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CIVIL CODE OF FRANCE.

Preliminary Speech by Portalis upon presenting the first law of the civil code.

Citizens Legislators,

The government has considered as one of its first cares, the fulfilment of the wish manifested in the deliberations of our national assemblies for the formation, so ardently desired, of a civil legislation.

War, which has so frequently the effect of suspending the career of salutary projects, has not checked our operations relative to this great work.

Those operations commenced with the very constitution under which we have the happiness of living.

At the close of your last session, the plan of a civil code was distributed among you, in order that each of you might, in the bosom of his family, and assisted by the mildest inspirations of sentiment, meditate, as husband, child and father, the rules and maxims which he was soon to have to proclaim as a legislator.

At the same period, the plan of the code was sent to the tribunal of annulment (*Cassation*) and to all the tribunals of appeal, which appointed commissions composed of experienced men, capable by their worth and information, of doing justice to the task entrusted to them.

The observations that have been transmitted to us have been concentrated and printed. No work published upon the subject has been neglected.

It is impossible, upon such a subject, to have too much information. Truth, particularly in matters of legislation, is the good of all men. To endeavour to discover it is not a right which belongs exclusively to public functionaries. When private and well informed persons discuss, with good intentions, an object of legislation; when their sole aim is to offer the tribute of their knowledge to the country, we must consider them as auxiliaries and not enemies. Unhappily, after a great revolution, timid men keep silent; they seem to fear that their existence should be perceived. The indifferent, who are always the greater number, remain strangers to every thing that is passing. This is a grievous inconvenience; if bitter or discontented writers take up the pen their ideas *filtrate through their passions and are tinged with them.* The discovery of true or useful things is usually the recompence of moderate characters and good minds.

We must do homage to the zeal and the researches of the magistrates that have been consulted. By transmitting to us the opinion of those under their jurisdiction, and their own ideas, they have enlightened us upon important points. The principles of laws are always usefully discussed, when they are discussed by men who, from their situation, make the most extensive and various application of them.

Thus, at the same time that the courage of our armies ensured to us so large an accession of strength and of glory, the wisdom of government, calm as if it had never been diverted by other objects, laid in the interior, the foundation of that other power which commands more certainly perhaps the respect of nations; I speak of the power which establishes itself by good institutions and good laws. Foreigners, enemies, or rivals, are much more alarmed at the slightest advantage that a state can obtain over them by victory, than at any prosperity which may result from a well ordered administration. And this sentiment is natural; for the prosperity that rises out of the wise conduct of a government, recalls also the recollection of its virtues, and one sees in it a safeguard against the abuse it may make of the augmentation of its power.

It cannot be doubted, citizens legislators, that the ideas of order, of morality, and of amelioration, which have been followed with such constancy for two years, ideas which have been solemnly consecrated by you, have secured to us the confidence of Europe.

How magnificent is the spectacle which the French nation presents to the universe! On the same day in which treaties, concluded after so many negociations so gloriously terminated, are presented to you, I am charged to submit to your sanction the first of the plans of laws destined to form our civil legislation, and to open to you the general plan of the work. It is now true, that in this august sanctuary, peace and justice embrace each other. Not a moment has been lost. In the midst of war we were preparing for the enjoying of peace, and in peace our labours will be supported and encouraged by the grand recollection of all our triumphs in war.

Citizens legislators, before I open to you the general plan of a civil code, and make known to you the spirit in which that plan has been drawn up, it is of importance to fix your attention upon the nature and difficulties of such an undertaking.

What is a civil code? It is a body of laws destined to fix the relations of society, of family, and of interest, which men have with each other who belong to the same country. Each society has its civil right. That right cannot be formed but successively. A people become civilized by degrees; at first they are governed more by usages than by laws. General ideas of public good, notions of all that is useful and reasonable, follow the progress of knowledge. Some laws are published at intervals to correct customs and to supply them. Multiplied and frequently contrary decisions intervene to interpret and reconcile custom and laws. Soon this civil right presents but a confused mass of usages and of rules that terrify by their number and their diversity, and which it is impossible to reduce to system.

In such a state of affairs, would we refound or reform the civil legislation of a people? The first difficulty we experince is that of collecting and concentrating the necessary points of information, almost all scattered, and the greater part of which have never even been seriously sought after.

The civil right intermixes and connects itself with every thing. We are sure then to meet with all private interests when we desire to speak in the name of the public interest. Those who find much order established, hate changes; those who find it otherwise are afraid of something worse.—Each would at least convert these operations to his own personal profit, without being mindful of the prejudice that might result from them to others.

Formerly men of letters and philosophers disdained the study of jurisprudence; they were led away by the attraction of more agreeable arts, and still more by the mysterious politics of the times, which feared that men should occupy themselves with the affairs of society, and which believed that it ought not to tolerate any but literati, theologists and geometricians. But whilst this ancient indifference to the objects of legislation left a free course to errors of all kinds, the interest that is now awakened forces the legislator to a circumspection, salutary without doubt, but which renders his career infinitely more difficult and laborious—the legislator finds himself incessantly engaged with the system maker.

A multitude of other obstacles rose out of this variety of usages and privileges which separated and distinguished the ancient provinces of France from each other.

In short, the continual vacillation of the laws for ten years has delivered up the minds of men to every kind of doctrine, and is only calculated to keep up resistance and opposition.

Through all these difficulties it is that a civil legislation in France must develope itself.

In tracing the plan of the legislation, we were to fortify ourselves both against the spirit of system, which tends to destroy every thing, and against the spirit of superstition, of slavery, and of indolence, which tends to respect every thing.

From the middle of the 18th century there has been a great agitation in the minds of men. Our discoveries and our progress in the exact and in the natural sciences, have exaggerated in us the consciousness of our own strength, and have produced that active fermentation which has extended to all that has fallen under our hands. After having discovered the system of the physical world, we have had the ambition of rebuilding the moral and political world. We directed our attention to the different institutions, and we never fix our attention upon an object without reforming more or less, well or ill, all that has been done or said before; hence that croud of works which have roused warm imaginations, agitated our reason without enlightening it, and condemned us to live upon illusions and chimeras.

The prodigies that have been operated during the revolution, are well calculated to increase our confidence; but by the side of these prodigies have not the disorders, unhappily too well known, warned us of our errors and our faults?

Some persons appear to regret not meeting with *any grand conception* in the plan of the civil code that has been presented for discussion. They complain at seeing only a recoinage of the Roman law, of our antient customs, and our old maxims.

It would be a desirable thing to be able to attach some precise idea to what is meant by a *grand conception.* Would they express some daring novelty, some institution in the manner of the Solons and Lycurguses?

Yet let us not deceive ourselves—a bold novelty is frequently nothing but a brilliant error; the sudden *eclat* of which resembles that of the thunderbolt which strikes the very spot it enlightens.

Let us beware how we confound the genius that creates with the spirit of innovation that destroys or disfigures.

The institutions of Solon & Lycurgus, which appear to us so singular, had their roots in the manners of the people for whom they were made. Solon himself warns us to give a people such laws only as suit them.

Antient times have no similitude to our modern. In antiquity, nations were more isolated, and consequently more susceptible of being governed by exclusive institutions. In our modern times, when commerce has established more ties of communication between different states than there existed formerly between towns of the same empire; in which the same arts, the same sciences, the same religion, the same morality, have established a sort of community between all the polished people of Europe, a nation that should wish to isolate itself from all others by its maxims, would throw itself into a forced situation that would injure its politics and compromise its power, by obliging it to renounce all its relations, or which could not subsist if those relations were preserved.

The reproach made to the framers of the plan of having laboured, at least in part, after the Roman law and ancient customs, deserves to be appreciated according to its just value.

Does any one know of a people who framed an entire civil code, a code absolutely new, without any regard to any of the things done before their time? Ask history—she is the experimental physic of legislation. She informs us, that every where men have respected ancient maxims, as being the result of a long series of observations.

Never did a people give themselves up to the perilous enterprize of separating themselves suddenly from all that had civilised them, and of creating their entire existence.

The law of the Twelve tables was but the collection of the laws of the antient kings of Rome. The code of Justinian, and those of his predecessors, were but compilations.

In France, the excellent ordonances of the celebrated chancellor de l'Hopital, and of Louis the Fourteenth, were but the enlightened selection of the wisest dispositions found in our customs, or in the antient *depots* of legislation.

In our days, did that philosophical king Frederic II. do any more than collect with method the rules and principles which he received from the Romans, and which have civilized Europe? The general code of Prussia, which has been more recently published, is more extensive than that of Frederic; but it is only the wise and faithful guardian of all received maxims; it has even respected local customs.

Why then are we to be imprudent enough to reject the best inheritance of our fathers?

Yet, it must be confessed, that there are in the duration of states, decisive epochs in which events change the position and fortune of a people, in the same way that certain crises change the temperament of individuals. It then becomes possible and even indispensible to make salutary reforms; a nation then placed under a better genius, may proscribe the abuses that overwhelmed her, and resume, in certain respects, new life and vigour.—Yet, even then, if that nation has long been celebrated upon the earth; if she has long occupied the first rank among polished people, she ought still to proceed to the work of reform, with a careful step, a cautious hand, and wise precautions. Whilst she rises with the energy of a new, she ought to preserve all the maturity of an ancient people. We may use the scythe indifferently in a field overgrown with weeds; but from a cultivated soil we must pluck only the plants that check and encumber the useful productions.

In applying ourselves to our civil legislation, we have thought it sufficient to trace a line of separation between the reforms that are required by the present state of the republic, and the ideas of real order which have been consecrated by time and the respect of the people.

New theories are but the systems of some individuals; ancient maxims are the spirit of ages.

Without doubt, genius may discover relations hitherto unknown; but time alone can ensure to the productions of genius homage and partisans, because time alone habituates men to the conception of truths that extend or multiply our relations. The legislator who cannot without danger pass on a sudden such great intervals, ought to remain within the limits which the tradition of knowledge has determined, until events and things warn him that he may, without convulsion and commotion, proceed in the career that had been opened to him by genius.

The Aguesseaus and the Lamoignons, and all good minds, felt by example the necessity of having a uniform legislation. Different laws engender only trouble and confusion among a people, who, living under the same government, and in a continual communication, pass or marry with one another, and, placed under other customs, never know whether their patrimony be secure to them.

But at the time in which the Lamoignons and Agueseaus manifested their wishes, it would have been dangerous, and even impossible to realise them. At present a uniform legislation will be one of the great benefits of the revolution.

As long as there existed, in France, political differences and distinctions among persons, as long as there were nobles and priviledged persons, we could not eradicate from civil legislation the differences and distinctions that were connected with those social vanities, and which established in families a particular order of succession, for those who had already a particular manner of existence in the state. Now, all the laws of succession can, without contradiction and obstacle, incline to the principles of general equity.

Celebrated magistrates had demanded that civil institutions should no longer be mixed with religious institutions, and that the state of man should be independent of the worship he professed. But how could so great a change be produced whilst a ruling religion was recognized, and whilst that religion was a fundamental law of the state?

The tolerance of worship has been since proclaimed—it became possible to secularise legislation. We have organized that great idea, that we must suffer all that providence suffers, and that the law, without enquiring the religious opinions of citizens, ought to view only Frenchmen as nature views only men.

You may may now, citizens legislators, judge what has been the course we have followed in drawing up the plan of a civil code. We have always kept in view, that in legislation it is not enough to do good things. We must do what is suitable; *that the spirit of moderation is the true spirit of a legislator; and that political, as well as moral good is always to be found between two extremes.*

NATIONAL INTELLIGENCER.

A BILL,

For establishing the government of the Territory of Columbia.

[Now before the House of Representatives.]

BE it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the government of the territory of Columbia, (with a reservation of the constitutional authority of Congress over the same,) shall be exercised in manner following:

The powers of legislation shall be vested in a House of Representatives, to be chosen annually by ballot, by the freemen, citizens of the said territory, in the separate divisions, into which it hereby is, or hereafter shall be laid off for that purpose; each division electing a number of representatives proportioned to the number of freemen therein, according to a ratio to be established by the legislature from time to time, for which purpose a census of the freemen shall be taken every fourth year at least; and whenever by an increase or decrease of the number of freemen, the whole number of representatives shall exceed or fall below the number of the existing ratio shall be altered by the legislature, so as to bring it within those limits.

Sec. 2. *And be it further enacted,* That every free white male citizen of the United States, of the age of twenty-one years, residing within the territory and paying a tax to the same, shall be a freeman of the territory, and having resided twelve calender months in his electoral division next proceeding an election of representatives, and having paid taxes in the territory within that time, shall be capable of electing, or being elected, a representative of his said electoral division.

Sec. 3. *And be it further enacted,* That the House of Representatives shall chuse its own speaker and other officers, and shall by law, prescribe the time, places and manner of holding elections, it shall meet on the of in every year after that of and at other times on its own adjournment, or the call of the governor of the territory: It shall be the judge of the qualifications and due election of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties, as it may have provided. It may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds expel a member, but not a second time for the same cause. It shall keep a journal of its proceedings, and from time to time publish the same: And the yeas and nays of the members on every question, shall at the desire of one fifth of those present, be entered on the journal.

Sec. 4. *And be it further enacted,* That no compensation shall be allowed to the members of the House of Representatives for their services, until it shall have been enacted into a law by a legislature, and re-enacted by a second legislature, after the intervention of an election, which compensation so allowed, shall be payable out of the treasury of the territory. They shall in all cases, except treason, felony or breach of the peace, be privileged from arrest, during their attendance at the session of the House, and in going to and returning from the same, and for any speech or debate therein, they shall not be questioned in any other place. No member of the House of Representatives shall, during the time for which he was elected, be appointed to any civil office in the territory, other than that of justice of the peace, and no person holding any office under the United States, or any office under the territory, except that of justice of the peace or in the militia thereof, shall be a member of the said House, during his continuance in office.

Sec. 5. *And be it further enacted,* That every bill shall, before it becomes a law, have passed the House of Representatives at two several sessions, one month at least intervening between them; and have had three several readings, on three several days each, unless in the opinion of two thirds of the House the case shall be urgent, in which case, the bill may be introduced at any time after the day of its first passage, and proceeded on to its second passage. Every bill or resolution (except decisions or votes which respect the members or officers of the House, and those only) shall also before it becomes a law, or take effect, be presented to the President of the United States; if he approve he shall sign it, but if not, he shall return it with his objections to the House, who shall enter the objections at large on their journal, and proceed to reconsider it; if after such reconsideration, two thirds of the House shall agree to pass the bill, it shall become a law; but in all such cases the votes of the House shall be determined by yeas and nays, and the votes of the persons voting for and against the bill, shall be entered on their journal. If any bill shall not be returned by the President within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the House by its adjournment prevent its return, in which case it shall not be a law. And in all cases, and at all times, the legislature of the United States shall have a power to repeal by law, but not to modify, any law passed by the legislature of the territory.

Sec. 6. *And be it further enacted,* That the legislature of the territory shall have power to pass all laws which are not withheld from it by this act, nor from the states of the union, by the constitution of the United States.

Sec. 7. *And be it further enacted,* That the privilege of the writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it. No bill of attainder or ex post facto law shall be passed. No money shall be drawn from the treasury but in consequence of appropriations made by law: and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

Sec. 8. *And be it further enacted,* That