of the Court of Cassation and the fashion in which it was rendered.

And the Court of Cassation by its last decision condemned M. Dreyfus. Yes, certainly; for by its decision, contradicting both the spirit and the letter of the law, and imposed solely by the wish that M. Dreyfus might not appear before a third court-martial, it declared two things: first, that a reversal without new trial could not be arrived at without an alteration of the law, which is a very explicit moral condemnation; and second, that in the judgment of the court, any court-martial before which he might be brought would infallibly find him guilty again, which is an even more explicit moral condemnation.

By its decision the court says very clearly,

"The law will have it that M. Dreyfus be tried again by a court-martial, but since he would be found guilty by any court-martial, I acquit him, in spite of the law." It is a crying condemnation. So crying, you notice, that M. Dreyfus has not merely been found guilty by two courts-martial; the Court of Cassation represents him as found guilty in advance by every possible court-martial, and so, to keep him from appearing before any court-martial whatever, it acquits him. If it had meant to say, "I declare that M. Dreyfus will always be found guilty," it could not have gone about it otherwise. A humourist might say: "The Court of Cassation was animated by the most hostile intentions against M. Dreyfus, for it has cried to the universe by its decision that it was not possible for him to be acquitted." That is not the case; the court was not hostile to M. Dreyfus, but it must be admitted that it might be thought so. The fact remains that it condemned him morally as far as lay in its power.

This is so true that, as is known, while

peaceful people were satisfied with the decision, the thick-and-thin Dreyfusists were outraged by it. They felt strongly what I have been saying, that the case was only reopened without the possibility of ever being closed, and that an acquittal based on such artifices and on such an avowal that it could be procured in no other way, amounted to a rather cruel conviction. The decision of July 12, 1906, is a piece of judicial sleight of hand, and an incomparably awkward one.

Now, is it the Court of Cassation that performed the feat of prestidigitation and did it clumsily? Not the least in the world. It is the government. It is the government, which from the month of July, 1899, intended to impose on the judges of M. Dreyfus, whoever they were, a verdict of acquittal, as we see from the letter of M. Gallifet, Minister of War, to M. Waldeck-Rousseau, President of the Council.

Monday, July 10, 1899.

MY DEAR PRESIDENT AND FRIEND,

You have found too "open" [according to the context this probably means "leaving too free

a hand"] the instructions that I was disposed to give to the government-commissioner on the Rennes court-martial. I myself thought them too closed [probably "too strict"]. For two days I have been giving all my attention to this affair, and for reasons which I give you in this letter I have resolved not to send any instructions at all, which is conformable to usage, and which has been the practice since the Bazaine case for example. Believe me when I declare that what would be useful in dealing with civil magistrates is harmful in the case of government-commissioners, of presidents of courts-martial and of military judges. If we take a hand in the matter in any way whatever I am convinced that we shall bring about a conviction. I am so sure of it that I shall take good care not to work for it. The judges of the court-martial as well as the government-commissioner have been lectured by their comrades. "Don't pay attention to any advice, any order," they have told them; "they will be so many snares laid by the government." They have all lost their balance in this connection. Our instructions would not be kept secret; they would be published, commented on, decried, and the government-commissioner would not pay the slightest attention to them. He is out after glory and would make a pedestal for himself of all our instructions after trampling on them noisily.

We can't change him at this time of day. I have no idea of the rules of jurisprudence but I have some knowledge of the varying states of mind of officers of the army. . . . I close by assuring you that if we speak or write, conviction is certain. . . .

GALLIFET.

This historic letter proves a number of things. It proves in the first place that the government of 1899 wanted to exert pressure, not only on its commissioner in the court-martial, which would have been perfectly legitimate, but on the president of the court and the judges, since M. de Gallifet said to M. Waldeck-Rousseau, "Believe me, our intervention would be harmful in the case of the government-commissioner, the president of the court-martial and the military judges." The inference is that M. Waldeck-Rousseau had advised—and pretty strongly—intervention in the case of the government-commissioner and even of the president and the judges. That is what the letter proves first, and in truth it did not need to be proved. What M. de Gallifet said of the government-

commissioner, M. Waldeck-Rousseau must have said with some bitterness of M. de Gallifet, "I can't change him at this time of day."

The letter proves next that in spite of their divergencies, M. Waldeck-Rousseau and M. de Gallifet agree perfectly on one point, that this intervention of the government with those who judge "would be very useful in the case of civil magistrates." Here there is unanimity. M. Waldeck-Rousseau is as convinced as M. de Gallifet, and M. de Gallifet is as convinced as M. Waldeck-Rousseau, that civil magistrates would obey.

And note that it is because M. Waldeck-Rousseau, a lawyer, is accustomed to the habits of the civil bench that he has been led to believe that military judges would behave in the same way and that they could be handled in the same fashion. It is because M. de Gallifet is a soldier, has "some knowledge of the varying states of mind of officers of the army," that he is not at all of the same

opinion but believes that the more you want them to obey the less they will do it. But the opinion of one as of the other is that the place to look for military obedience is on the civil bench.

Why is this? Is it because there is a sort of racial difference between army-officers and magistrates? Not at all; who would maintain that? It is simply because military judges feel themselves perfectly independent and because civil magistrates do not feel themselves so. An officer who is judge for the time in a court-martial, gives his opinion as he forms it and goes back next day to his rank almost as a civil juror would do. I say almost, because it is true that it is not exactly the same thing. The officer runs a little more risk than the juror. It may be remembered later that he was a member of a court-martial whose findings were not in accord with the desires of the government, and his advancement may suffer from the fact, so that if he were merely consulting his own interest he would do better to find

according to the hints or the wishes of the seat of power. But after all he is not, like the civil judge, destined to stay a magistrate all his life and to have daily relations with the government. His independence is much greater. In the last analysis it is intermediary between that of the civil magistrate, which can be only very feeble, and that of the juror, which is absolute.

This is why the pressure of government on a man who is going to judge is useful in the case of a civil magistrate and is harmful in the case of a military judge,—as harmful in the one case as it is useful in the other.

Note that I am attacking a species, not persons. The conduct of the military judges of Rennes in 1899 may be blamed and the conduct of the civil judges in 1906 may be defended. It may be said that the military judges of Rennes obeyed their passions (obstinate resolution not to contradict the first court, instinct of military solidarity, etc.) and it may be said that the civil judges of 1906 obeyed—the government, no doubt,

but that in obeying the government they only obeyed a reason of state, which is an important matter. It remains to be known whether it is not precisely a superior reason of state that there should be a power which can oppose any particular reason of state as it appears to the government at a given moment. That would need further discussion. But I return; considering simply the decision of 1906 for itself, a decision very evidently adjusted to circumstances, I ask the reason why it is, so to speak, physically impossible for a civil court of justice to act in this way. Because it feels itself irresponsible and wants to be so. Caught between two irresponsibilities, which is a rare and piquant case, it casts everything upon other shoulders than its own. On the one hand, it casts its decision upon the law, which moreover it invokes: "I am not the judge; it is the law." On the other hand, it casts the singular independence of the law which it permits itself, upon the government: "Everyone will understand that in bending the law to

put an end to the Dreyfus case, I obey the desire of the government. Carry your grievance to the government." But what sort of a bench is that? It is a very wise bench, very prudent, very learned, even very honest, from which every thought of responsibility has vanished; that is the whole trouble.

One of its ancestors, under the Restoration, said to the government of the time, "The court gives decisions, not services." Do you see in this magistrate of 1820 a survival of the mentality that animated the judges of 1750? The court gives decisions, not services,—what does that mean? These words in the mouth of a magistrate of 1750, member of an order of the state and in no wise dependent on the central power, would be very natural and would only testify to a high sense of dignity; but pronounced by a judge of 1820 they are simply an anachronism. The judge of 1820 being a functionary, like a prefect, has precisely nothing to render but services. It is praiseworthy in him, nevertheless, to judge conscientiously, according to the law,

in all cases in which the government does not intervene. But as soon as the government intervenes, by the very fact that he is the government's man he must have no law nor conscience but the government itself,—otherwise he would be highly illogical and even monstrous. He would be a government man judging against his government, in other words the government judging against the government, and that would be simple anarchy. In pronouncing, for the sake of closing the Dreyfus case, a decision without a leg to stand upon, the Court of Cassation simply obeyed the desire not to be anarchistic.

These are the consequences, funny and a little sad, that result from the fact of having set the judiciary free from all responsibility. The judiciary may enjoy it, no doubt. Nothing is more agreeable than to say, "No one unless he is crazy can have a grievance against me." Nevertheless the matter is serious. A nation judged by men who are irresponsible, who know and say and prove

that they are irresponsible and that the governing power wishes them to be irresponsible, may feel itself in danger. It may ask itself if it is not very perilous for private citizens that, since the bench is only the government sitting as judge, every dispute between a citizen and the state is necessarily decided against the citizen. It may say to itself, "Would that not be despotism?"

It is very probable that it is despotism. It began in France in its simple form in 1789, but it has since been perfected in details. Nevertheless there is room for still further perfection. That will be the business of the socialist régime.

Montesquieu was appalled by this idea of the government as judge. He said:

In despotic states the prince himself may judge [and conversely every régime in which the prince himself is judge is despotic]. He cannot do it in monarchies; the constitution would be destroyed, the intermediary powers would be annihilated, we should see an end of all formality of judicial procedure [and the law itself, of which formality is but the safeguard, perverted], fear would

possess all minds, we should see all faces pale, there would be an end of confidence, of honour, of love, of security, of monarchy. . . The prince is the party who prosecutes the accused and causes him to be punished or absolved; if he should sit himself as judge, he would be both judge and party.

Why, certainly; in a despotism the vital point is that the prince, if he have a difference with a private person, should be at the same time party and judge. Without that it would be no longer despotism. That is just the stage at which we have arrived. By making the bench its organ, the state has despotised itself on that side as far as it can.

This situation was very vividly brought to light by M. Raymond Poincaré in an eloquent preface which he wrote for a book of memoirs of an old magistrate. He begins by recalling Guizot's words, "As soon as politics penetrates the precincts of the tribunals, justice has to leave." And it is in fact self-evident. But M. Poincaré says, "The bench has never been more incorruptible nor more conscientious; how does it happen then that its

impartiality is often open to suspicion?" He does not lay it to the growing malice of men. He says that it is perhaps because

justice and politics have seldom been so exposed to dangerous contracts and sinister confusions. Formerly [toward the middle of the nineteenth century] the judiciary composed a sort of family, narrowly closed, animated by a spirit corporate, hierarchical, almost sacerdotal, and isolated from the world in a tower of ivory. It had the defects of this state of things. It was doctrinaire, formalist, refractory to new ideas. But it passed in general for independent and impartial. It also was too often in the hand of the governing power. There is somewhere in Balzacan examining judge who is the worthy precursor of the magistrates of Brieux and Arthur Bernède. He is called Camusot. He has a wife who looks jealously after his career and who, dreaming of a seat in the tribunal of the Seine for him, murmurs to him tenderly, "From that, my love, to the presidency of a chamber of the court there is no greater distance than a service rendered in some political matter." The judge of those days was at least not required to render such services to any but the government. That was too much, but compared with what goes on to-day, it was almost nothing. To-day the en-

feebled executive power no longer dares make an attempt on the dignity of the bench except when yielding to pressure from the legislative power. But parliament is led to consider that justice, wholesale and retail, is at its disposal, and the public itself ends by being convinced that this *ought* to be so.

How many suitors, fearful of losing their case, have not the candor [no, the intelligence] to address themselves to their deputy! And how many deputies have not ventured to make application, insolent or discreet, to the judge? But these personal meddlings are not so serious as the collective confusion of function which the chambers think themselves authorised to make, interpellations on judicial questions, instructions shouted from the tribune, orders to the keeper of the seals, commissions of inquiry, and I don't know what. Politics has invented a thousand ways of slipping into the hall of justice, and a long while ago justice, either seduced or discouraged, gave up resistance. Are not the chambers the real depositaries of public power and the sovereign dispensers of advancement? A keeper of the seals turned up in 1906 who had the bold caprice of bringing a little order into this anarchy, of rescuing the judges from the clutch of parliament and of giving some solidity to their personal status. The order which he countersigned

raised such tempests that he had to reshape it and soften it down. Since then there has been talk of creating a supreme council of the judiciary, analogous to those that exist in various ministerial departments and are charged with the duty of scrutinising with perfect independence claims to advancement. And certainly it would be by no means impossible to have in the chancellery an organ comparable to the council-general of mines or of bridges and highways, to the committee of inspectors-general of secondary education or to any other professional body intended to limit the arbitrary choice of the ministry. Everything that can be done to separate politics from justice and to confine each to its proper domain will be a measure of national safety. If the judge does not succeed in freeing himself from parliamentary tutelage there will soon be an end of the authority of justice. There will be no further need of reading or writing essays on the art of administering justice; the art of intrigue will answer every purpose.

Every word in this strong and luminous page is food for thought. Notice the distinction between the ordinary and the extraordinary in judicial practice. The ordinary thing is the meddling of government in

cases to be decided. That is what happens every day. As soon as government has an interest in a case, the case belongs to it by definition and the bench recognises that it belongs to the government, that government understands it and ought to decide it.

To the ordinary belongs also the personal interference of deputies in judicial matters, and this is interesting because it brings us once more face to face—my readers know how often I have examined this question—with that institution which, though illegal, is none the less one of the institutions of France: the local governments. France is much more decentralised than is generally believed. Each department is administered by a prefect and a council-general and it is governed . . .

By the prefect and the council-general.

Not at all, and you answer like a child in a primary school. What you are talking about is only the façade. Each department is governed by its Fifteen Thousand, that is, by its deputies and senators; a little more by its deputies than by its senators, because

the deputies upset ministries oftener than the senators do, but still by its deputies and its senators.

Before we go further we must make another distinction. Do you, the department of Saône-et-Marne, want to be well governed, as nearly as possible? Elect no senators nor deputies save of the opposition. Why? Because if you only elect senators and deputies of the opposition they will have no hold on your prefect, your magistrates, your engineers, your road-commissioners, and you will be governed by the administration, that is to say, almost with regularity, almost with legality. But if you elect government senators and deputies, you will be governed by them. France is therefore divided somewhat as it was—there is at any rate an analogy—in the times of customary law and written law. Just as there were then districts of customary law and districts of written law, so now there are districts of state and districts of parliament. The districts whose parliamentary representation

belongs to the opposition are governed by the government through its agents, the prefects. The districts whose parliamentary representation is governmental are governed by their representatives, before whom the prefect is nothing at all and whom both the prefect and the attorney-general obey. The result is —since of all serious matters politics is the most grotesque—that a prefect wants nothing so much as to be appointed to a department belonging to the opposition, because there he has a free hand. And he does not like at all to be appointed to a governmental department, where he is a subordinate. Another result is that the French government governs really only in the departments where the opposition has a majority and which, because they are in opposition, are "districts of the state"; whereas it governs only in a fractional and precarious way in the governmental departments, since they, being governmental in sympathy, are "districts of parliament."

But let us consider only the latter class,

which is the more numerous. They have a real local government. Their senators and deputies form a departmental committee which the prefect must not antagonise. They make the appointments, imposing on the ministry those that depend on the ministry and imposing on the prefects those that depend on the prefects. They remove school-teachers who are not election-agents, because they have failed to perform the sole mission for which they were appointed, and also those that are not sufficiently zealous election-agents, because they lack zeal in the discharge of the only function demanded of them. They intervene with the magistrates in cases where one of their partisans might be the losing party, for that would be a bad example and would compromise the republic. In a word, they govern.

These local governments, very well organised and very strong, created for the single end of preventing government by law, since the law might favour enemies of the

republic, make one of the most curious aspects of the present régime; they impose themselves on the attention of the historian by their ingenious mechanism, and moreover they are perhaps the *essential* institution of the French republic.

It is easy to understand how the magistracy finds in this institution an excellent pretext for getting rid of all responsibility, and moreover finds it pretty nearly impossible to keep any. For it is more difficult to resist a local government than a central one; the local government holds you closer, watches you more narrowly, clutches you tighter. You may refuse to the central government the acquittal of one of its partisans found guilty of an offence against the game-laws. When all is said, that would only be a joke. But it would be disrespectful and dangerous to refuse such a thing to the local government.

Add that if the magistrates disobeyed the local government they would have against them both the local and the central gov-

ernments, since the members of the local government would denounce them as anti-republican to the central government, and since the central government depends on the local government, inasmuch as the latter is composed of members of parliament, by whom the central government can so easily be overturned. The chain is perfectly welded; it is very strong.

In consequence the French judiciary obeys as far as it is able, or, if you like, disobeys as little as possible, the local government in the districts of parliament, and gladly hands over to it the responsibility for its decisions.

And this, as we have said, is the ordinary, the everyday procedure. The extraordinary, which we have seen and which M. Poincaré did not fail to point out also, consists of those occasions, still pretty numerous, on which the legislative power takes to itself a judicial matter which in its judgment was badly presented or badly decided. For example, the Rochette case in 1910. Rochette, banker and promoter, who seems otherwise

quite uninteresting, had an enormous success and an immense popularity. The government decided to ruin Rochette, whether, as is alleged, out of solicitude for small savings—which is not impossible, for the government may sometimes be solicitous for the general interests of the nation, and that is altogether in the tradition of monarchical and paternal government, and this interest directed to people not one of whom complains but who ought to complain is something both touching and burlesque;—or whether, not more probably but as probably, out of interest in the bankers who were its friends and Rochette's enemies. Since the government could not act directly through the public prosecutor because there was no complainant, it found a complainant, set him up, invented him, and set the judicial machine in motion. The chamber of deputies, which did not share, it appears, the solicitude of the government for small savings, ordered a parliamentary inquiry, that is to say, morally at any rate took the matter into its own

hands and made itself judge. What does that mean? It means that the king orders the *grands jours*. Under the old régime, when justice was impotent in a province, owing to the number of crimes and the strength of the criminals, the king used to order the *grands jours*, that is, he created a high court of justice with full powers which represented him, the king, exactly, and which had the right to do all that he could do himself. In just the same way the chambers—that is to say, the sovereign, the prince, France—finding or believing it found that the bench, in an affair in which government took a hand, was obedient, as always and in accordance with its maxim, to the government; finding moreover that the government had perhaps hearkened to the voice of its own interests and not to the voice of the interests of France, held its *grands jours*, and declared that it, the supreme power, would itself judge as sovereign. It substituted itself for the government which had substituted itself for the bench; it cast its "act of the

prince" on top of the "act of the prince" which the government had cast on the judges. It dispossessed the government which had dispossessed the bench. It declared detestable the arbitrary action of the government, and therefore replaced it by one of its own.

Montesquieu would have turned white in a night before this confusion of powers, corrected by a greater confusion of powers; before this double confusion of powers; before a first heresy amended by a more detestable heresy, and would have said that this was despotism raised to the second power.

Nothing could be more true; but what are we to do about it? If, because the bench no longer counts in cases where politics comes in, the government is judge in political cases, it is logic that *qua* judge as *qua* executive power it should be accountable to the legislative power. "I, the legislative power, addressing you, the executive power, invade your judicial power; yes, but because you yourself invaded the judicial power.

That makes a double invasion. It may be so, but perhaps one invasion corrects the other and one usurpation sets right another usurpation."

In the meantime, it is anarchy.

Oh, as far as that goes, yes. And it furnishes another reason why the judiciary feels itself irresponsible and ends by smilingly resolving to be so. "There are too many of them," it says. "The executive performs an act of the prince on me; the legislative performs an act of the prince on the executive. I depend on the executive, which depends on the legislative. I am accountable to the government, which is accountable to the chamber. In all this only one thing is clear; it is that I count for very little and that I have no responsibility at all. In ordinary affairs, barring interventions by the local governments, which however take place every day, I do what I believe to be my duty according to the law and to my interpretation of the law. Concerning questions in which the government takes an interest, I say to

the government, 'What are your wishes?' I say to the legislature, 'What are your wishes?' To the two I say, 'Are you in agreement? your joint wishes shall be carried out; you are not in agreement? talk it over, accommodate yourselves, and when you are agreed I will agree with you both.' I have nothing else either to say or to do. This is the intention of the real constitution, which, behind the solemn façade of the official constitution, rules this land."

In other words, judicial power no longer exists in France; there is in France no such thing as judicial power. A keeper of the seals, says M. Poincaré, wanted to introduce a little order into this anarchy, and he raised parliamentary tempests. I should very much like to know who, in either chamber, could have had the fantasy of restraining the power of the two chambers by securing, even in a small measure, the autonomy or even the comparative independence of the judicial power. Success is achieved with political as with all other

bodies by proposing to augment, but hardly, I suppose, by proposing to cut them down. M. Poincaré concludes that at this rate the authority of justice will soon be a thing of the past. I am entirely of his opinion, except that I don't see very clearly why he uses the future tense. And he concludes also that the art of judging will be superseded by the art of intrigue. It may well be, but what can members naturally desire save that everything in France should be more or less perfectly after their image?

There is another irresponsibility which the French bench has achieved. It has been relieved of all responsibility for criminal trials; criminal trials are decided by the jury alone. The history of the jury is extremely interesting. It goes back to a sufficiently remote antiquity. The heliasts at Athens were a jury.[1] It was a case of never-mind-who (provided he was a citizen) acting as

[1] I notice too late that Montesquieu thought of this. Speaking of the English jury he says, "the power of the judge exercised by persons drawn from the body of the people," and he adds in a note, "as at Athens."

judge, because it is amusing to judge and because he said, "I feel like judging." Moreover he received a small fee for it. The most celebrated decision of these juries is the condemnation to death of a rather sarcastic flâneur named Socrates.

The jury never existed at Rome, for the Roman never had fully the democratic sense.

In England it is very old. In imitation of the English the French philosophers of the eighteenth century recommended it with all their courage, even Montesquieu himself. He does not fail to say—note this well, for I shall speak of it later—that the jurisdiction of the jury being attached neither to a certain class nor to a certain profession becomes, so to speak, invisible and null. A man has not continually the judges before his eyes and he fears the magistracy rather than the magistrates. He adds, "It is even necessary that the judges be of the condition of the accused, or his peers, to keep him from taking it into his head that he has fallen into the

hands of men determined to use violence with him."

Voltaire has strong praise for the jury in his *Lettres sur l'Angleterre;* he considered it one of the bulwarks of liberty, being already penetrated by that hatred of courts which he retained all his life. He is much more explicit on this point at the very end of his life, in his letter to M. Elie de Beaumont (1771):

> I prefer, to put it simply, the old jury-system which has been preserved in England. Those juries would never have broken Calas on the wheel nor decided under Riquet [attorney-general to the court of Toulouse] to treat his worthy wife likewise; they would not have broken Martin, on the most ridiculous evidence; the chevalier de la Barre, aged nineteen, and the son of president d'Etallonde, aged seventeen, would not have been sentenced to have their tongues torn out, their hands cut off and their bodies cast into the fire for having failed to make a reverence to a procession of Capuchins and for having sung a low soldiers' song.

This is all very well. But when Voltaire was busy with the Calas case and with the

de la Barre case, he made very diligent research into them, which is to his honour. And what did he find? He found, concerning the de la Barre case, that

for a whole year nobody in Abbeville talked of anything but sacrileges. It was said that a new sect was forming to burn all the crucifixes and to throw the wafer to the ground and pierce it with the sword. It was asserted that the sectaries had shed much blood. There were women who believed they had been witnesses of this. All the calumnious stories spread against the Jews in so many cities of Europe were renewed. And you know [he added] to what excess the populace carries the credulity of fanaticism, always with the encouragement of the monks.

Concerning the Calas case, he learned what he tells Damilaville in his letter of March 1, 1765:

What was my astonishment when, having written to Languedoc about this strange adventure, catholics and protestants answered me that it was impossible to doubt the crime of Calas! I was not at all discouraged. I took the liberty of writing to the men who had governed the province, to the commandants of

neighbouring provinces, to ministers of state; all advised me unanimously not to put a finger into so ugly an affair. Everyone condemned me; and I persisted. . . .

In another letter he says:

The fanaticism of the people succeeded in reaching the judges, prejudiced though they were [at Toulouse]. A number were white penitents; they may have deceived themselves. . . .

Well, then! If the people of Abbeville were furious against La Barre and d'Etallonde, if the people of Toulouse and Toulousain, as well protestants as catholics, were raging against Calas; if the fanaticism of the people was such that it could communicate itself to the very judges; and since we may be sure that it would have worked more violently if it had not been communicated to the judges but had remained in the breasts of the people; it is sufficiently probable that a jury drawn from the people of Abbeville would have convicted de la Barre and d'Etallonde, and that a jury drawn from the people of Toulouse would have

convicted Calas. And it is rather droll to come and say afterward, "A jury would never have sent Calas to the wheel," the more logical conclusion being that it is precisely what it would have done; and to say, "A jury would never have burned de la Barre," the more logical conclusion being, according to appearances, that it would not have failed to do so.[1]

The truth is that in attributing to the jury a knowledge of criminal law, we have removed the functions of examination, repres-

[1] As for Martin, in whose case there was certainly a judicial error, there is nothing to be drawn from his history either for or against a jury. A traveller had been murdered; footprints which fitted Martin's shoes led from the scene of the crime to Martin's house; the murderer, seen by somebody, resembled Martin in dress; a witness of the crime, confronted with Martin, said, "I do not recognise him," and Martin cried, "Thank God, here's one who does not recognise me." In these ambiguous words the judge saw an admission of guilt; he condemned Martin; La Tournelle (chamber of Parliament of Paris) confirmed him. Martin was broken on the wheel. The real murderer, arrested for something else, declared himself the author of the crime attributed to Martin. There is nothing to say about this either way. Voltaire is sure that a jury would not have convicted Martin. He doesn't know anything about it, and neither do I.

sion or acquittal, from the field of action of the passions of the judges and confided them to the field of action of the passions of the people. That both judges and people have passions is my sincere belief; but I am led to believe and I venture to say that in the judges the passions are weakened by more education, by knowledge of the law and of jurisprudence, by reading the philosophical jurists and by the habit of reasoning. It seems to me to follow that there is less of passion among the judges and that there is nothing but passion among the people.

I may add that the passions of the judges are weakened by the sense of responsibility, and that the jury has no responsibility. Consider again that very fine passage from Montesquieu, "the jurisdiction of the jury . . ." That is very ingenious and even very profound. But if the jury is a magistracy invisible and null, the magistrates are no longer feared and hated by the rapscallions, and that is agreeable to the magistrates.

But there is no one left for rapscallions to fear and hate, and that is dangerous.

"Yes," you say, "they are not afraid of the magistrates who are invisible. But they are afraid of the magistracy, which they don't see but which they know exists."

I am not so sure of that. I don't know whether a magistracy that one may call invisible and null inspires very great terror. I think it inspires the same terror that chance does; for chance is exactly what it is. Will the jury of the criminal's imagination be easy or severe? He has no idea. The fact that he has no idea reassures you because it ought to frighten him, and it frightens me because it may give him confidence. The criminal whom judges await acts with the certitude of being punished if he is caught; the criminal whom a jury awaits, acts with the incertitude of being convicted or acquitted. This incertitude is in itself, it seems to me, rather encouraging than intimidating. The criminal who expects a judge cannot count on

his lawyer, since no lawyer ever changed the opinion of a judge; the criminal who expects a jury counts on his lawyer, who often changes the frame of mind of several jurors. When all is said, only two classes are gratified by the transfer of criminal trials from judge to jury,—the judges and the criminals; the judges because they are thus relieved of a heavy responsibility, the criminals because to their chance of not being caught (about 50 per cent) this adds the chance of being acquitted by a jury (75 per cent). This is reassuring, and to a certain degree encouraging. Given that of every hundred crimes, fifty remain unknown; that of the remaining fifty, 50 per cent of the authors are undiscovered; that of the remaining twenty-five, 75 per cent of the authors are acquitted; and you can calculate, without any exaggeration but the contrary, that a criminal when he commits a crime has 94 chances to 6 against being punished. This makes criminal industry much less aleatory than small shopkeeping, for 50 per cent of the small shopkeepers

fail, while only 6 per cent of the industrials of crime come to grief.

This is the explanation of the continual and rapid increase of criminality. Some have tried to explain it by the diminution of religious education, by the influence of the atheistic ethics of teachers. All that may without doubt contribute, and I have small doubt that it does contribute. But the bottom of the matter is the fact that the majority of trades offer many more chances of failure than that of the murderer, that the profession of murder, while not offering (we must admit) absolute security, is at least one of the safest; that public office and murder are the only trades that mean almost complete repose. This turns a great number of serious minds towards crime and public office, and away from industry.

Remark further that this magistracy, "invisible and null," as Montesquieu calls it, that is, the jury, knows itself to be invisible and null and this adds to its irresponsibility the consciousness and the sense of its irre-

sponsibility. The jury feels itself invisible and null; it is not formally and by name held up to the malice and the rage of criminals who get their punishment, or of their friends . . .

("Well, that makes the jury more rigorous.")

and it is not held up formally and by name to the indignation of honest men who fail to get defence and protection, and that leaves it free to yield to its sentimental impulses. The jury is a group of citizens invested for a week with the right to judge, which, in the first place, because it has no legal knowledge and no knowledge of criminal psychology, judges by hook and by crook, in accordance with political opinion or sentiment or the impression made on it by the public prosecutor or the counsel for the defence; and which, in the second place, because it is aware that it judges at random, tends to diminish still further the hardly perceptible responsibility which rests so lightly upon it, and to increase the almost complete irresponsibility which it enjoys.

It has been a very rare thing this last ten years for a jury that has convicted to fail to hand up a recommendation to mercy. What does this mean? You don't know then what you have done, and you admit that you don't know? You have full powers. It is to your credit to acquit an undoubted criminal, even a criminal who has confessed, for what we ask you is not "Did the accused commit this act?" but "Is the accused guilty?" And you can always say, without any lack of reason, that a man who has killed his father and his mother is not *guilty*. So you have enormous, plenary powers. Well, having plenary powers, you convict and, in the same quarter of an hour, with the same hand you sign a recommendation to mercy. That is where your passion for irresponsibility shines out with dazzling clearness. You convict because, whatever repugnance you feel for conviction, you cannot, in conscience and without losing your self-respect, do otherwise; but you want to evade responsibility. You want, when it

comes to the point, to make someone else do the convicting, namely him who refuses the recommendation to mercy.

Here we take in the very act the horror of responsibility. "Before all, above all, it must not be my fault."

Moreover we detect here two things which, when all is said, come to the same thing. First, the taste of the Frenchman for washing his hands. "I've done something; but I did not leave the spot without having so acted that what I did there should be null and without result." This amounts to saying, "I do not meddle; I never want to meddle and even when the law compels me to do so, I seek and I find a means to have not meddled." And then we detect here not less clearly, I think, the taste that has been characteristically French for a century for having the government do everything.

Just as the bench, the Court of Cassation, for instance, is enchanted to say, "It is the act of the prince; I was commanded; I did not count at all"; so the jury is enchanted

to be able to say, "I do not count at all; I had nothing to do with that act of indulgence; I had convicted; I handed up my recommendation to mercy; the government exercised mercy; it is not my fault." Or, "I had nothing to do with that execution; I convicted, it is true, but I recommended to mercy; the government could have exercised mercy; it didn't; it's not my fault; I had transferred my powers to the government, for in France it is just and it is almost constitutional for government to do everything."

You see them all eagerly running away from responsibility! By a code relatively simple and coherent, we discharge the magistrates from the responsibility which was the result of their being obliged to interpret the law and to judge a little in equity. They are happy. We discharge them from judging the criminal by handing this over to the jury, a change agreeable to the judges and advantageous to the criminal, so that criminals and judges are pleased. But the jury itself, though irresponsible by its invisibility

and nullity, is not at all satisfied with the remainder of responsibility handed over to it, and hands it over to the government in turn by the recommendation to mercy.

And so we have the spectacle of a fugitive responsibility, not wanted anywhere, chased from this place, ill-received in that, repulsed by these and by those, odious to all and finding rest at last with the government, which, be it said, does not trouble itself in the least about it.

All this is significant of the state of mind of the Frenchman of the nineteenth and twentieth centuries. But this is not all. To the irresponsibility of judges, to the irresponsibility of the jury, has been added, these twenty years, the irresponsibility of the criminal. All the honest men want to avoid responsibility for a conviction, but they have to know also that the criminal was not responsible for his crime. The Code itself established the principle, long before (note that point) we knew exactly what insanity is, that (1) he who is to be convicted

is the guilty person, and that is the reason why the jury is asked, not "Did the accused commit the act in question?" but, "Is the accused guilty?" and that (2) an insane man is not guilty.

Now, we have learned through study of criminality on the one hand and of insanity on the other, that the criminal is always insane, that therefore the criminal is never guilty and that by strict logic the criminal ought never to be convicted.

Let us analyse this. Can we say that a lunatic is guilty? Evidently not; that is a matter of common sense. The lunatic is a sick person who does not know what he is doing and who cannot be blamed for his acts. He must be treated, not punished. He is irresponsible.

Very good. But are there not degrees of insanity? Yes, a man is more or less crazy; there are semi-lunatics who are very dangerous, more perhaps than complete ones because their lunacy is less manifest. Still, they are only half insane.

Well, are there not fourths and fifths of lunacy? Good heavens, yes, certainly; it is clear that there are many degrees. Then there will also be incomplete or limited responsibilities. Doubtless. Thence has arisen the whole system of more or less limited responsibilities. Doctors have been found who calculate responsibility by eighths. There was one (it is matter of history) who calculated for a criminal a responsibility of 45 per cent.

Very good, but what is the mark of total or partial responsibility in a criminal? If you please, it is his criminality itself. The annals of justice are full of verdicts indicating that this criterion is the only one. A man is arrested for stealing in a large shop. He is convicted and sent to prison. When his term expires he is set free. He steals a second time, a third, a tenth. This time he is not again convicted, for if he steals ten times he is no longer a thief but a kleptomaniac; he is insane, he is no longer guilty. Therefore the more you are criminal, the less

you are guilty; a high power of criminality blots out culpability; you are guilty only on condition of being very little so; as you advance in criminality your culpability diminishes; if you are a very great criminal you are not culpable at all; and in the last analysis no one is culpable but the very honest man who commits a fault.

Note that this is very true. It is true in the order of imputability, as the theologians say. Can you impute, that is, make it a reproach to a man, that he has killed his whole family from grandmother to grandson? No, no. It is too plain that he is a brute; there is absolutely nothing to be said to him. Should one impute it as a fault to a very honest man if he commits a trivial malversation? Evidently; this man is highly culpable since though he knew the right, saw the right, saw it all the time, he did wrong, were it but once. He is culpable in the extreme.

This was the quarrel between Pascal and the Jesuits. The Jesuits said:

He who takes no thought of God nor of the sins that he commits, and has no knowledge of his obligation to perform acts of the love of God [in philosophical language, no sense of duty] or of contrition [remorse], commits no sin in omitting these acts. In order that an act be a sin, the following must take place in the soul: knowledge of the good, inclination to do it, resistance to evil instincts, etc., and if these things have not taken place in the soul, there is no culpability!

Pascal replied, with a certain cleverness, I admit:

Oh, reverend father, what good news this is for certain persons of my acquaintance. I must bring them to you. You have possibly never seen anyone with fewer sins, for they never think of God at all; they have never known either their infirmity or the physician who can cure them. They have never thought of desiring their soul's health, still less of praying God to give it them; so that they are still, according to you, in the innocence of baptism. They have never felt contrition for their sins; their vice consists in a continual search for every sort of pleasure, and its course has never been interrupted by the slightest remorse. All these

excesses make me think their destruction assured; but you teach me, father, that these very excesses make their salvation certain. Blessings on you, father, for justifying men thus! Others teach the cure of souls by painful austerities; but you show that those whom we have deemed the most desperately ill are really in health. Oh, what a good way to be happy both in this world and in the next! I have always supposed that a man was more sinful in proportion as he thought less about God. But, as I see now, when once he has brought himself to think no more about God at all, all things for him are henceforth pure. No more of these half-sinners who have some love of virtue. They will all be damned, those half-sinners; but as for the out-and-out, hardened, pure and simple, complete and perfect sinners, hell has no hold on them. They have cheated the devil by surrendering to him.

There is some truth in this. Nevertheless the Jesuits are right. From the point of view of imputability, of reproach, in one word of culpability rightly understood, that man is not culpable at all who has no idea of good; and the man is very culpable who, having a clear idea of good, does wrong; and

the half-culpable or the partially culpable range themselves between these two extremes.

Therefore from the point of view of culpability, it is the atrocious criminal who is innocent, because he is irresponsible; and it is quite true that it is by criminality itself that irresponsibility is recognised and by the magnitude of the crime that irresponsibility is measured.

And the consequence is that one is never culpable if one is criminal, but one is insane.

When the magistrates ask a doctor, "Is he insane?" the doctor should always reply, "Evidently, since he is criminal." It is not always raving mania, but it is always stupidity. A man murders from jealousy or from malice or for revenge, because he is an idiot; he murders to rob, because he is inept, for there is nothing he can gain so valuable as what he loses; a man steals, without murder, from stupidity again, so great is the fall for a slender profit; the unscrupulous business-man himself is only a poor devil with a very narrow mind, so stupid as to think

that getting rich is only a form of profit-taking and to perceive only when it is too late to what degree it is fraud. Every culpable person is a degenerate; that is the true principle; the irreproachable man is only an intelligent one.

And virtue, where does that begin? At being not only irreproachable, but devoted to one's fellows; at not only refraining from evil, for which it suffices to be intelligent, but at doing good, which intelligence does not teach.

So criminals are insane, delinquents are imbecile; not one of them has a sound brain; they are all invalids and not one of them is culpable.

Then let us acquit them all! No, condemn them all, not as culpable but as dangerous and as needing to be intimidated. It was the principle that was false, the principle of culpability, a remnant of theological confusion. The true principle is not to see culpability anywhere but to see danger in every infraction of the law.

"But that will come to the same thing, and there was no need to talk so much in order to leave things just as they were."

Just so, but it does not come to the same thing at all, and here we are at the point. Of this principle of culpability, of imputability, the judge or the jury, the jury above all since its mind is less free, is enamoured because the principle as a practical guide is false to the last degree. "Is he culpable," cries the advocate, "this man the monstrosity of whose crime of itself proves him an idiot; this man who from his birth, before the act which brings him before you, has committed nothing but extravagances? No, he is sick; let us cure him."

"It is true," says the jury, "he certainly is not culpable, therefore I acquit him."

It is the "therefore" that is stupid; exactly because that man was incapable of culpability, he ought to be locked up.

"Is he culpable, this man who has been imprisoned three times for theft and steals

again? He is a maniac; do we punish maniacs?"

"No, he is not guilty because he is so so often," says the jury, and acquits him.

"Is not this other man ten times culpable," says the public prosecutor, "this man hitherto honest, healthy-minded and even very intelligent, who commits a knavery, abusing his honourable reputation for the facilities it gives him to be a rascal?"

"Yes, he is ten times culpable," says the jury to itself (and it is true), "therefore I won't let him off."

It is the "therefore" that is fallacious. Punishment, or severe punishment, ought to be reserved for the second offence.

Thus from this false principle—in the practical field, in the field of repression—from culpability and imputability are derived collections of absurdities of judgment; at the very least they give rise to a constant incertitude in the minds of those who judge, since they do not know—and we cannot blame them—whether it is the most culpable

that should be punished least or most, whether it is the less culpable that should be punished less or more.

The principle is false and we need another. We must look at the matter from the point of view of public danger and intimidation.

In regard to the first: the issue is not to learn whether the man is culpable or not culpable; we know nothing about that, it is a philosophical question. Nor is it to learn whether he is responsible or irresponsible; we know nothing about that; it is a philosophical question. The issue is to learn whether he is dangerous or not and to what degree. He is terribly so if he is a brute and if, consequently, he is not culpable. Perhaps he is not culpable, but I will deprive him of the power to injure, because he is dangerous. He is dangerous enough if he is half brute, half intelligent; I will deprive him of the power to injure by treating him, educating him, trying to make his intelligent part take precedence of the other. He is not very dangerous if he is very intelligent

and has done something silly; he is more culpable perhaps than another, but that is a matter for the philosophers to discuss. I punish him because he needs a lesson; but above all I will place him in the hands of people who will show him how, precisely because he was intelligent, he was absurd.

In regard to intimidation: these persons, not only those who are brought before us for judgment but their congeners, are susceptible of the fear of blows, and the most stupid among them are susceptible of nothing else. Punishment ought to be a means of deprivation of the power to injure; it ought above all to be a means of intimidation. The animals, more responsive than man to gentle means, are all on the other hand trainable by intimidation. Men who approximate to animality are very sensitive to intimidation and can be partially trained by it. It is necessary that the dangerous, the noxious, should be afraid of punishment, that punishment should not be light, that there should be no reason for not fearing it, for desiring it, or for taking

the chance of it light-heartedly. The corporal punishments used in England are excellent things because they intimidate both the man who has felt them and who will not care, once out of gaol, to expose himself to them again, and the vicious who have not yet committed crime and are discouraged from committing it by their knowledge of the punishment they will have to undergo.

It goes without saying that these punishments should never prevent us from working for the education, the uplifting, the reformation of the culpable. Every prison ought to be a hospital, since we are dealing with the sick. Every prison ought to be a school, since the school is a hospital for sick brains. But it is not necessary on that account that the prison-hospital-school should be an agreeable place for the criminal, since one of the means of uplift and reformation is exactly intimidation.

As for capital punishment, this may be said against it evidently, that it bars out the intimidation and reformation of him

who suffers it, and that it has in its favour only the intimidation of those who might be inclined to put themselves in the way to suffer it. I apologise for writing on such a subject a word that may cause a smile, but the trouble with capital punishment is that it is incomplete; from the theoretical point of view it is a perfect case of incomplete punishment; it secures only one end out of three, it looks only to general intimidation. I believe it necessary in certain countries and at certain times; in the countries and at the times where and when the absence of general religious and moral training creates a considerable social stratum composed entirely of bandits; in the times and places where the gentleness or even the nullity of other modes of repression leaves no other means of intimidation but this; in times when a recrudescence of criminality renders necessary an aggressive campaign of intimidation.

For example, at the beginning of the twentieth century in France, for five or six years there were no more executions. Crim-

inality increased so appallingly that capital punishments were resumed. This return is so recent that statistics cannot yet tell us whether a diminution of crime has coincided with it. I am a thorough partisan of capital punishment if it is shown to be the only way to produce the desired result, and completely opposed to it as a punishment that is intimidating merely, if there are others equally intimidating. I should therefore be glad to see a very simple experiment made. Let a country like England which punishes in its prisons and punishes severely, where a prison is not simply a place for social intercourse, suspend capital punishment for ten years. If during these ten years crime does not increase, that will be proof that the prison with punishment and a system of intimidation is sufficient; and capital punishment ought to be abolished or left suspended. If crime increases, that will be proof that capital punishment has a special and specific intimidative value which it would be the greatest mistake to abandon.

Penal theory ought not to talk about culpability or responsibility or imputability; it should speak only of greater or less social danger. We must return to the real meaning of words. What does *innocent* mean? It means *not harmful.* That is the social sense of the word. If by the intervention of a subtle philosophy and by considerations of responsibility and irresponsibility, innocent has come to denote the most harmful of men —the more innocent the more harmful he is —let us leave all that aside and defend ourselves only against the nocent; we will grant him if you like that he is not culpable, but we will take vigorous means to prevent him from being noxious.

This is the truth about penology. But it is easily seen how much trouble has been injected into the minds of jurors by this invention of moral irresponsibility confounded with social irresponsibility. The irresponsibility of the criminal has augmented in the breasts of jurors the passion for being irresponsible themselves, and, loving to

acquit because of their good hearts and French kindness, they are delighted to have a pretext for doing so. Every juryman says to himself, "I don't understand much about these questions of psychic responsibility; but what I do gather about these irresponsible criminals is that I am irresponsible myself. And I'm very glad of it."

Irresponsibility of the magistrates who can discharge upon the law the burden of decision; irresponsibility of the magistrates who can and who think they should, in the most important cases, discharge upon the government the burden of decision; irresponsibility of the jury, who besides their freedom from the necessity of giving reasons, can discharge upon the government by a recommendation to mercy the burden of decision and especially of rigorous decision; irresponsibility of the criminals, augmenting in the juror's mind his terror of assuming the responsibility of decision; these are the different and, I think, sufficiently numerous irresponsibilities which enervate all justice in France and

particularly repressive justice, making France a country where the most complete security, though even that is sadly incomplete, is that of the criminal.

Must we then abolish the jury and return to venal offices? We should certainly abolish the jury, which has given every proof of incapacity, so that it is regarded by everyone as a lottery, and so that everyone, counsel for the defence as well as the public prosecutor, is in the habit of saying, "with a jury you never can tell."

I should be a strong partisan of the re-establishment of the venal office. However monstrous it may appear, it still exists for certain offices.

The offices of solicitor and notary are venal, but this does not excite public indignation, because it exists. But would you be badly judged by notaries or solicitors, if it were required in addition that they should be doctors of law? You would be very well judged, with very great independence and a contempt, if not complete at any rate strong and general,

of what might compromise the judge. Would you prefer to be judged by prefects and sub-prefects? No? Well, it is exactly by prefects and sub-prefects that you are judged now.

But, speaking seriously, we cannot return to venality of office. Even though, as I do not hesitate to say, it would be the best course, we must find another. I have explained a dozen times (and so I must be brief now) that it would suffice to make of the judiciary an independent order of the state, as it used to be. This could be done, for example, in the following way: let the state pay the magistrates but neither appoint them nor promote them; let it have no hand whatever in their appointment or promotion; then they will be independent.

Who shall appoint and promote them?

The Court of Cassation; let it make all the appointments and promotions of the whole bench of France.

But if it is the government that appoints the Court of Cassation?

It shall not be.

Who then?

The bench of France by election, as fast as seats become vacant.

In this way, the supreme court appointing the whole bench and the whole bench electing the supreme court, the bench becomes a closed body, autonomous and autogenous, depending on nothing but itself and proceeding from nothing but itself, exactly like the magistracy of the old régime, which is just what we wanted to secure.

Only since, differing thus far from the old régime, government pays the judiciary and he who pays is always a little bit the master; and since the law constituting the judiciary along my lines can be changed by parliament in the twinkling of an eye, it follows that the law constituting the judiciary as an order of the state must be part of the constitution, hedged about with the strongest guarantees and incapable of being changed by, for instance, a plebiscite.

Thus the bench will be an order of the

state, as it must be if we are to have justice.

But that is ultra-aristocratic!

I am aware that it is ultra-aristocratic.

II

PROFESSIONS

THE Frenchman obeys just the same tendencies in his choice of a profession. His passionate desire, whether for himself or for his sons or for his daughters, is a profession of complete repose. And by a profession of complete repose he means one that involves no risk and no responsibility. The Frenchman desires with all his strength, with all his appetite, that his son may be in a public office and that his daughter may marry a man in a public office. An official is a man whose first and almost only duty is to have no will of his own. "He united," says Goncourt of somebody, "the two great virtues of the functionary, indolence and exactitude." It is well said. The functionary is a cog-wheel; all that is asked of him is

to dovetail perfectly; no one asks of him initiative or zeal or strenuous labour; that would throw everything out of gear, impede the general motion, disturb the established order. To work infinitely little, never to think for himself, but to present himself for adjustment to the machine at the very minute when the machine needs him—that is all that is asked of him.

"I agree about exactitude and absolute passivity," someone will say, "but as far as work is concerned, that we must have; since there is a certain amount of work that must positively be done."

Not at all, I should reply. Estimating eight hours a day for the amount of work involved in a given job, and $1600 per annum as the proper sum to spend on it, the state, knowing well the Frenchman's mania and that, however small the pay, the job will be in demand, cuts the job in two and gives it to two functionaries, to whom it pays only $800 each and from whom it requires only four hours of work. Then as time goes on it

subdivides each of these half-jobs, and there are four functionaries, each getting $400 and each required to do two hours' work a day. Then it subdivides again and has eight functionaries, each getting $200 and doing one hour's work. There it has to stop. That is, it has to stop there as far as the salary is concerned, but not in regard to the amount of work required. As applications continually increase in number, it subdivides again to create new jobs, and to pay the new functionaries it demands a fresh effort from the taxpayer and succeeds in employing men who get almost $200 but who do not and cannot give more than half an hour of work.

And the desire of the Frenchman is satisfied; he need not work, he earns little, he has a pension, he has no will and no responsibility. The calling of perfect rest—he has it in every possible sense.

All this comes from the two principal traits of the French bourgeois: laziness and the dread of risk, which are two forms of the

horror of responsibility. The fear of risk among us is appalling. It is mathematically the same thing to put one's money into an industrial enterprise which pays 10 per cent. with two chances out of three of losing one's stake, and to put it into government bonds with a return of 3 per cent. Morally the two are entirely different and two chances out of three of losing everything terrifies a Frenchman as does the prospect of death; it makes his hair stand on end. But again why? Because to take a risk is to assume a terrible responsibility; the Frenchman feels responsible to his children for the fortune which would be at stake; he blushes at the shame he would feel if he had to say, "I have lost everything," and he takes immense satisfaction in thinking that he can say, "I have increased your estate very little, but I have taken very few chances with it." He will never have been responsible.

That becomes for a Frenchman a sort of duty. To lend to the French state seems to him patriotic; to lend to industry seems to

him to be defrauding the state, as if the greatest service he could render the state were not to contribute to make it an industrial, commercial, rich nation. I know men who think it unpatriotic to hold Russian bonds, as though the way to have allies were not to create financial ties between peoples, powerful in this case but the feeble too if they have a future, and ourselves. But there is a risk. "Reason tells us that we must work for the uncertain," Pascal says. Of all French thinkers, and not only from this point of view, Pascal has had the least influence on the French mind.

Laziness, that other form of the horror of risk, and springing from the same causes too, has also a considerable influence in forming the French taste for having "a post." Our bourgeoisie is very curious; through hereditary admiration mixed with envy for the old aristocracy of the land, it has adopted with precision all its defects and none of its qualities. All its defects without missing one. It despises the people and you could hardly

believe to what a degree it thinks itself another race than they, if it is not another species. And since the people work a great deal, it believes firmly that it is a sign of high rank to "live like a lord," that is, to do nothing. To live like a lord is absolutely its ideal. The employee who has to be in his office from ten o'clock till noon and from two o'clock till five, will never be seen in the street before ten, because it would look as though he rose with the dawn to earn his bread. On the other hand he will walk with pride from five to seven in the frequented parts of his little town, to emphasise the fact that his day's work is done three hours before that of the workingman.

And moreover he envies with all his heart the man—not very different however from himself—who does nothing at all and can be seen idling from two to five. This man shows himself magnificently at all the hours when business-men are at their desks.

This bourgeoisie again wishes to hold everything from the state as the old noblesse

wished to hold everything from the king, and it runs after a sinecure as the Lauzuns used to run after pensions, each man for himself, for his children, for his sons-in-law and his nephews; and this is partly pride, partly dulness, partly laziness.

The combination of laziness and pride was very clear to the eyes of Montesquieu.

> You see [says he] the infinite ills that arise from pride in certain nations: idleness, poverty, abandonment of everything, the destruction of nations that fortune has brought beneath their hands, and their own. Idleness is the result of pride. . . .

Idleness is above all the result of idleness, but it is very true that it is a little the result of pride: to distinguish oneself from the workingman by the most visible sign—he works, then we will not. The citizens of the ancient republics, who were aristocrats, had a profound contempt for the man who did anything. To Aristotle himself, intelligent as he was, the workingman is a semi-slave.

Idleness is the result of pride; work is the result of vanity.

There is some truth in it; still, since vanity is only petty pride, or rather pride in a petty mind, it has more often the same results as pride itself. It is through pride-vanity that the little French bourgeois does not work.

Work is the result of vanity; the pride of a Spaniard leads him not to work; the vanity of a Frenchman teaches him how to work better than others. Every idle nation is serious, for those who do not work regard themselves as the lords of those who do.

Think of the Spanish *morgue* of the French bourgeois; he is very serious; he does not care to laugh, he does not enjoy wit, he likes to be bored with dignity.

Every idle nation is serious, for those who do not work regard themselves as the lords of those who do. Examine all the nations and you will see that in the majority [he says the majority because evidently he makes a mental exception of England] seriousness, pride and idleness keep pace. The peoples of Achem are proud and

idle; those who have no slaves hire one, if it were only to walk a hundred paces and fetch a pint of rice. They would think themselves dishonoured if they fetched it themselves.

In every little or middle-sized town in France, every bourgeois and his wife would think themselves disgraced if they carried in the street a parcel as large as your fist.

The women of India think it disgraceful to learn to read; that, they say, is the business of slaves who sing canticles in the pagodas.

The young girls of the French bourgeoisie despise those who pursue their studies beyond the primary stage; girls who do that must want to learn a trade, to become teachers, professors, to come down in the world. Have they nothing to live on?

The bourgeoisie in France resembles the old noblesse also in having the cult of ignorance. It despises the scholar, the man of letters, the artist—people with little common sense, often with eccentric ideas, and in fact ill-balanced; above all, people who do something, a sign of inferiority of race and of

mental inferiority; moreover most of them have no government employment. For the two signs of social superiority are to live like a lord and to have a state-office, things which are as often as not confounded.

The French bourgeois does not read. Our publishers know it; if it were not for school-books and the newspapers and stationery there would be no book-shops in the country, outside of three or four large towns. Solicitude for the scientific, literary and artistic glory of France is perfectly unknown to the French bourgeois. To live on the state by serving it nonchalantly and to despise everything else—that is his permanent state of mind.

He has no idea how far he is a socialist, and how illogical he is when he reproaches the workingman with socialism. Or rather he has an obscure perception of the thing: he is a socialist for himself but he doesn't want the others to be socialists for themselves. I heard once a noble sentiment from a perfect bourgeois, a functionary, a republican, a

radical and an anti-clerical. "The socialists! Every man a government official, that is their doctrine. They all want offices and they want everybody to have an office." This is the precise truth, but the tone in which he said it could have been set to music. What, workingmen in office? Peasants in office? One doesn't know whether to laugh or to cry. Just think what they would look like! Those creatures to hold office, just like me! To be paid by the state, just like me! Can you imagine such a thing?

I seemed to be hearing M. de la Pretintaille saying, "All these scoundrels propose to become noble!"

The little French bourgeois also resembles the old noblesse, feature for feature, in his manner of bringing up his children. The noble of the old régime sought at once for his sons some great lord who could protect them and advance them in the world; the bourgeois of to-day seeks at once for his sons some high official who can be their protector; the protection-hunt is the whole care, and

agonising care, of the bourgeois father. For his daughters, the old noble had the convent; the poor bourgeois has not the convent, but, having all the pride of caste of the old nobleman, he brings up his daughters exactly as the noble brought up his. He teaches them nothing, no trade either practical or intellectual. A little bourgeoise must not become a working-girl, even of the highest grade, a superintendent earning $2000 a year or a professor earning $1200. That would be a shocking social step downward. She must not even, by the sort of education she receives, give the impression that she is preparing herself for one of those careers. That would indicate that she needed it, that she had no *dot*. The dignity of the family is opposed to such a revelation or to what looks like such a revelation.

Through pride of caste the young girl learns nothing and consequently places herself far above the girl of the people, materially and morally. Materially: either she marries or she does not; if by insufficiency of

dot, or through a family reverse resulting in unexpected deficiency of *dot*, she does not marry, she remains a poor old maid, exactly like the daughter of the old noble who was sent to the convent, and she is much more unhappy than the daughter of the people who has always her trade to turn to. If she marries she either gets a good husband or she gets a bad one or she becomes a widow. If she gets a good husband, there is nothing to be said except that she has had luck in a lottery; if she gets a bad husband, she is forced to submit to him, since she is a creature incapable of self-support, and she is horribly unhappy since her lot leaves no room for hope or change; if she becomes a widow she falls back as a charge upon her parents or upon the state (for very probably her husband was a functionary) and she swells the appalling herd of soliciting women who beat upon the doors of official ante-chambers.

Morally: the young girl of the bourgeoisie is far above the daughter of the people because the daughter of the people is free and

the young girl of the bourgeoisie is a slave. Since she cannot earn five cents a day the young girl of the bourgeoisie has no other career than marriage. Consequently she is virtually forced to take the husband presented by her family, since she is terrorised or at least intimidated by the life they would lead her if she refused. And just as among the old noblesse, by social usage, the young girl was forced to accept the husband presented to her when she was sixteen years old, with the understanding that she should later enjoy every proper compensation, so, as the result of economic necessity, the young bourgeoise is forced to submit to the husband presented to her when she is twenty-five years old, with the understanding that she will take later the revenge which is her due.

If she is married to a husband who turns out to be a good fellow, her lot is tolerable, although in truth no lot is really tolerable for a woman but to marry a man she loves. However her lot is pretty nearly support-

able. But still, in relation to this good husband, she feels that she is absolutely dependent on him, that she cannot leave him if he grows bad, that she is materially bound to him, and that when he says, "I am the master," she cannot without absurdity reply, "You are not." This is slavery.

If she is married to a bad husband she has this perspective; in spite of certain measures which the state has taken in her favour and which pretend to free her by divorce, she can never separate herself from her husband, because he is the earner and she is incapable of earning; and there is nothing on the statute-book which weighs against that. It is idle for the law to set a woman free and give her leave to go, when the necessity of eating obliges her to stay. This is slavery.

Finally, as a widow, she passes from the status of slave to that of public mendicant, which is on the whole a promotion, for it means passing from the status of private beggar to that of public beggar. But still it is very hard to have to solicit the state

or the muncipality for alms, to wipe off affronts, to be told to work and to answer, "You know very well that I can't do anything; I am a bourgeoise." This is slavery.

Through pride of caste and to the end that they may not be as workingwomen nor seem to be so, the bourgeois gives his daughters a status very inferior to that of the workingwoman; he gives them the status of slavery.

And he does it obstinately, touchily, proudly. The greatest insult you can offer the French bourgeois is to say to him, "You ought to have your daughter learn a trade."

"A trade? dressmaking? for what do you take me?"

"A less lucrative trade, school-teacher, professor."

"A student? for what do you take me?"

And you are quarrelling with him. Not that it has ever happened to me; I have never been so stupid as to say that to a bourgeois.

He has perhaps $7000 to give as his

daughter's *dot*, but his dignity will not permit her to raise herself intellectually to the rank of workingwoman or teacher. He prefers her to be a thing, for she is not even a servant.

I once wanted to find a place for a young girl reduced to poverty. A teacher? Not to be thought of; she was a little bourgeoise and I doubt whether she could read. Working-girl? What sort of work? She did not know so much as the alphabet of any trade. "A servant, then," I said to the lady with whom I was discussing her. "Dear me, no; don't you know that servants are working-women, in the kitchen or in the dressing-room? Your young bourgeoise, having been brought up by the bourgeoise her mother to know nothing of cooking or sewing, cannot be either a cook or a lady's maid. The little bourgeoise can do nothing but speak correctly the French of her province; she has no natural aptitude but for having babies. And neither of these functions is remunerative."

Contrast the case of a young girl who had a very modest teaching appointment and married a millionaire. The millionaire squandered his fortune in five years. She stayed with him, became wretched. Finally he turned criminal; she left him and resumed teaching to support herself and her child. She said to me: "I am not altogether to be pitied. I am like a working-girl whom a man of the world takes a fancy to, makes his mistress and abandons when he has had enough. She always has her trade to fall back upon, and when she is deserted she returns tranquilly to her sewing-machine. So with me. I was heartbroken by my husband's follies, but I was not panic-stricken. I had a trade, and when I couldn't stand him any longer I left him without despair. I was not forced to descend to my husband's moral level, for I had kept my sewing-machine!"

To get his son into a government office, to marry his daughter to a government official or to a rich man, that is the dream of the

French bourgeois. To make his sons and his daughters creatures sufficiently furnished and armed to be independent, that is what he never contemplates, or contemplates with horror.

In regard to his daughters he does not perceive, virtuous as he is and esteeming highly as he does feminine chastity, that he runs a great risk of making them courtesans, and that this actually happens rather often.

In two ways. Just like the young noblewoman of the old régime, married without being consulted, so the young bourgeoise of our time, married without her wish or against her wish, is very ready to take a lover later. Foreigners are begged to believe, in spite of our novels, that this is rather rare because of the moderate sensuality of Frenchwomen, but still I cannot deny that it happens.

But the other way is more frequent. The young girl for whom no other career than marriage is open, who knows this fact and

knows also that this career is highly speculative, applies all her powers to enter it. She flirts implacably; she seeks with fierce determination and with feminine wiles to get a man on her line; she plies the trade of the courtesan; she is literally the virgin-courtesan. Notice that the young girl who does not flirt but whose mother flirts for her, a frequent case, and who marries without loving the man who has been crimped for her, is a virgin-courtesan just the same. That is the logical outcome of the ideas, traditions, prejudices and manners of the bourgeois.

This picture is a little behind the times. For a generation or a little more, the virgin-courtesan is appreciably rarer. The young bourgeoise does not flirt any more; she does not even lend herself to the vicarious flirting of her mother; she is willing to remain unmarried. Why? Incontestably because her moral level has risen; because the part of virgin-courtesan is repugnant to her; and because she has the ideal of every right-minded woman, to marry the man she loves

or not to marry at all. Very good; but since she is at the same time one of a class who must always be slaves since they cannot earn their own living, she has the sentiments of a free woman but cannot achieve the destiny of a free woman. The result is that she stays in her father's house as long as he lives and after his death becomes a very wretched and sad little thing, a perpetual minor.

"What is a minor?" asked a child. "At what age do you stop being one?"

"There is no age limit," his father answered. "When you earn your own living you are no longer a minor; until you earn your own living you are a minor."

The French bourgeois dreams only of seeing his son a quasi-minor, that is, a government clerk, and of seeing his daughters minors till the day of their death.

Have I wandered a good way from my subject? I am right in the middle of it. It is a little laziness, a lot of pride turned upside down, and above all a profound terror of

responsibility that create all these evils. The complete ideal of the bourgeois is not to work very much, but especially to work only under orders and to practise no profession but those followed under orders and, man or woman, to hold no position of which the business is not transacted under orders. The passion of the French bourgeois is not to enter personally into what he is doing, to obey someone who dictates to him and who is responsible for what he does. "My work does not concern me" is the maxim he loves to utter and the thought he loves to cherish. Every profession and every employment that demands free activity is unpleasant to him because it requires him to foresee, to calculate, to combine, to determine the chances for and against and to know just what he risks. Now, to foresee, calculate, combine, risk, is to face a future responsibility, present already in that it is foreseen. He thinks, "Some day I shall congratulate myself on this," or "Some day shall I not reproach myself for this?" And the responsibility horrifies him. A

Frenchman is afraid of being responsible to himself. That is why he is devoured by officialdom and why his daughters object so much to becoming free women and why, above all, he feels nothing but horror for their becoming free.

Note how few free professions there are in France, and also how the free professions are nationalising themselves little by little, transforming themselves little by little into state-professions. The only free professions are agriculture, industry, the bar and medicine. All the trades are of course included under industry. Now, in the first place socialism would like to nationalise all the professions and have every man in the employ of the state, and that is probably what we are coming to, but we won't discuss that. Pending its attainment in the future, it is now a general tendency. The state wants to annex the great industrial enterprises and it is fast beginning to annex them, swearing that they will be better managed in its hands than in other hands. The fact does not always

furnish striking proof that it is right, but that is not the present question. The present question is whether the Frenchman likes this process of transformation. Yes, he does. It is very simple. The man who works on a railroad says to himself: "If the government ran the road, I should work less, have less responsibility, and get promoted by politics. I should work less because the state would have a political interest in lending a favourable ear to requests for employment, would employ more men, and according to its invariable custom, from its very logical point of view, would always have three men where it needed one. I should work less. And I should have less responsibility, because the state would always have an interest in not discharging employees who are voters for the Parliament on which it depends. I should get on by politics for the same reason that would prevent my discharge. The employee who is a good voter, and who may easily be a good employee as well, will of course get on; but much faster will advance the good election-

agent, who, because he is a good election-agent, will be a bad employee. I should get on by politics."

The personal interest of the man who works on a railroad, in direct opposition to the general interest, is on the side of the nationalisation of the railroad industry.

The professions called liberal are also becoming nationalised. A lot of doctors dream of state employ and are practically in state employ. They get positions as asylum doctors, hospital doctors, doctors in state schools and colleges, doctors to railroads (for several railroads now belong to the state). A remarkable and significant thing is that they have no interest in doing this, unless they are entirely without practice, and the state does not generally employ as doctor a man who is without practice. Thus the doctors who apply for state jobs have no interest in doing so, for they are paid much less by the state than they would be paid by private patients and the time they give to the state is practically time lost in which

they might be making money elsewhere. A director of a railroad company said to me: "In compliance with the law of supply and demand we are all the time cutting down the pay of our doctors; we can always get them, and good ones too. We shall end by paying them only with free transportation and we shall still get them. I don't understand it, but so it is."

To a doctor who asked me to support his application for a post on a railroad I said: "Why do you want it? It's a money loss. In the hours you will give to the company you could earn five times what it will pay you, without counting that during these underpaid hours you lose good professional chances by not being at home when you are sent for. You are like a small shopkeeper with a good custom who shuts up his shop six hours a day and goes off to work in an excise office. Would that be good business? Why then do you want this job?"

He answered, "There is a title and a salary." This is a great saying. "A title and a

salary," that is the true motto of the Frenchman. To have something to put in front of his name on his visiting-card and to get a little pay with great regularity, that is the twofold vision of every good bourgeois. The title is for his vanity; the salary is for his sense of security, for the appeasement of his terror of risk and responsibility, to quiet, partially at least, his horror of adventure.

It is a mistake to think that the passion of the college-professor for a monopoly of education springs solely from hatred of Christianity and horror of liberty. There is a good deal of these in it, as I take pleasure in acknowledging, for the hatred of Christianity and the horror of liberty are among the commanding sentiments in France. But there is another element in the energetic love of monopoly in education. It is not only the desire to belong himself to the state and to be sustained by it and to teach nothing but what it would have him teach; but the desire that every professor should be in this

position—that there should be no professor differently circumstanced. Why is this? Because the state-professor, even if he be profoundly devoted to the state, has a little shame at being a man in bonds, a man whose thought is not free save to a limited extent, and consequently he does not like to have any other professor be or even seem freer than he. This is a natural sentiment. I shall be told that many, perhaps the majority, do not hold it. It is true, but it is because they are very intelligent. They understand that the liberty of free workers is a guarantee of the relative liberty of workers for the state. Evidently. If there are no workers but those in state employ, the state will in the first place pay them what it likes, with a tendency, to which it will finally yield, to come down to a starvation-wage; and in the next place it can require all it wishes in physical effort of its manual workers, in servility of its workers with the mind, and this is simply slavery. This is the aim that will be realised under the socialist régime.

But if there are both free workers and workers for the state, the free workers will keep up a competition for liberty. That is to say, the state-worker, if he is too much hampered, can always leave the service of the state and go into free work. And because he can do so he is virtually free, and because the state knows he can do so, it is forced to leave him a certain measure of liberty, genuine liberty, and is driven also to pay him an honest wage. Thus the liberty of the free worker ensures the relative liberty of the worker in barracks.

The professors, then, to come back to their particular case, know well that if they have a very acceptable measure of liberty, this is because there is not a monopoly in education, and they say, "Much good it would do us to have a monopoly; we are the class for whom supremacy is death."

I entered the state system of education (knowing it well, since my father was a professor) without any apprehension, because there was in existence a free system, which on the one hand made it possible for me to

leave the state system, and on the other hand made it possible for me to stay in it by assuring me a tolerable life, precisely because the state knew I could get out if I wanted to. If there had not been a free system I should not have entered the system of the state.

"So you would have entered the free system, if there hadn't been any?"

"No, I should not have gone in for teaching at all; I should have chosen some other career."

"But what if all the careers had been controlled by the state?"

"That would be socialism. In that case I should have lived in some other country, believing that a country under the pure socialist régime is uninhabitable."

Therefore those professors that reject a state monopoly reason completely in their own interests, outside of all consideration of principles and general ideas. But those that desire the monopoly are men who in the first place, as I have said, believe in state control, or men who feel an invincible repug-

nance to Christianity. In the second place they are men who like to have a way of thinking imposed on them because they like to have someone else do their thinking, and that is the very bottom of the whole matter.

There is no more curious study than this mentality. The thinkers who are partisans of monopoly are ultramontane catholics. The catholic is a man who shuns the responsibility of thought. So are they, precisely. The responsibility of thinking is a very heavy one; it has made more than one spirit quail. It takes much courage and no modesty to say to oneself at a given moment: "I will give no heed to the thinking of my herd; I will think with my own brain, as I digest with my own stomach." That sounds very simple, but it requires an immense effort. It is astonishing how modest man is by nature. He delegates his thinking to others and admits he is incapable of thinking for himself. Catholicism is nothing else than that.

And protestantism too, pretty nearly.

Without doubt those protestants that are penetrated by the spirit of Luther have formulas of this kind: "Any religion that a man has not made for himself is a superstition and not a religion"; "Make yourself a soul or you will not have any"; "He who accepts from another the soul he ought to have, is only a body." So that I said once to a protestant, "Then every protestant who is not a heretic from protestantism is not a protestant." "You are pleased to be funny," he replied.

Yes, the ultra-liberal protestants reason thus, or they try to. But the majority are merely catholic latitudinarians. They have their dogma and claim that the faithful must subscribe to it, and they demand explicitly that the faithful resign their function as thinking beings. The only difference is that they are less strict. *In dubiis libertas.* There are only a few more *dubia* among protestants. The catholic spirit dominates and penetrates all religions because it is the religious spirit itself. The religious spirit

consists in being afraid of thinking alone, in thinking by herds. *Væ soli putanti.*

It is this religious spirit, this catholic spirit, which the monopolists possess to admiration, or rather by which they are possessed. For them as for the catholics there must be but one faith. Who is to give it? The herd to each member. And who is to give it to the herd? The head of the herd. They are the faithful followers of the state as pope. And this anti-clerical papistry is, like the catholic pope when he has any power, a partisan of all measures of coercion and will not acknowledge any priests of thought but its own priests of its own thought. That is quite simple.

But why do these monopolists show this spirit very often outside of all religious or political thought? Partly through monism, partly and chiefly through fear of intellectual responsibility. Monism, which is a very widespread taste, is the cult of uniformity. To have all things equal is, to some minds, very beautiful and satisfactory to their

particular æsthetic, and the best way to have all things equal is to have all things the same thing. One single thought throughout the state levels and equalises all brains admirably and prevents those differences between superior and mediocre minds which it is so painful to see. One single thought throughout the state is order itself, since it is the contrary of irregularity and therefore of disorder. One single thought throughout the state means the end of anarchy, the impossibility of anarchy. No spectacle could be more beautiful. It is La Bauce, and La Bauce shows an admirable perspective.

Is there not almost physical pain in seeing a Voltaire and a Rousseau differ in opinion for twenty years, and, through their disciples, for very much longer? Humanity would have been spared this melancholy spectacle if there had been a unity of thought imposed by a superior intellectual authority which admitted no divergences. This single thought, a summary of the thought of the nation, would doubtless have suppressed Vol-

taire as well as Rousseau, and Rousseau as well as Voltaire, but it would have established uniformity, and there is nothing so beautiful as uniformity, that sign and in fact that form of equality. *Ut sit æqualitas.*

Have you noticed that Montesquieu gives us a very plain choice between liberty and equality? He says in *L'Esprit des Lois:* "I make it felt that we are free in a political society for the reason that we are not equal." And in fact his whole book makes one feel that, but he says it nowhere so explicitly as in this passage. We can be free only by means of inequality, for the very good reason that equality suppresses all liberty and is indeed forced to suppress it in self-preservation, since all liberty, as soon as it is used, creates a superiority or an inferiority and destroys equality. Liberty and equality then are antinomies and we must choose between them. We, monists as we are, choose equality because it is the best generatrix of uniformity; we reject liberty as generating irregularity of lines and con-

sequently ugliness. Such is intellectual monism.

The monopolists are rather frequently monists, artists in love with La Bauce. They are much more often lovers of irresponsibility, men who recoil before intellectual responsibility. There is nothing so cruel to certain minds as to have a thought of which they cannot get rid by reposing on someone who has given it to them or who holds it as they do. They feel themselves alone, and they feel about them a great silence which frightens them. Doudan says somewhere: "When one has advanced a little way in a study, the noise of commonplace is stilled and one finds oneself in a great silence which is very favourable to the labours of thought." Very good, but this great silence is painful to a large number of minds. It overwhelms them, because it signifies that they are no longer thinking in common with their group, with their party, with their nation, with their religion. The man who leaves his religion, his fatherland or even his party,

feels cold. He feels that he is far from home, an exile, an emigrant. I have known men who, believing their party to be in the wrong, followed it nevertheless, because to leave it would be a sort of uprooting. It did not seem to them that man was made to think correctly in solitude; far rather, in the extreme case, to think wrongly and unjustly with his herd. It was less agonising to be wrenched away from themselves than to be wrenched away from their fellows.

"But is not that what is called a lack of conscientiousness?"

I think not, for it was precisely a troubled and disturbed conscience that gave pause to the men of whom I speak. It is not a lack of conscience, it is rather having two. It is having a sort of collective conscience warring against the individual conscience. In a word, it is recoiling before a thought for which you are responsible, because you hold it alone. The thought that you hold with others is not heavy to carry, because so many others carry it with you. That is intellectual

irresponsibility, and even to some extent moral irresponsibility. The men who reject academic freedom and who wish that all teaching should be in the hands of the state are men who want to think by order, about order, under orders and for order. Perhaps that is the reason why they are called free-thinkers.

They are eminently social, I admit; but, to employ the terminology of Comte, they belong to social statics, not to social dynamics. As far as they are concerned and if they were alone, the state would not be troubled but it would never budge an inch; for—although this is contested by certain modern sociologists—it is in my opinion the inventors who create movement. "Of all cold monsters," says Nietzsche, "the state is the coldest," and I do not flatter myself that I have positive knowledge of what he means. Perhaps he wants us to understand that the state has in itself no creative warmth and must receive it from individuals who have it. It is possible.

For the rest, be sure that when the state shall be in charge of thinking for everybody there will be a very general intellectual cooling-off. There will be a relative and progressively feebler conservation of the old heat, but there will no longer be a hearth. I admit that there will be uniformity and that we shall hear no longer the cacophony of discordant voices, which will perhaps be a great gain.

However this may be, the fear of responsibility is the cause of that passion for officialdom which is at any rate the most conspicuous trait of the French character, and that this passion is at once a sign and a source of the weakening of French energy.

III

IN THE FAMILY

THAT the French family is one of the most beautiful things France can offer for the respect and even the admiration of the foreigner, and that the foreigner spontaneously admires and respects it in many cases, and in fact in every case where he does not judge it on the evidence of our superannuated novelists, I admit with all my heart, and I am very happy to admit it. But this book is written to criticise, to mark the weak points of our institutions, political and moral, in the attempt to suggest the idea and the desire of improvements.

Now in the family itself, the fear of responsibility or—and also—the false manner of conceiving responsibility are the weak

points that must be indicated with all the precision at my command.

The French bourgeois loves his children with all his heart and he even loves them too much, if that is possible; well, he loves them with all his heart. This country is perhaps the only one—or it is where it happens oftenest—where man and wife who do not love each other, end by loving each other in their children, so that they become absolutely devoted to each other. If they could observe themselves (and that must happen sometimes) they would say, until the first child was born: "We do not love each other at all. Our marriage was a matter of arrangement, as it generally is in France, not at all of mutual knowledge, as it never is in France; or else it was a marriage of inclination, as it sometimes is in France but still not one of knowledge; and here we are, without any love at all."

And after the birth of the first child they would say: "What saves everything is the child; she loves him infinitely, I love him

much. She satisfies me in relation to him; we don't quarrel very much since he came; I forgive her everything for his sake."

And twenty years later they would say: "We have brought them up with absolute devotion, with infinite pains and unremitting solicitude. She is the best mother in the world. I tell her so with emotion; she tells me tenderly that I am a very good father; those moments are very sweet. Why, I believe we love each other!"

French married people love each other profoundly after the age of love is past. This comes from the fact that they love each other in the love of the children. I believe there are countries where love begets children, but in France the children beget love. Provided the love is there, we have the essential.

The French then love their children profoundly. Only, for love of the children they don't have them, and for love of the children they don't bring them up.

For love of the children they don't have

them. As Ugolino devoured his children that he might preserve a father for them, Frenchmen abstain from having children in order to preserve for them a rich father or a well-to-do father and so that they may not come to poverty. The nightmare of the French paterfamilias is having more than two children or even more than one. If he has more than two, he sees them in the future less well-off than himself and in a position to reproach him with the fact. From this responsibility he recoils with terror. Even if he has only two he tells himself, with sound reason and correct arithmetic, that when the children marry, if both parents are unluckily still alive, the property will be divided into four parts, two for the parents and one for each child; that consequently each child will have only a fourth until the death of his parents, his proper share, but a scanty portion: "Oh, what a wretched little establishment our daughter will have! What a narrow entry into life there will be for our son, who will earn but

little in his capacity of government clerk. We ought to have had only one child."

Thus he reasons through fear of the responsibility he incurs by having more than two children, or more than one. He is sometimes driven to have two by the desire for a son, if the first was a daughter. But even this does not always screw his courage to the point of having two. He always wants one, because paternal love is very strong in him; but very rarely more than one. He needs to have a creature, issued from himself, to love and cherish and caress and spoil deliciously and by whom he may believe himself beloved in return. But one is enough for that, and, as soon as he has one, the paternal sentiment is extinguished by the paternal sentiment itself; I mean, the desire to have children is extinguished by the satisfaction of having one and by his idea of the enormous duties he owes to the one he has.

There is in France—let us not deceive ourselves but come out with it—a dis-

approbation, a disesteem, yes, a sort of contempt for fathers of numerous children. They are considered to be bad fathers since they have robbed their first child of the advantage of being the only one, or their first two children of the advantage of being only two. They are people who do not love their children; and the elder children themselves partake obscurely of this sentiment. And they are also people who lack the preeminent French virtue, the sacred virtue, the only virtue really esteemed, economy. They are prodigals, spenders, wasters. At bottom, in the eyes of every French bourgeois, the father who has six children is a bohemian and needs a lunacy commission.

The result of all this is, in the first place, that the French family is very united, very concentrated, very respectable, sympathetic and touching; but, from a certain point of view, it does not exist. The true family is numerous, has many children. In that family there is (a strange thing at first sight but explicable on reflection) more love on the

part of the children for their father and mother, perhaps a little jealousy, as I have indicated, on the part of the elder children, but on the part of the younger, who are the more numerous, and, by contagion, on the part of all, much more love and respect for the father and mother who seem like patriarchs, like chiefs of the clan or the nation, and who have a sort of glory. You are not without acquaintance with such a family, for they still occur; and you have fully discerned this sentiment.

Further, in the family with many children, tribal habits are naturally formed. In this family there are sound offspring and others that are less so. The latter are put to rights or kept in place by the others. The naughty child has as correctors not only his father and mother but the well-balanced of his brothers and sisters. The family is a sort of tribunal and jury where the good are in control and try the bad. Even supposing that the bad are in the majority, two are intimidated in wrong-doing by a single one

who is on the side of the parents and upholds them as they uphold him. In a word, the family is a society in which the bad elements are more than counterbalanced and are restrained by the good elements; while in a family with an only child, if he is good nothing could be better, but if he is bad, the parents have no allies against him. The numerous family has in itself a very great power for good.

In the family with an only child, it happens often that the only child does not live, and that the great effort of love by which the family limited itself to one is pure loss. And if the only child lives, it often happens that he is brought up with excessive feebleness, that he is spoiled, that he is consequently an egoist and that he does not love his parents. There are exceptions but they are rather rare.

That an only child should not love his parents or should love them but little is a thing so natural as to need no explanation. It is by a loving jealousy that the child learns love; a loving jealousy in the main, tender,

sweet and very lovable, but still undoubtedly jealousy. "You love my sister more than me;" "You don't love me as much as my brother." "Yes, I do; I love you both alike." The jealous child is almost convinced; in the meantime the stirring of jealousy has taught him love, and love will never leave his heart.

The only child, unique object of worship, finds the situation natural, and allows himself to be adored without reciprocity, in the absence of anything to excite him to reciprocity or even to give him the idea of it. The only child is analogous to the husband too well loved by his wife, or the wife too well loved by her husband; he does not love; that seems too much his due which is not refused, is never refused even by halves, even a little, even in appearance; what is squandered on you seems too much your due.

There is a very curious thing which I have observed, if I am not mistaken. The parents of an only child seem to find it quite natural not to be loved at all. Perhaps they don't

notice it; I think however that they notice it somewhat and take it as a matter of course. They seem to feel that nothing ought to correspond to infinity—"infinity, nothing," as Pascal said in a very different connection; that to an affection without limits ought to correspond, since nothing could equal it, a very languishing affection, and to an affection of incredible activity an affection altogether passive.

It is certainly the case that the only child is very passive in affection and that his parents do not notice this passivity, or that they resign themselves to it or seem to see it with a sort of pleasure. Abnormal situations denature the feelings. You all know the desperate love felt for his wife by the man whom his wife does not love, his desperate regret when he loses her, the remark you often hear him make, "Poor woman, she never loved me; I never knew how to make her love me." The parents of an only child are only a little bit like that, but they are somewhat so, the mothers especially. "He

does not love me; he is so superior to me; he is adorable; how could anyone help loving that child?"

And in fact the non-affection of him you love strengthens the feeling you have of the incommensurability of his perfection and your unworthiness, and confirms you in your adoration of him.

Only, it is idiotic. And the road to this idiocy is your imprudent prudence in having only one child instead of ten.

The ethnic consequences are no less grave and no less painful to consider. A non-reproductive people placed beside peoples very prolific or only more prolific than it, is quietly and continuously invaded by them. France, between Germany and Italy, loses one peaceful battle a year to Italy and two to Germany. The children that France does not breed are replaced by those that Italy and Germany breed and send to us because there is no room with them and plenty of it with us. "Rome has become a Greek city," said Juvenal; with much less

hyperbole I could say, urban France has become German and Italian. Add the cosmopolitan people, the Jews, who, finding themselves nowhere better off than in France and being very prolific, very largely people our urban territory. It is true and it is an essential part of what I want to say, that the intellectual crucible of France is so red-hot, so powerful, that out of the sons of Germans, Italians, Jews, it very quickly makes Frenchmen who have almost all the characteristics of the French race and are almost indistinguishable from Frenchmen of the old stock. Germans, Italians and above all Jews are very prolific of Frenchmen who have the French qualities and defects. But this fact is only half consoling; for if these sons of metics are very acceptable Frenchmen from the point of view of intelligence and even of heart, it is impossible that they can be very French from the point of view of patriotism. The thing happens, I am told. I know it, but I know also that it is rare. The headquarters of the anti-

patriots are among the sons of metics, and above all it is among the metics that you find the bulk of the indifference to the idea of "my country." So, as M. Edouard Petit says, in that language which is all his own, it is paucinatality which contributes chiefly to the enfeeblement of patriotism.

It is remarkable in any case that the decline of patriotism among us coincides very exactly with the diminution of the birth-rate among the true French. One way to batter into ruin that patriotism so odious to some is not to have children. When a teacher becomes a father I wager that his colleagues say to him: "You are a begetter of children, you are not one of us." If they don't say this it is because they don't understand the situation.

I have said that through fear of responsibility the Frenchman does not beget children and he brings up badly those he does beget. I pass to the examination of this second assertion. Nothing frightens a Frenchman so much as to bring up his child himself.

When a girl is in question the French father never has anything to do with it; he leaves her to her mother, and that is always a great error. I hasten to say that the father, occupied outside by the sacred duty of supporting his family, cannot devote a great deal of time to the education of his daughters or even of his sons. Still he ought to give, and with a good deal of authority, the general direction. I should almost say that the education of the girls especially concerns him until they reach a certain age, fourteen years or thereabouts. The mother has a number of feminine qualities which she communicates insensibly to her daughter, and nothing could be better. But she has also a number of feminine defects which ought to be counterbalanced by a masculine influence, the paternal. These defects, which the mother cannot combat in the daughter, which she cannot even help giving her, the father must point out to the girl, always of course declaring that her mother is free from them and emphasising the mother's freedom from them as a method

of combating them. But anyhow he must point them out and condemn them.

In parenthesis, he will correct them a little at one blow in the mother too, by combating them in the daughter with an emphatic denial that they exist in the mother. Lack of system, nonchalance, laziness, eternal procrastination ("we have plenty of time"), inexactness, loquacity,—I say no more—how can you ask that a French mother cure her daughter of all those faults? By her example? You are joking. By words? More possibly; but you know that if one corrects one's own faults but little, it is because one takes them for qualities and congratulates oneself on them through life.

So, up to a certain age it is very important that the father intervene, very tactfully of course, and with the necessary discretion, in the education of his daughters. Royer-Collard had as much authority at home as in political assemblies, the rarest thing in the world in the case of a statesman. He was very imperious with the Misses Royer-

Collard. He said among other things, "You are not going to be young ladies; I shall prevent it." I don't know whether he did prevent it, but I know that he understood the duty of a father to his daughters.

The majority of French fathers, in regard to their daughters, content themselves with seeing them grow in grace, in charm, in accomplishments, and do not bother themselves about anything else. The responsibility of so delicate a task as the education of their daughters would seem to them heavy. They are so many Chrysales. Have you noticed that Chrysale did not bring up his daughters at all? Both of them were formed by their mother. Philaminte had a direct influence on Armande, who became a blue-stocking. She had an influence of counter-effect on Henriette, who, having the temperament of her father, reacted against her mother; but her reaction went a little too far, was a little too aggressive, too obstreperous, so that she is somewhat common and talks like a soubrette. "There

is no down on that girl," says Jules Lemaître. Or, if you like, Philaminte formed Armande, and it was as a reaction against Armande that Henriette passed over, very wittily, to the trivial. Poor Chrysale did not even influence his sister. She sided with Philaminte as with a very distinguished person whom she was proud and happy to call sister-in-law. But she, like her brother, was of the nearly plebeian stratum of the bourgeoisie, so she became a very vulgar Philaminte, reading nothing but novels and confining her pedantry to pride in being able to spell; a provincial blue-stocking. So far was her brother from influencing her and from being able to say, "My poor good sister at least is left to me." We have many fathers who resemble him. Plenty of heads of families in France are Chrysales.

There is an extremely serious point in the education of girls in regard to which this fear of responsibility is pushed to the most ridiculous degree and also constitutes a very grave danger. To tell the truth it is the

mothers who are concerned here and the fathers have nothing to do with it. I am speaking of the revelation to be made to the young of the relations between men and women. It is understood in most French families that this revelation is never to be made, or is to be made only two or three hours before the wedding. Nothing could be more dangerous. Either the girl remains ignorant, which happens oftener than one thinks, or she gets her information from young friends. In the first case, she is exposed to grave perils; in the second, her information is confused, disquieting and indecent. The mysteries of life ought to be taught clearly, chastely, seriously, gravely, since they are in fact the most serious, grave and chaste of things. But the mothers recoil before the responsibility which they think they incur in teaching these mysteries. To rub the down from a daughter's soul seems to them a bad action. Do they prefer to have somebody else do it? No, not exactly; but they postpone doing it indefinitely, until the time

comes when they tell themselves vaguely, not wanting to be sure about it, that it has been done. There is here a very characteristic lack of courage, which is at the same time a great imprudence. The girl ought to be instructed briefly and clearly in the physical facts of love as soon as she is a girl. The only way to make dangers avoidable is not to leave them unknown; and the only way to keep curiosity from growing unhealthy is to satisfy it wholesomely.

We see how numerous and how diverse are the phobias in regard to responsibility that exist in the French family. This people, so courageous, lacks civic courage and also family courage. Family courage is the first chronologically of all the courages. All the others rest upon it, or rather it is the atmosphere in which all the others must, if not exactly come to life, at any rate develop, find nourishment, maintain and renew themselves.

IV

IN POLITICAL CUSTOMS

THERE are two things in politics, the political constitution and political customs. The political constitution of the French, to begin with that, is founded on universal irresponsibility. Under the old régime there was a very real responsibility, that of the king. We are too apt to forget it, but if the king was absolute (which however is absurd) he was eternally and absolutely responsible and was made to feel so. Note that after the end of the civil wars of the sixteenth century the French crown governed despotically, but was continually checked by revolts. The reign of Louis XIII was a constant struggle of the crown against the nobility in insurrection; so was the minority of Louis XIV, with the magistrates and the

people added to the nobility; Louis XIV, when he reigned himself, had to struggle with the protestants whom he had imprudently provoked, and he was always uneasy about the parliaments and lived always as though on the eve of a Fronde. We must understand that the monarchy, called absolute, felt itself continually menaced and consequently felt itself very responsible. It had moments of the intoxication of absolute power, but was always haunted by the confused feeling—sometimes a very definite feeling—that someone existed close at hand who demanded an account or would some day demand one. Its intermittent wisdom held fast to that idea; its folly lay in not understanding that it was bound to organise that confused and indeterminate responsibility, that a despotism tempered by insurrection or by the fear of insurrection is a despotism menaced, a despotism intimidated, but not a tempered monarchy; that the responsibility must be determined in order to become normal and fecund of happy

results; that insurrection must be disarmed beforehand by giving freedom of speech to the opposition, and that one does not find the people against one if they have permission to speak and their words are heeded. But still responsibility existed and was very distinctly felt.

So much the more in that the crown felt itself, though rather vaguely, I admit, a usurper. It knew that a constitution had existed, that the kingdom had had "fundamental laws," binding the king, inviolable by the king, which the king had allowed to fall by degrees into desuetude, particularly in the interests of civil troubles which are always useful to the conqueror, but fundamental laws which had existed and which still virtually existed. I do not know a single political writer of the old régime who maintained that the monarchy of France was a despotic monarchy. They all said that there were laws above the king and that the king could not do anything he liked. When the crown said—and it said it a hundred

times, addressing the parliaments—that the legislative power was the king, it knew that it was not speaking the truth and it was perfectly conscious of itself as a usurper.

The clergy only told the crown pretty constantly that it was sovereign, holding its power from God alone; but in the same breath they fastened upon it a very formidable responsibility; they cried that it was responsible before God and that it owed an account to God for what it did against the people or without troubling about the people.

I shall be told that this responsibility may appear slight, indefinite, because it is infinite, and that the crown might say like Tartuffe, "if heaven is all . . ." We must not take the matter quite like that; we must not take it as though the clergy had whispered that to the crown in privacy. They said it aloud, and here is where temporal responsibility begins. They said it aloud and the people heard it as plainly as the king and seized in it the idea of royal responsibility.

To govern justly was a duty to God. True, but it was a duty to the people to govern them as God wished them to be governed. Here was displayed again, though enfeebled, the old intervention of the spiritual power in matters temporal in the name of a sovereign God, an intervention which had often been so effective and so salutary in the case of barbarous princes. Notice that a sovereign who fears God feels a heavier responsibility, though he be an absolute prince, than a sovereign chosen by the people and holding nominally from the people. When the church said, "All human power comes from God," it is generally believed that it crushed the people beneath the sovereign. Take care! In saying to the king that his power came from God it made him at one blow responsible before God to a terrible degree. On the other hand the sovereign who says to himself that he holds from the people alone, feels that he really holds from no one, that his claim rests on nothing but success, that he will be popular as long as he

is fortunate and that he will be detested, abandoned, overthrown, when fortune turns against him. The sovereign accountable to God makes a pact with God; the sovereign accountable to the people has made a pact with chance. We must keep this in mind.

I admit, I have admitted, that in order that the pact with God may have a salutary effect, it is necessary that the prince have the fear of God; and it must be admitted also that it was exactly this fear which was noticeably feeble in the breasts of our kings of the old régime, except the last one. But I wish to make it clear that under the old régime, if constitutional responsibility did not exist, a responsibility nevertheless did exist, and even in a triple form—responsibility to God which did not cease to make itself felt; responsibility to a constitution "which had never been anything but infringed," as Mme. de Staël wittily said, but which nevertheless existed in idea and was often recalled by the lawyers; responsibility to the people, before whom the king, precisely

because he had destroyed the intermediary bodies, felt himself to stand alone in case he committed a serious fault, a thing to make him reflect and fear.

In our day we have so constitutionally limited the responsibility of power as to make it practically nil; and by political custom, altering the constitution, we have reduced to nothing the responsibility already feeble constitutionally of the central power and its agents. The president of the republic has fairly large powers; he can prorogue the chamber of deputies for several months; he can, with the consent of the senate, dissolve the chamber of deputies and send them to the country for a fresh election; he can, by use of the suspensive veto, order the chamber to reconsider a bill passed by them. It is curious that all these provisions have become dead letters, existing only on paper, and are in practice as though they were not. Since the dissolution of the chamber by President MacMahon on May 16, 1877, no chamber of

deputies has ever been dissolved. Never since 1871 has the president brought about the reconsideration of a bill passed. Never since 1877 has the president prorogued the chamber. More; constitutionally the president has the right to communicate his ideas to the chambers by messages. Thiers made frequent use of this method of government. It is a method of government in this sense: the president does not really by his message issue an order of any sort, but if there is discord between him and his parliament, he makes the nation judge, and the nation will either declare itself against him by electing the same deputies, or for him by electing others. It is therefore a responsibility that he takes, and an indirect method of government that he adopts, when he addresses a message to the chambers. Never since MacMahon has this method been employed.

And finally, by the constitution, the president is irrevocable for seven years. The chambers recalled one president, Jules Grévy,

without any formal act of revocation, because that would have been unconstitutional; but they gave him the hint to resign by using the famous formula, "the chamber . . . the senate . . . awaiting a communication from his excellency the president."

The result of all this is that, in the happy phrase of M. Aulard, a real constitution has replaced the legal constitution, and so completely that no one would dare to violate the real constitution in order to apply the legal one, and that to act constitutionally would appear shamelessly unconstitutional. And this real constitution is contained in one word: the president of the French republic is a cipher. Or in another word: there is no president of the French republic.

This is so true that a statesman who is elected president of the republic feels simply that his political career is ended. It is ended, totally and forever, for as president of the republic he has no duty but to do nothing and to say nothing. And even after his term expires, since usage will not allow an ex-

president to become either a senator or a deputy, he must go on doing nothing and saying nothing. The office of president of the republic ostracises a statesman all the time he has it and all the time after he has had it. It annihilates him by lying upon him, and obliterates him when it leaves him.

These principles, which are inscribed nowhere and which are in force just the same, are so strong that a president who was not in accord with his ministers, M. Loubet, did not dismiss his ministers, not prorogue the chamber, did not dissolve the chamber, did not demand reconsideration of a bill passed, did not address messages to the chambers. But sometimes at a dinner or a reception he made some utterance directly opposed to the policy of his ministers. Thus he salved his conscience, but he brought vividly into view the "real" constitution and the strange paradox it involves. One might have said to him, "If these are your views, why do you not employ constitutional means to make them known, and constitutional means to

make them prevail, within the limits set by the constitution?" And since he did not act thus, it was easy to read between the lines of his speeches this proposition, "According to the real constitution I have none of the rights given me by the legal constitution, and I cannot talk like a private citizen, and as for action, I cannot act in any way at all." There is in France no president of the republic; there is no head of the state.

This is a very important thing to consider because it amounts to saying that France is a pure democracy. When I set forth the disadvantages—redoubtable in my opinion—of pure democracy and of the results that will follow, and very rapidly, in its train, I am answered with the ancient democracies and with the democracy of the United States. But this is a confusion between a republic and a democracy, and no confusion is greater. The ancient democracies never existed: so much for them. And the American republic is not a democracy.

The ancient republics were aristocracies,

except, for a very short period, the Athenian republic; there democracy finally established itself, and coincided, by the way, with the decadence of the nation. The Spartan republic was an aristocracy. The Roman republic passed without transition from aristocracy to government by one. I probably need not mention that the republic of Venice was radically aristocratic.

As for the American republic, it is a constitutional monarchy and nothing else. With his large powers in foreign relations, and in domestic affairs with his ministers who are not responsible to congress, with his right, which he uses, of initiating legislation, with his right, which he also uses, of appointing all the functionaries of the state, the president of the American republic is a sovereign. He is one so much the more in that if his ministers are not responsible to congress, neither is he, since he was chosen not by congress but by the people. At bottom and in all reality the president of the American republic is a very powerful constitutional

monarch, who need consider nothing but the public interest and need take pains about nothing but public opinion to be popular, to be re-elected, and when he has been once re-elected and cannot be again, to be honoured in his country. He is a sovereign *pro tempore*, but a sovereign. An ambassador from France to the United States said to me, "The president of the American republic is incomparably more a king than the king of Great Britain, and more an emperor than the emperor of Germany."

There has never been and there is not in the world to-day a pure democracy, unless it be the French democracy. That is why we are studying it. We must study it in order to foresee what it will become, to criticise it and advise it in view of its future, to reason about it almost in the abstract. We are a good deal reproached for it, but we cannot do otherwise and cannot be made to do otherwise. We base our reasoning on some memories of the Athenian democracy, which it is true existed but only for about half a

century. That is what Rousseau did before us when, in spite of the *Contrat Social*, he attacked pure democracy. We reason a little too from the French revolution which we consider—in the course that it ran, in the curve that it traced from Mirabeau to Babeuf—as the schema of the history of democracy, as the prophetic foreshadowing of pure democracy. We reason a little also from the history of the third French republic, with the tendencies it has shown, the direction it has taken; and we announce the democracy of to-morrow as a prolongation of the democracy of 1871–1911,[1] as the progressive radicalisation of the democracy of to-day. But finally we reason chiefly in the abstract, considering the very essence of democracy—that is, absolute equality—and affirming that French democracy will approach more and more closely to its essence, more and more closely to pure democracy.

Is it legitimate to reason thus, and is it

[1] This book was written in 1911. *Trans.*

impossible that democracy will correct itself as it advances, amend itself while affirming itself, and itself create the counterpoise it needs?

Yes, I think it is legitimate to reason thus, and I do not think that French democracy is correcting itself as it develops because—and how clearly the American, Barrett Wendell, sees that in his *The France of To-day*—the nature of the Frenchman is to be radical, to be ideologistic, to pursue his ideas to the very end, to have no fear but quite the contrary in considering whither his ideas will lead him.

Nothing is more true. When France was for the establishment of catholicism, she saw without alarm and without pity, even for herself, she saw with almost unanimous satisfaction, two millions of the best and most useful Frenchmen forced to leave her that this idea might be realised: one only religion of the state and one only religion in the state. Passionate ideology! "Let the colonies perish rather than a principle."

When France was nationalist, that is to say enamoured of the principle of nationality, she preached and dogmatised against herself, against her evident interest; she fought herself, shed blood against herself, to create nations against herself, in order that this idea might be realised: great nations grouped according to race and to language. Passionate ideology. Let us not deceive ourselves, one of the Frenchmen most typical of the French intellectual character is Napoleon III.

If France is made like this intellectually, I have no doubt that since she is taken with the democratic idea she will push it to the end in a straight line, by the shortest road.

And that is why I reason abstractly on this question; in the first place because the fact of democracy is a new fact, so that we can hardly do otherwise; in the second place because having to do with a people which itself acts in the abstract, on abstract grounds, it is a fairly just method to reason in the abstract about what it will do with itself.

To sum up this digression, France is a

democracy enamoured of pure democracy and tending with all its force to realise pure democracy.

Am I far from my subject? I do not think so. France is a democracy tending to absolute democracy. That is why she organises herself spontaneously, almost automatically, on the principle of absolute democracy; and this principle is in the first place absolute equality and next that responsibility be lodged nowhere and that no one be responsible. The Athenians during the period in which they were a democracy had no government; they were governed by the mass of citizens who, like every mass, were responsible to no one, unless to history, which, to be sure, has brought it home to them. Well, how shall we suppress responsibility? By dividing it, subdividing it, dispersing it, scattering it so that you cannot get hold of it anywhere, so that none can say of any man, *is fecit*. That is exactly what our constitution has done, and our political customs still more than our constitution.

In France the governing power is parliament. It is not the fictitious head of the state; we have shown that. It is not the ministers, who, in perpetual subjection to parliament, govern and administer at the dictation of parliament, and are nothing else than the executive agents, the clerks of parliament. All governing action takes place in the two chambers. Now, the members of parliament are irresponsible because there are nine hundred of them. Each one when he makes a decision feels himself covered by all the others and holds the just view that a man would have to be very malicious to find fault with him. The sole governing power resides in a confused mass which offers no point to which a man can address himself when it is a question of complaint, reclamation or indignation. Montesquieu's great theory of the separation of powers is a theory of responsibility. The head of the state is responsible, and his ministers if they govern; the judge is responsible if it is clearly understood that he cannot transfer his re-

sponsibility to a government which gives him orders. The legislator is responsible if he is not innumerable; and if on the other hand he is not a confused power, which, legislating, governing, administrating, and even encroaching upon the judiciary, assumes in appearance so many responsibilities that really it has none at all.

For it may be objected, but the objection will not be just, that a fine example of thirst for responsibility is furnished by a legislative body which makes itself everything, legislative power, executive power, administrative power, judicial power, which so to speak invites all possible criticisms. But I say that the objection is fallacious because by taking everything on oneself one takes nothing, directly, formally, explicitly. France feels that it is governed, administered and even judged by its deputies and senators; but besides the fact that they are a crowd, what divides and distributes their responsibility is that it is by an executive power, an administrative power, a judicial power, that

parliament governs, administers and judges, so that no one can tell what quantity of power or influence parliament introduces into each of its powers. Thus in its capacity of government, of administration and of justice, parliament is an occult power and France feels itself governed, administered, judged by a power occult and intangible.

And moreover, because parliament has a finger in everything as an occult power, when it is on its own ground of legislation it escapes its responsibility there because it does not appear to be on its own ground even when it is, since it is incessantly on all the others. The ubiquity of parliament covers it even when it is minding its own business, because it diverts the attention which might be directed to its business and to it while doing it. The members make laws, but they do so many other things that one does not regard them exactly as legislators. They make laws, but it is so secondary a part of the mission they have undertaken that it is not the part that chiefly draws the attention

of the public, which moreover can only be uncertain and confused when it is directed to the other things they do.

The great defect of parliamentary government is that it is a sort of syncretism; when its various mechanisms are not precisely differentiated and distinct, legitimate criticism drifts, wanders, does not know where to take hold, has consequently a sense of impotence and ends by reducing itself to a sort of indifference and resignation. We are governed in the artificial shadows which they have skilfully created so that neither the governed may know whom to blame nor the governing know very clearly what they are doing. We are governing and governed by touch. . . .

"Bah, that is all rhetoric!"

Why then, consider a recent example. In the affair of delimiting Champagne, the government makes a decision—good or bad, that is not the question. This decision having caused an insurrection in Champagne, the senate, on interpellation, decides that

there should have been no act of delimitation and censures the cabinet for this act. The cabinet has only one thing to do, to resign. They do not resign at all, but put the matter in the hands of the council of state by the expedient of the blank resolution, that is to say, they charge the council of state with making the law. The chamber in its turn discusses the affair with many protests against the senate, and declares its confidence in the government. What confidence? It is not to the government that it should have accorded confidence in this matter, for the government had disclaimed it. It is to the council of state, and the order of the day of the chamber should have read as follows: "The chamber having heard the government, which has no opinion, and having none itself, and relying on the council of state which it begs to have one, passes to the order of the day." So true is it that in this matter, at this time of writing, we are not governed by government, which has no opinion, nor by the cham-

ber, which has no opinion, nor by the senate, which has its opinion and takes no account of it; we are governed by the council of state, which has no mandate to govern and is nothing but a consultative body. This is a situation unconstitutional in the highest degree.

But what is at the bottom of this unconstitutional situation? There is the horror of responsibility and the effort of everything but the senate to get under cover. The government has divested itself of power, has no longer a will and doesn't wish to have any. The chamber, expressing its confidence in the lack of will and opinion of the government, declares vivaciously that it is without will and opinion itself. Everybody except the senate hides from responsibility by handling it over to a council of legislation and administration which has no power to legislate or administer.

The ideal of all these gentlemen seems to be to have that body decide which cannot be called to account. The passion for hiding

from responsibility is here caught in the act. For is it not strange that a government already irresponsible because it is nothing but the executive agent of parliament, should hide from a shadow of responsibility by transferring the burden of decision to a body which does not form part of the government; and that a chamber already irresponsible because of its size, shirks the shadow of responsibility by transferring it to a government which transfers it to a third party, and by confiding itself to a government which confides itself to someone else?

Scatter the responsibility so thoroughly that it cannot be taken hold of,—that you see is the way.

If the government is irresponsible the agents of the government are no less so and may be more. We know well enough what individual liberty is in Great Britain and in the United States, what is its safeguard and what causes it to exist. What causes it to exist is that you, a private citizen, can prosecute a functionary who

molests you even in the exercise of his function. The Anglo-Saxon legislator understands that there is justice to be invoked against an agent of government as well as against an equal, and even that you are quite likely to find a molester or oppressor more frequently in a man powerful by office than in an equal. Therefore in England and America you can bring suit against a functionary who, even in the exercise of his functions, seems to you to have injured you.

In France you cannot do it. You really can do it, but if you do, the functionary makes a plea of incompetence which brings the case before the court of conflicting jurisdictions. This court, being composed chiefly of functionaries of the state, cannot decide for the private citizen as against the functionary. As a matter of fact, the right of a private citizen to bring an action at law against a functionary does not exist in France.

And when one thinks that it might exist without increasing very much or at all the

responsibility of the functionary! From the moment when the judiciary depends so completely on the government—one knows why—that it denies that it can find against government in favour of a citizen or thwart in any way the wishes of government, why need we rob it of jurisdiction over functionaries attacked by citizens, since it is highly probable that it would never exert this jurisdiction in favour of the citizen and against the functionary? Ah, no. It is not enough for the bench to consider itself as an agent of government to assure the irresponsibility of the other agents. In order that this irresponsibility may be intangible, we must also have for these agents a system of exception and privilege. That multiplies the assurances and the safeguards of the infallibility of the functionary. How fortunate the functionary is in France, and how he can take his ease!

In reality he is not so fortunate nor so much at his ease as one might suppose. He is terribly hampered and terribly responsible.

Univ. of Mich.

But he is hampered by those who ought not to hamper him, and responsible to those to whom it is essential that he should not be responsible. He must in the first place render an account to his government; that is absolutely legitimate and unattackable. But then he has a much more delicate account to render to that occult government of which we have spoken. He must administer his office in the interest of the senators and deputies of his region, and against the adversaries of the deputies and senators of his region. The occult government makes no other demands upon him and has no imperious requirement but this. This is a matter on which I have insisted elsewhere and I need not dwell further on it here.

The result is that the functionary, irresponsible to his fellow-citizens, for he is not elected; irresponsible to the courts, for he is not amenable to the courts, is responsible to a set of quasi-irresponsibles, the members of the chambers, and to persons—these same members—who, in regard to the services they

have been able to require of him, are completely irresponsible.

In fact, before whom does the member of parliament come, his term completed, to render an account? Before his party. On what does his party interrogate him? It may ask him how he has voted, what laws he has made; but it will never ask him whether he has exerted an influence, an intimidation, an abusive pressure on the functionaries of his department. On the contrary, if it should have any reproach to make to its deputy on this head, it would be for not having displayed enough energy in making the functionary act in the interest of the party.

So the government functionary, irresponsible to justice, is responsible to quasi-irreponsibles, who, in regard to what they makes him do, are altogether irresponsible. It follows that the functionary has not the kind of responsibility that would be useful, but the kind that is fatal; he is not responsible in the direction of the public good and he is

closely responsible in the direction of social injustice, with which he believes he is entrusted.

Such is this government, founded, in principle and appearance, on right, reason and equity; in practice and by the way it has been distorted, so dangerous to reason, justice and the general good. In a word, we have founded an impersonal government which has become irresponsible, and I know nothing in the world more dangerous.

The remedies would be of two sorts, constitutional remedies and moral remedies.

Constitutional remedies: one thinks at once, naturally, of monarchy. It is quite natural, since democracy is advancing towards despotism because it is impersonal, to think of monarchy, which, being essentially personal, might establish the safeguard of liberty. I think this would be an error. People always say: there is no one but a king who can be above all parties and who, being above all parties, can think solely of the public good and even of the liberty of each, precisely because he does not wish one party

to control the others, oppress the others and therefore himself, so that there is solidarity between the liberty of the crown and the liberty of the subject.

This is not bad reasoning, and it is a pleasure to explain or sum up the opinions of persons who reason so well. But if we consult the facts and if we recall our history, whence does it arise that there are as many parties contending for power under a king styled absolute as in a republic? The fact is incontrovertible. Under every king there have been parties, that is to say coteries, each having its chief, its lieutenants, its clients, its sportularies, and each one, profiting by the shortcomings of the others, disputing the royal favour and obtaining it in its turn as well by the faults of the others as by its own intrigues; these parties succeeded each other in power exactly as our parties or fractions of parties succeed each other now; from which it results that there is no more continuity in public affairs to-day than there was under the old régime, but also

that there was no more continuity under the old régime than there is to-day.

People are forever repeating after Renan in his *Réforme intellectuelle et morale* that a man with the faculties of a great statesman could never become minister to-day, for the reason that he could never become either deputy or senator; that it was a good deal easier for Turgot to be minister in 1774 than it would be to-day; that in our day his modesty, his awkwardness, his lack of oratorical talent, would have stopped him at the threshold; that "in 1774 it sufficed for success to be understood and appreciated by the abbé de Viry, a philosophical priest who had the ear of Mme. Maurepas." Nothing is more true; but they forget to add that Turgot, if he arrived very easily, departed more easily still and that he retained power only two years, was overthrown by an intrigue, and never regained it.

Those who emphasise the merits of royalty assume always a very intelligent and very obstinate king who knows how to choose his

ministers and how to keep them, maintaining himself at as great a height above the parties as he can, which is absolutely. Such a king was Louis XIII, dominated perhaps, but insisting so firmly on being always dominated by the same man, who was a man of genius, that I consider him as the most intelligent and most energetic of all our kings. Such a king was Louis XIV, at any rate during the first half of his reign, in which he sustained Colbert and Louvois against all their enemies and even against each other. The theory of the king who is very intelligent, very firm and above all parties, is then not a pure assumption; but still it rests on an exception and it is not on exceptions that theories should be built. The truth is that since nothing is rarer than a firm and intelligent king, there is strife of parties and succession of parties to power and consequent instability under a king as much as in a republic.

Add what I have sometimes said before (but it is the duty of a political theorist to repeat himself) that as far as France is con-

cerned, considering that the republic has existed for eighty years, it is the first virtue of the political man, in view of the respect due to important facts and rooted traditions, to accept the republic and only to try to find the best in it. I say that the republic has existed in France since 1830 because when the monarchies dispute the throne in a nation, the tendency is towards a republic as the necessary solution, and virtually it is there already; even physically it is there already since it is governed by a monarchy not universally admitted, which is the very essence of monarchy, but almost universally contested. Whence it follows that it is governed by a party, that it is governed for a time by a party, and that is the very essence of a republic.

It is then profoundly true that France has been a republic for eighty years, which is a considerable fact and one so long in existence that we must accept it. In 1911 it is essentially traditionalist to be a republican.

Setting aside absolute monarchy (or parlia-

mentary monarchy in a consultative fashion, as was the monarchy of the old régime), should we have recourse to a strictly parliamentary monarchy, monarchy, that is to say, in which the king reigns and does not govern, in which the party of the majority governs, legislates, administers and judges? Since, try as I will, I can see no manner of difference between this form of monarchy and a republic, unless it consists in the existence of a civil list, in solicitude for my own time and that of the reader I shall not say a word about parliamentary monarchy.

It is proper then that France remain a republic, and it would, in my judgment, be an immeasurable misfortune for her to waste her strength in an attempt to restore a monarchy contested, hampered, trammelled and very probably ephemeral, and which if it were not ephemeral would prolong as long as it lasted strife, opposition, civil discord and waste of strength.

So let us be republicans, but one can be a republican without being a democrat,

especially a narrow and superficial democrat, to use Renan's phrase. It is a question of making a republic that will work, and that, like all the republics that have lived, will be a republic with a democratic base and containing an aristocratic element. The aristocratic element exists in the nation; it always exists. But the sport, the paradox, the irony of institutions may be the fact that though it exists in the nation it is very carefully eliminated from all the governing powers. That is exactly what happens among us.

The aristocratic element in a nation is all that part which has enough of vitality and of cohesive force and of sense of responsibility to form a group, an association, an assemblage of parts, an organism, to become a living thing, that is to say, a collective person. An aristocratic element is the body of barristers; an aristocratic element is (or it might be with another organisation and another spirit) the judiciary; an aristocratic element is the body of physicians; another is the army, by

which I mean the body of officers; another is the chambers of commerce; another is the cities, at any rate the largest, with their past, their traditions, their *amour propre* and their sense of long-descended responsibility, of responsibility to their ancestors and to their descendants; another element (and they are well aware of it) is the labour-syndicates.

I am only giving examples. Everything in a nation that is not purely individual is an aristocratic element. These are the elements which in France are eliminated from the public power. A curious detail: through party-preoccupation, the constitution of 1875 almost eliminates the great cities from the election of senators, at just the time when as great moral persons the cities should have had a more considerable representation than that of the country districts, and the aristocratic author of the constitution of 1875 in this respect produced a piece of the most thorough democracy.

It is the aristocratic elements which

by elective representation ought to form, and, in my opinion, exclusively, the upper chamber. This upper chamber would represent everything in the nation that has cohesion, collective vitality and the sense of collective responsibility. And this upper chamber alone would perform the legislative function, having alone, in my judgment, the capacity to do so.

By the side of this chamber, the other one, elected by universal suffrage and absolutely necessary in order that the government may know the state of popular opinion, would have the right of veto over the laws made by the upper chamber. For the people, being absolutely incapable of knowing what they want, but very capable of knowing what they suffer and what they do not want, should in consequence be represented by persons who do not make the laws but who have the right to reject laws they do not want.

Finally, the president of the republic, elected as in the United States by the nation

in a constitutional sense, that is, not by direct universal suffrage but by universal suffrage at two removes (for instance either by the general councils or by the provincial councils) would have so much authority as would make his opinion to be reckoned with; he would not be simply the humble servant of parliament, a simple supernumerary magistrate, before leaving and in fact from the moment he takes office; he would not be from the moment of election simply a future ex-president, which he is, neither more nor less, under the present régime. But he would have, by the messages he would dare to write, by the right of second deliberation which he would venture to exercise, by his right to dissolve even the senate, which he would venture to exercise, the preponderance which the head of a state must needs have if governmental responsibility is to be centred anywhere.

Objection. But is it true that in the France of to-day the aristocratic elements that you mention are really aristocratic

elements? What cohesion and what collective vitality does the French bench exhibit, and what collective person does it constitute? What collective person do you find in the army or the university? What in the chambers of commerce? What in the cities? Don't you see that there is no cohesion, no collective vitality and no common feeling of responsibility anywhere, except perhaps in the oldest and the newest of corporate organisms, the clergy and the labour-syndicates?

The objection is very sound. It is quite evident that if inorganic democracy is present in our institutions it is so because it is in the facts, and it would be very strange if it were found in the institutions without being found in concrete reality. However *à-priorily* and ideologically institutions may be created among certain peoples it is still true that the facts of life, when they are overwhelming, impose themselves upon the institutions and make their way into them as if by force, and if considerable

and powerful aristocratic phenomena existed in France they would have forced an entrance into legislation and coerced the legislator, willy-nilly.

Yes, it is because the spontaneous and natural aristocracies of France are relaxed and enervated that no account is taken of them in the constitution. It is because the bench is nothing more than a corps of functionaries, as obedient as the highly respectable corps of excise officers, that no occasion has suggested itself for considering it as an aristocratic body. It is because the university, the army, the cities, commerce, have an existence far more formal than personal and far more dependent on the state than corporate in themselves that they quite naturally failed to appear to the eyes of the legislator as great collective persons. It is because the people of France have rather become "human dust" and "a heap of sand," according to the consecrated phrases of aristocratic writers, that the French constitution takes no account of cohesions and

collectivities. And it is because the French people are purely demos that their system is democratic.

"And the conclusion is that you reason *à priori* and as a sheer ideologue, in demanding an aristocratic organisation for a people that contains no aristocratic forces."

I beg your pardon! I have been talking not of aristocratic forces but of aristocratic elements, which I say always exist. These bodies have no strong collective life, but they exist nevertheless and are collective bodies. And provided these bodies exist, the sense of collective vitality and the sense of collective responsibility can be given to them or increased in them and developed from feebleness to strength by according them great importance and a great place in the state.

The law of the cause which is effect and the effect which is cause applies perfectly here. It is because the aristocratic elements are feeble in the nation and because every individual and every corporation vies with

every other in saying "the state is everything, let it do everything," and because there is therefore no great difference between corporations and individuals,—it is on this account certainly that our régime is grossly democratic. But it is also true that if we should take account of these aristocratic elements, feeble as I admit they are, if we should consider them as more important social forces than "the dust" and should therefore entrust to them the most considerable part of government, then we should be driven to develop in them the sense of collective vitality and of collective responsibility, to give them a conscience or make their feeble conscience strong and form them doubtless into very great and considerable moral persons.

All that I have been describing is in my judgment entirely necessary to the institution and the existence of a republic. And I think that all I know of history, ancient, modern and contemporary, supports my

theory, or at any rate gives less support to the opposite theory, which is a great deal. But I recognise that, without being right, those persons are not entirely wrong who say that the constitution is not of much importance and that the best constitution is always the one you have, if you know how to use it with intelligence and with unremitting preoccupation with the public interest. Taken in this way, we could make a fairly good job of the constitution we have, on the condition of using it in accordance with its spirit and not substituting a "real" constitution for the legal one.

We have a senate which is not at all what it should be, that is, aristocratic in my sense of the word; which, given the organisation of its electoral colleges, is elected solely by the prefects and which will therefore always represent the government of the moment rather than the nation; which may perhaps be very much more "democratic" than the chamber of deputies if we establish the *scrutin de liste* with proportional representation as the

method of making up the latter; in a word, we have in the senate a very poor legislative instrument. But still it represents the average of rural ideas; it is the chamber of the peasant; it will never be socialist; it is constitutionally composed of elderly men, which is a guarantee of relative prudence; it is renewed by fractions, which is a guarantee of order and of continuity in its labours; it is not very large, though it is too large and I should like to have not more than five hundred senators and deputies all told. But as the effect of an apparently insignificant detail of its constitution, that a senator's term of office is nine years, it is composed in part of political veterans, old deputies who are tired of making an electoral campaign every four years, and want a long legislative term. On the whole it is not a deplorable political instrument.

It would certainly hold the balance of power if it were simply to take it; if it did not hurry through its examination of the budget in a fortnight on the ground that there are

already eleven "twelfth provisos"; if it were not afraid to invite the president to require a second consideration of a bad bill passed by the chamber; if it were not afraid to invite the president to dissolve the chamber when an appeal to the electors is indicated; in a word, if it were not afraid to the point of panic of any sort of conflict, as if the reason for having two houses in any country with parliamentary government were not precisely that there may be conflicts, that is to say, that the laws voted by one house may be controlled by the other, with the result of unanimity when the laws are good but of conflict when they are bad.

But—and this is very curious—the superstition of democracy is so strong that the senate, because it is elected by universal suffrage at two removes, like the Assemblies of the Revolution, instead of by direct universal suffrage, like the chamber, believes and feels itself less legitimate and is always in fear of having its origin thrown in its face so that it seems to be continually blushing in advance.

Finally, the president has fairly extensive powers. The mere fact that he has them constitutionally shows him that he ought to take a hand in political life, that he ought not to resign himself to the rôle of figure-head, or to making pompous tours of the provinces and colonies as the travelling representative of the republic. Constitutionally he is the director of the national policy; this part he should play with discretion, with tact, but he should play it. Without imposing his opinion, save on altogether exceptional occasions and then in the constitutional forms, he should manage to have it always known. In most cases the presidential opinion will be only an opinion, but a considerable, an important opinion, an opinion coming from a high source and having great weight, not bearing directly upon deliberation but in the first instance upon opinion and then upon the mind of each senator and deputy, and finally and naturally upon deliberation and conclusion themselves.

On every important question the opinion of the president should be known to all. It is told as a fact that a former president of France said, speaking of the time when he was in office, "I held my tongue constitutionally." Isn't this a clear example of the superstition that reigns in the political world in regard to the "real" constitution? What! the constitution that gives the president the task of appointing ministers, of presiding over the deliberations of the cabinet-council, of provoking second consideration by the chamber, et cetera, this constitution imposes silence on the president? The constitution bids him hold his tongue? Then, since it is absolutely impossible to think without talking, and equally impossible to form the habit of silence without losing that of thought, the constitution means that the president should not think. That is curious.

I admit that if the ex-president meant to say, "the constitution gives me the right to keep still," he is incontestably within his right. But the circumstances show that he

meant to say, "the constitution imposes on me the duty of silence," and that is what is singular. It has been said that the silence of the people is the text-book of kings; but one cannot understand how the silence of kings can be the text-book of the people, and kings owe to the people the lessons they mean to give them. Now, the intimates of the president of whom we speak knew for certain that the president was not in agreement with his prime minister; it was important for the instruction of members of parliament and of the public, in order that they could make suitable and useful reflections upon it, that this divergence, without being emphasised, should be known. The president then is invited by the constitution to play a certain part and he ought in conscience to play it.

It is true that senators and deputies, jealous of being the sole governing power, have a tendency to elect to the presidency someone highly respectable but colourless and, either by age or by character, willing to be passive. They have often done so, and

the odds are in favour of their always doing it hereafter. The desire to have power without responsibility creates the desire to place in the chief position a man who is not responsible either and does not wish to be so.

Lastly, the judiciary, even as it is constituted, could, if it honestly and patiently sought responsibility instead of fleeing it, play a very important part, a very useful part, and the part it ought to play. Without doubt we must say in this case that the constitution itself invites the judiciary to efface itself and to be nothing but a docile agent of government. The great vice of the bench in France is that it is a career, like the department of registration, which one enters very young, at a very small salary and in which, as everywhere, one advances very slowly if he confines himself to the correct performance of his duties, and where, as everywhere, one advances rapidly if he renders services to the government. Well, a man seeks advancement, he is dominated by the care for

advancement, and he often does what is necessary to obtain it.

In England the bench is not a career; it is the crown of a career. There they make judges of old barristers, men who have achieved their career, and a brilliant one, at the bar and who have there formed habits of independence which they do not lose; moreover they have no reason to desire advancement because there is hardly anything left to advance to. In a word, the bench is retirement, very brilliant, and, in parenthesis, very well paid, but it is retirement. An English judge has all the reasons in the world for being perfectly independent.

We can see that these good effects do not always, do not absolutely, result from the institution but far more from usage. There is no reason why the bench should not be made a career in England, with all the resultant disadvantages which the thing has in this country. Simply it is not done, from fixed habit, from custom, perhaps from an obscure feeling that the dignity of the bench

does not permit it to be a career; the result is that without a single line of law on the matter, they have an excellent judiciary.

I say nevertheless that even with a constitutionally bad form of magistracy, even with the habit, bad also, of making the magistracy a career like another, our bench would be excellent if it wanted to be. It would suffice if it had, collectively, the sense of its responsibility which is enormous, the sense that it is nothing less than the keystone of the arch of a free country; that the citizen will not be free and therefore useful unless he feels that his rights will be acknowledged and sustained against the central power by a power perfectly independent and impartial. A bench penetrated by this idea would assure its independence by taking it, by affirming it, by exercising it. However greedy the government might be of complete authority and of omnipotence, it could not "purge" the bench every six months and it would have to put up with a judiciary independent, impartial and austere.

Good institutions are an excellent thing; but even bad ones can be made good in practice by the way we use them. In particular it hardly makes any difference whether independence is secured by law if a man is independent by nature and if a body is composed of individuals who are naturally independent and do not allow themselves to be led.

We have, then, a constitution which certainly needs correction, but which even as it stands would not be worse than another whose imperfections are not apparent, if our character were better, more firm, more elevated, more autonomous. And this brings us to the last general reflections that we have to present to the reader.

V

FOR EACH ONE OF US

THE French character is not on as high a level as the French mind, and that is the cause of all the trouble. The French mind is of the first order. As a creator of ideas, a conqueror of knowledge, a creator of beauty, no mind in the world is the superior of the French mind or perhaps its equal. The French character is defective. "There are in France," said Renan, "as many men of heart and men of mind as in any country; but none of that comes to the fore." Why does it not come to the fore? What is lacking of the conditions that would bring it to the fore? Character, will. We are light, we lack perseverance, obstinacy, tenacity. We are prompt to give in. We are children, we are greybeards, we are never—I

speak of the majority—in the prime of life. Without being lazy—far from it—we like to lie back on those who make us work. It is the paradox of our nature. We like to surrender ourselves to the state while allowing it to impose even heavy tasks upon us. The basis of this paradoxical inclination is the lack of personal will, and this lack of personal will itself comes from the horror of responsibility.

It is not so much that we do not wish to act as that we do not care to have the results of our actions laid to our charge. No one likes better than we to say, "I wash my hands of it; it is not my fault; what would you have me do? I can do nothing about it because I have nothing to do with it."

We were fashioned to this shape by two centuries of brilliant despotism, of which we do not cease to be proud. We have accustomed ourselves to count ourselves as naught, and to expect that everything will be done by everybody without the aid of anyone. This is natural because in the old days everything

was done by the crown without any private initiative. We imagine to-day that everything is done by the aggregate without the will to act of any of the individuals composing the aggregate. All have replaced one, and nothing is changed.

But in fact everything is changed and a democracy cannot by itself, in itself, and by the single fact of its existence, replace a central will and a central intelligence. It must produce from its bosom, or from its bosom must spring of themselves, individuals who can will. Individuals who can will, who accept responsibility, who love responsibility, who unite in a common thought and will, and who accept and love common responsibility, these are aristocrats.

Whence it follows that a democracy can live only on condition of producing aristocracies or permitting aristocracies to produce themselves. That seems strange, but nothing is more certain. The vitality of democracies is measured by the amount of power they have to generate aristocracies.

And moreover it is not enough, as I allowed myself to say for a moment, that the democracies allow aristocracies to spring from them; it is necessary that the democracies be themselves aristocratic in the sense of having themselves a will and a taste for will. The individuals that compose them must have the sentiment of individual will, of individual tenacity; for it is only on this condition that they will understand the qualities of their aristocracies and support them, sustain them, love them, while keeping an eye on them.

A nation is an army which loves its officers because it understands their qualities and virtues, and it does not understand them unless it has them itself, in a rudimentary state but real and already strong. A nation is a collection of wills and an organisation of wills. The collection of wills is the nation itself; the organisation of wills is the aristocracies which it gives itself, which it approves and which it admires for their strength of will. The will of the people should be that its chiefs have wills. I frequently repeat

the remark of a candidate in a comedy: "Citizens, all that you will, I will more than you." The citizens ought to reply: "I have a will, and that will is that you have a will and that you know what you will."

The taste for responsibility is made up of self-respect and respect for the collectivity of which one is a unit. The individual must be able to respect himself, the collectivity must be able to respect its collective conscience and the duty that this imposes, the nation must be able to respect the national conscience and the national duty, which is to live as free men in all relations, domestic or foreign. The secret desire of every man to count on someone else, on a number of others or on all the others, is a surrender and a desertion. We have too many who surrender from indifference and desert from inertia.

We must react against this national fault, which has for its parents the natural mildness of our manners and which has been fostered, as it were with care, by long years of despotism. Never say, "It's not my

fault." It is everybody's fault, high or low, Never say, "I can't do anything about it." One can always do something if it be only to give an example of personal energy and to look about one for other energies, even very obscure ones, with which to join one's own and thus form a nucleus of social force.

I should not say, the kingdom of this world is to the energetic and those who are not afraid of being blamed. It is not a question of reigning but of living. Man lives by will alone. Goethe said, "A man does not die until he renounces life; he lives as long as he wishes to live." Perhaps this is not altogether true of individuals, but it is true of peoples. Nietzsche has talked a great deal about the "will of power." There is a great deal to be said about that; but there is a will of power that cannot be too highly recommended to and wished for those one loves, beginning with oneself; it is the will of power over oneself.

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