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Mary Immaculate College

**A Literary Translation and Critical Analysis of Voltaire's  
*Prix de la Justice et de l'Humanité* (1777)**

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## **ABSTRACT**

### **A Literary Translation and Critical Analysis of Voltaire's**

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**Author: Sarah Clancy**

On 1 October 1777, the Economic Society of Berne proposed a reform discussion in the *Gazette de Berne*, that required entrants to 'compose and write a complete and detailed legislative proposal on criminal matters.' As a member of the Society, Voltaire composed and submitted his own treatise *Prix de la Justice et de l'Humanité* (1777), in response to the proposed competition as a gesture of support. Unlike many of his other celebrated works, *Prix de la Justice et de l'Humanité* was never adequately translated into the English language.

However, the following research study has produced a comprehensively annotated literary translation of the first edition of Voltaire's treatise, including detailed commentaries and an integrated analysis. In order to accurately represent Voltaire's views about crime and punishment, the following study examined the historical background of *Prix de la Justice et de l'Humanité*, including its publication and the first edition of the treatise. In addition, Voltaire's relationship with justice throughout his life as well as his literary style were also examined. Furthermore, a detailed analysis of *Prix de la Justice et de l'Humanité* is presented, which addresses principal themes in the treatise including corruption, freedom of speech and thought, the death penalty, rationalist thought, and social optimism.

**Keywords:** Criminal theory, legal history, crime and punishment, capital punishment, French enlightenment, criminal law, rationalist thought, social optimism.

## **AUTHOR'S DECLARATION**

I hereby declare that this dissertation represents my own work and has not been submitted, in whole or in part, by me or another person, for the purpose of obtaining any other credit/grade. I agree that this dissertation may be made available by the College to future students and for research purposes.

### *Dearbhú an Údair*

*Dearbhaím leis seo gurb é mo chuid oibre féin atá sa tráchtas seo agus nár chuir mé féin ná aon duine eile an t-iomlán nó aon chuid de isteach chun aon chreidmheas ná aon ghrád eile a bhaint amach. Tugaim cead don choláiste an tráchtas seo a chur ar fáil do mhic léinn eile a thiocfaidh i mo dhiaidh agus le haghaidh taighde.*

Signature/*Síniú*: \_\_\_\_\_

Date/*Dáta*: \_\_\_\_\_

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# **1. INTRODUCTION**

## 1.1 The Inception of Prix de la Justice et de l'Humanité

In 1759, an association of Bernese patricians founded the Economic Society of Berne (Die Oekonomische Gesellschaft Bern) in Switzerland.<sup>1</sup> The Society, like its European sister societies, took part in international reform debates and discussions with the aim of encouraging economic and political change.<sup>2</sup> On 1 October 1777, the Society proposed a reform discussion that was published in the *Gazette de Berne*.

The *Gazette de Berne*, founded in 1738, and based in Leiden, Netherlands, was one of the most significant political newspapers of the Eighteenth Century.<sup>3</sup> The publication sought to document 'the resolutions and challenges to royal authority.'<sup>4</sup> The reform discussion put forward by the Economic Society of Berne required entrants to 'compose and write a complete and detailed legislative proposal on criminal matters.'<sup>5</sup> The call for submissions was publicised in the 14<sup>th</sup> issue of the *Gazette de Berne*, dated 15 February 1777,<sup>6</sup> and competition entries were accepted until 1 July 1779.<sup>7</sup>

Voltaire, being a member of the Economic Society of Berne, composed and submitted his own treatise in response to the proposed essay competition. Voltaire did so as a gesture of support, as he wanted to encourage others to submit entries.<sup>8</sup> Furthermore, he also acted as a

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<sup>1</sup> Regula Wyss and Martin Stuber, 'Paternalism and Agricultural Reform: The Economic Society of Bern in the Eighteenth Century', in Koen Stapelbroek and Jani Marjanen, eds., *The Rise of Economic Societies in the Eighteenth Century* (London: Palgrave Macmillan, 2012).

<sup>2</sup> *Ibid.*

<sup>3</sup> Jeremy Popkin, 'The Gazette de Leyde and French Politics under Louis XVI', in Jack Censer and Jeremy Popkin, eds., *Press and Politics in Pre-revolutionary France* (Los Angeles: University of California Press, 1987).

<sup>4</sup> *Ibid.*

<sup>5</sup> See Voltaire, 'Prix de la Justice et de l'Humanité', in Robert Grandroute and Shiela Mason, eds., *Œuvres complètes de Voltaire*, vol. 80B (Oxford: Voltaire Foundation, 2009). Unless otherwise indicated, all subsequent references to the published works are to the OCV edition.

'Composer et rédiger un plan complet détaillé de législation sur les matières criminelles sous ce triple point de vue. 1°) Des crimes et des peines proportionnées qu'il convient de leur appliquer. 2°) De la nature et de la force des preuves et des présomptions. 3°) De la manière de les acquérir par la voie de la procédure criminelle, en sorte que la douceur de l'instruction et des peines soit conciliées avec la certitude d'un châtement prompt et exemplaire, et que la société civile trouve la plus grande sûreté possible pour la liberté et l'humanité.' (p. 49).

(Compose and write a complete and detailed legislative proposal on criminal matters, under this threefold point of view. 1°) On crimes and proportional punishments that should be applied to them. 2°) On the nature and strength of evidence and presumptions. 3°) On the means to acquire them through criminal proceedings, to ensure that the mildness of the inquiry and the punishments be reconciled with the certainty of a prompt and exemplary punishment, and that civil society finds the greatest possible security for liberty and humanity.)

<sup>6</sup> *Ibid.*, p. 49.

<sup>7</sup> Voltaire's treatise *Prix de la Justice et de l'Humanité* was published in the 14<sup>th</sup> issue of *Nouvelles Extraordinaires de Divers Endroits* (Extraordinary news from various places), dated 15 February 1777. The newspaper, also published under titles including the *Gazette de Leyde* (Gazette of Leiden) and the *Gazette de Berne* (Gazette of Berne), was printed in the French language from its headquarters in the town of Leiden in the Netherlands. J. Popkin, *op. cit.*

<sup>8</sup> Emmanuelle de Champs, *Enlightenment and Utility* (Cambridge: Cambridge University Press, 2015).

sponsor for the competition by anonymously donating fifty gold louis to the prize fund for the winning entry.

## **1.2 The First Edition of *Prix de la Justice et de l'Humanité***

The first edition of Voltaire's *Prix de la Justice et de l'Humanité* materialised following the Economic Society of Berne's publication in the *Gazette de Berne* in 1777.<sup>9</sup> Voltaire's correspondence reveals that he was drafting and sending copies of what was to become the first edition of *Prix de la Justice et de l'Humanité* up until the end of November 1777.<sup>10</sup> In a letter dated 24 November 1777, Frederick of Prussia wrote to Voltaire and acknowledged that the month previous, on 27 October, he had received *Prix de la Justice et de l'Humanité*.<sup>11</sup> Although no exact month of publication was included in the first edition of the text, it can be gathered from correspondence that the final manuscript may have been completed toward the end of Summer 1777.<sup>12</sup> Later publications of the treatise include: *Prix de la Justice et de l'Humanité, par l'auteur de la Henriade*, Ferney, 1778; M. de Voltaire, *Prix de la Justice et de l'Humanité*, Ferney, 1778; and M. de Voltaire, *Prix de la Justice et de l'Humanité*, London, 1778.<sup>13</sup>

The front matter included in the first edition of 1777 consists of the title of the work printed in bold capital letters and a depiction of Lady Justice just below it. The only reference to the place of publication is an imprint that reads 'Londres' above the publication date '1777', inscribed in roman numerals 'MDCCLXXVII' (See Appendix A). However, no further details are provided that reveal the identity of the publishing house that printed and disseminated Voltaire's commentary on penal reform.

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<sup>9</sup> Samuel Favell, *A speech on the propriety of revising the criminal laws* (London: Rowland Hunter, 1819).

<sup>10</sup> Voltaire, 'Lettres du roi de Prusse et de M. de Voltaire', in *Œuvres complètes de Voltaire*, vol. 66 (Kehl: Société Littéraire Typographique, 1784).

<sup>11</sup> *Ibid.* See Letter LXXXIII, from the King of Prussia, dated 24 November 1777.

'J'ai reçu la lettre du 27 du mois passé avec le *Prix de la Justice et de l'Humanité*. Je me suis empressé de le lire, et j'y ai vu la justice et l'humanité tracées l'une et l'autre sur le papier avec la plume la plus éloquente et la prose la plus belle.'

(I have received the letter, dated the 27<sup>th</sup> from the previous month, with *Prix de la Justice et de l'Humanité*. I immediately read it, and in it I saw both justice and humanity outlined on the paper, with the most eloquent quill and the most beautiful prose.)

<sup>12</sup> See Friedrich von Grimm, Denis Diderot, Louise d'Esclavelles Epinay, Jacques-Henri Meister, and Jacques Barthélemy Salgues, *Correspondance littéraire, philosophique et critique : Part 2*, vol. 4 (Paris: Buisson, 1812). Look particularly at the *Extrait d'une lettre de Genève*, dated December 1777:

'Ce n'est pas qu'il ne soit encore plein de vigueur et de force ; en deux mois il a composé trois brochures : *Prix de la Justice et de l'Humanité ; Commentaire sur Montesquieu ; Nouvelle Lettre à Madame de Montaignu sur Shakespeare*.' (p. 137).

(It's not that he wasn't still full of vigour and strength; in two months he composed three pamphlets: *Prix de la Justice et de l'Humanité ; Commentaire sur Montesquieu ; Nouvelle Lettre à Madame de Montaignu sur Shakespeare*.)

<sup>13</sup> Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, pp. 33-36.

### 1.2.1 The false imprint ‘Londres’ and ornamentation

In his analysis of the false imprints that were prevalent in France from 1787 to 1800, James Mitchell established that the use of the ‘Londres’ imprint was an 18<sup>th</sup>-century French phenomenon.<sup>14</sup> This distinct false imprint was defined as:

an imprint only containing ‘Londres’ and the date [giving] a sparse look to the bottom of the title-page, an area usually occupying several lines. Presumably, this bareness meant that anyone who thought about it could tell that such an imprint was likely to be false and could then deduce something about the contents.<sup>15</sup>

Accordingly, the false ‘Londres’ imprint was generally applied to disguise the publishing house and bookseller rather than the author of the publication. Therefore, this leads us to question which publishing house did hide itself behind that false ‘Londres’ imprint and why? As specified by Mitchell, the ornamentation used to decorate a text should be examined to identify publishing houses that disseminated literature ‘sous le manteau.’<sup>16</sup> A comprehensive search on the Fleuron database, which stores a collection of ornament records adopted by several 18<sup>th</sup>-century publishing houses, allowed me to determine that the ornaments employed in the first edition of Voltaire’s text were those that were consistently used by the Société Typographique de Neuchâtel (STN) publishing house (See Appendix B).<sup>17</sup>

### 1.2.2 Société Typographique de Neuchâtel publishing house (STN)

In his examination of clandestine literature published in France circa 1769 - 1789, Robert Darnton explained that publishing houses such as the STN endorsed literature that offended the church, State and accepted standards of morality as well as philosophical works that presented cultural, social, and political criticism.<sup>18</sup> Furthermore, in her research on the politics of the book trade in late 18<sup>th</sup>-century Europe, Louise Seaward pointed out that ‘the STN’s international trade peaked during the 20-year period between 1768 and 1789’, during which:

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<sup>14</sup> Four categories of ‘Londres’ imprint were identified to be in circulation in the 18<sup>th</sup> Century: fanciful, fictitious, false and misleading. James Mitchell, ‘The Use of the False Imprint ‘Londres’ during the French Revolution, 1787-1800’, *Australian Journal of French Studies* (Liverpool: Liverpool University Press), n° 29, May.-Dec. 1992., p. 189.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.* Mitchell states that ‘another way in which printers made no real effort to cover their tracks was in their use of ornaments.’ (p. 189).

<sup>17</sup> Fleuron banque d’ornements d’imprimerie, *Fleuron Recherche d’Ornements*. See the following ornaments: or0282, or0326-3, or0335-3, or0193-6, or0419-4, or0008, or0444-1. Retrieved from: <https://db-prod-bcul.unil.ch/ornements/scripts/ListeOrnementsImprimeur.html> (Accessed: 10 April 2018).

<sup>18</sup> Robert Darnton, *The Corpus of Clandestine Literature in France 1769-1789* (London: Norton & Company, 2009).

The STN became involved in most areas of the print trade including publishing its own texts, reprinting counterfeit editions, swapping works with other wholesalers and selling books by both legal and clandestine methods.<sup>19</sup>

The STN ran the risk of suffering serious consequences due to their counterfeit ventures. Therefore, the STN had to conceal its identity to evade ‘foreign governments and other publishers who possessed privileges and permissions for particular works’,<sup>20</sup> as observed in the case of Voltaire’s *Prix de la Justice et de l’Humanité*, by choosing to implement the false ‘Londres’ imprint.<sup>21</sup>

This was not the first time in his career that Voltaire had one of his literary productions published clandestinely. James Hanrahan explains in his research on the role of the *Parlements de France* in both the censorship and criminalisation of certain literature that, in most cases, literature was not granted approval for publication because it was either nonconformist with regard to religion, blasphemous toward royal authority, or because in the eyes of censorship authorities the work was immoral.<sup>22</sup> It is evident that *Prix de la Justice et de l’Humanité* falls within these three categories. Therefore, in line with some of Voltaire’s other works, such as the *Histoire de Charles XII* (1731) and *Zaïre* (1732), it seems that he did not receive approval from royal censorship authorities<sup>23</sup> to legally publish *Prix de la Justice et de l’Humanité*, and instead took matters into his own hands and opted for clandestine methods to have the treatise printed.

Yet, as Hanrahan explains, Voltaire should not be considered as a victim of the 18<sup>th</sup>-century censorship system. The magistrates who banned and enacted punishments for certain literature were only a sub-section of a trilogy of censorship authorities that operated at the

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<sup>19</sup> Louise Seaward, ‘The Société Typographique de Neuchâtel (STN) and the Politics of the Book Trade in Late Eighteenth-Century Europe, 1769–1789’, *European History Quarterly*, vol. 44(3), June 2014, DOI: <https://doi.org/10.1177/0265691414535025>, p. 441. Seaward explains that ‘the link between the STN and the French government was of special significance [...] The firm’s directors were concerned with winning French approval because they understood that important members of central government could and would take steps to block the dissemination of their editions within France. The STN pushed for official support internationally but it perhaps had most to gain from ingratiating itself with powerful French figures.’ (p. 449).

<sup>20</sup> *Ibid.*, p. 441.

<sup>21</sup> In the *Œuvres complètes de Voltaire*, vol. 80 (Geneva: Institut et Musée Voltaire, 2009), Theodore Besterman established that Gabriel Grasset was the printer responsible for *Prix de la Justice et de l’Humanité*. In a letter dated 17 September 1777, Grasset indeed stated:

‘Je n’ai point encore fini *Les Pensées de Pascal*, il me les a fallu suspendre pour faire un traité sur la Justice et sur l’Humanité etc. par M. de Voltaire.’ (p. 219).

(I have still not finished Pascal’s *Pensées*, I had to put them aside to make a treatise on justice and humanity etc. by Mr. Voltaire.)

<sup>22</sup> James Hanrahan, ‘Literary crimes and innovation against punishment: Voltaire and the censorship authorities before 1750’, in Louise Hardwick, ed., *New Approaches to Crime in French Literature, Thought and Culture*. (Bern: Peter Lang, 2009).

<sup>23</sup> *Ibid.*



time.<sup>24</sup> Seeing as each body had their own agenda, with ‘often competing interests to protect and advance’, the censorship system was quite fragile, which often made it vulnerable to exploitation and influence.<sup>25</sup> Voltaire knew exactly how to exploit this weakness for his own gain by ‘pushing the authorities to their limits, often in direct communication with them.’<sup>26</sup> As it happens, the rival censorship authorities that were in place at the time ‘[allowed] space for literary innovation which talented authors were only too ready to turn to their advantage’, with Voltaire being no exception.<sup>27</sup>

### 1.3 Voltaire and Justice

During his early education (1711-1714), Voltaire acquired some fundamental knowledge concerning judicial matters. In 1711, he enrolled at the *École de droit* in Paris; however, having rather directed his focus toward the libertine nobles of the *Société du Temple*,<sup>28</sup> he abandoned his studies in 1713. In 1714, having returned to France after spending a period in Holland,<sup>29</sup> Voltaire again pursued his studies in law and became a clerk. Yet, it appears that he was not very enthusiastic about his duties and only worked at this profession for a short period of time.<sup>30</sup> Similarly, in the latter part of his life, Voltaire did not display a profound interest in justice or legal matters. An inspection of his personal library in Ferney, where he took up residence in 1759 at the age of sixty-five, revealed that out of 3,281 publications in his possession, only 39 works were judicial books concerning justice and legislation.<sup>31</sup> Moreover, only a limited number of these texts alluded to the subject of penal justice.<sup>32</sup>

In his early career, Voltaire was concerned by one institution in particular: the Catholic

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, p. 99.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> In his teenage years, Voltaire was taken to the libertine society known as the Société du Temple by his godfather. The Society’s meeting place was a monastery that was formerly used by the medieval religious-military order known as the Knights Templar. The Society’s master of ceremonies was Grand Prior Philippe de Vendôme and was composed of aristocrat intellectuals, who were freethinkers, enjoying an Epicurean way of life and dedicated their time and finances to ‘food, alcohol, poetry, wit and women.’ Alexander Nemeth, *Voltaire’s Tormented Soul: A Psychobiographic Inquiry* (New Jersey: Rosemont Publishing & Printing, 2008), p. 64.

<sup>29</sup> Francis Lieber explains that Voltaire’s father ‘was displeased with his mode of life, and entreated the marquis of Chateauneuf, French minister to Holland, to take the young Voltaire as a page. He consented; but Voltaire fell in love with the daughter of Madame Noyer, a refugee in Holland and was therefore sent back to his family. His father would receive him into favour again only on condition of resuming the study of law.’ *Encyclopedia Americana*, vol. 13 (Philadelphia: Carey, Lea, & Blanchard, 1833), p. 23.

<sup>30</sup> Benoît Garnot, ‘Voltaire et la justice d’Ancien Régime : la médiatisation d’une imposture intellectuelle’, *Le Temps des médias*, n° 15, 2010-2012. DOI: 10.3917/tm.015.0026

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

Church. Voltaire saw that by commenting on the criminal justice system, he could more importantly challenge religious intolerance and dogma.<sup>33</sup> However, in 1762, on the occasion of the wrongful execution of Jean Calas, Voltaire, at the age of sixty-eight, began to seriously contemplate the injustices of the French criminal justice system.<sup>34</sup>

Voltaire denounced the injustices of the criminal justice system by way of a media strategy. This media strategy significantly called on public opinion. It appears that Voltaire only began to use public opinion during his involvement in the Calas affair; however, as James Hanrahan suggests in his work on Voltaire and public opinion during the early 1760s, it could be argued that ‘this is what he had done all along through his voluminous correspondence with influential figures throughout France and Europe.’<sup>35</sup> Therefore, two of Voltaire’s main arsenals to target public opinion were his compositions and his correspondence.<sup>36</sup>

Voltaire founded his critiques on two principal pitfalls of the criminal justice system: the arbitrariness of the laws and the means of acquiring and verifying evidence. By concentrating on public thought, Voltaire gave the everyday citizen the potential to act as an appellant in response to judicial malpractice.<sup>37</sup> Yet, what is perhaps less known is how Voltaire awakened the public’s reaction and recoil in reaction to judicial misconduct. Voltaire incited public response by creating the demand for his compositions on the affairs that he was involved in.<sup>38</sup> It could be said that Voltaire gave the public what it did not know it was looking for, and thereby, he organized the ‘supply’, that is to say, his compositions and information on the circumstances of each case, to ensure that the ‘demand’ would persist. A strategy that proved a success.

Furthermore, from the mid-18th-Century, the framework of what was considered as public opinion was shifting.<sup>39</sup> The public now adopting the role of critic, took on a new

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.* Furthermore, Ian Davidson explains that by writing *Traité sur la Tolérance*, ‘Voltaire had opened a new social and moral critique, by arguing the connection between impartial justice in the law-courts and tolerance and pluralism in society. But it was not until the autumn of 1765, by which time he had launched his campaign on the Sirven scandal, so similar in many respects to the Calas scandal, that Voltaire really started to address the systemic problems of the French penal justice system. [...] Voltaire’s interest in the general question of penal reform was further aroused the following month, October 1765, when he told Damilaville that he had started reading the Italian book *On Crimes and Punishments*. [...] A month later, in a letter to Damilaville, Voltaire alluded to the commentary that he was writing, and by September he had finished it, sending a copy to d’Argental. It was published anonymously as a *Commentaire sur le livre des délits et des Peines* par un avocat de province.’ *Voltaire in Exile: The Last Years, 1753-78* (London: Atlantic Books, 2004), pp. 193-196.

<sup>35</sup> James Hanrahan, ‘Creating the “cri public”’: Voltaire and public opinion in the early 1760s’, in Nicholas Cronk, ed., *Les années 1760-1770: une grande décennie voltairienne. Mélanges offerts à John Renwick* (Oxford: Voltaire Foundation, 2008), p. 153.

<sup>36</sup> B. Garnot, *op. cit.*

<sup>37</sup> J. Hanrahan, Creating the “cri public”, *op.cit.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

authoritative role in public affairs. Considering the significant function that public opinion was procuring in society, it is no surprise that it became an essential feature of Voltaire's 'coherent actions on behalf of *philosophie*, against *l'infâme*, and in favour of the victims of France's criminal justice system.'<sup>40</sup>

Such compositions that publicised these matters include Voltaire's *Traité sur la Tolérance* (1763), in which he disputed for the exoneration of Jean Calas. Calas, a Huguenot trader from Toulouse, was condemned to death for the supposed murder of his son Marc-Antoine who wished to convert to Catholicism, when in fact he had committed suicide.<sup>41</sup> The town where Jean Calas resided was going to celebrate the bicentenary of the Saint-Bartholomew Day massacre (1572), when 2,000 protestants were assassinated by the Catholics of the town. Therefore, the historical context of this case was strongly characterised by the French Wars of Religion that took place in the Sixteenth Century.

In 1766 appeared his *Commentaire sur le livre des délits et des peines*, in which Voltaire responded to one of the most influential critiques of the 18<sup>th</sup>-century criminal justice system, made by Cesare Beccaria in his work *On Crimes and Punishments* (1764). In his commentary, Voltaire both upheld and advanced the declarations made by Beccaria concerning the legal system, which at the time was distinguished by superstition, inequality, and irrationality.

In 1775, in his appeal, *Le cri du sang innocent* (1775), Voltaire gave a voice to the innocent victims implicated in the de La Barre scandal (Affaire du Chevalier de La Barre), including Étallonde de Morival and François-Jean Lefebvre de la Barre, who were taken into custody for supposedly not having kneeled before a procession of Capuchin monks, among other accusations. Voltaire detailed the atrocious treatment that they were subjected to during their trial by Duval de Saucourt, who sought revenge against a cousin of de La Barre, Madame l'abbesse de Villancourt.

By denouncing the abuses of the criminal justice system through this strategy, Voltaire endeavoured to ignite public debate.<sup>42</sup> Although it could be argued that Voltaire was not as 'knowledgeable' as other enlightenment philosophers in the area of criminal justice and reform, his strategy astutely targeted public opinion. Yet, in certain instances, Voltaire manipulated truths, often using hyperbole to intensify the injustice of the case and to rouse debate in order to provoke the public to appeal for reform.<sup>43</sup> For example, in the Calas scandal (l'Affaire

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<sup>40</sup> *Ibid.*, p. 147.

<sup>41</sup> Hanrahan explains that Voltaire wanted the details of the Calas affair to be publicised, not in the interest of the public, but 'as proof of his suspicions that the judicial reasoning in the case had been prejudiced.' *Ibid.*, p. 152.

<sup>42</sup> B. Garnot, *op. cit.*

<sup>43</sup> I. Davidson, *Voltaire in Exile: The Last Years, 1753-78, op. cit.*

Calas), Voltaire presents Jean Calas at the time of his execution as a sixty-eight-year-old man and excellent father.<sup>44</sup> Voltaire does so to stress the unjust nature of his conviction. However, Calas was far from this ideal character that Voltaire portrays. He was actually sixty-two years old at the time, and for months he was pestering his son Marc-Antoine to deposit the pension that he was rightfully owed by law.<sup>45</sup> Voltaire purposefully excluded these details to instigate a greater public outcry.<sup>46</sup> Similarly, in the de La Barre scandal, Voltaire asserted that the local judges who presided were illiterate, when at the time to be employed in any judicial post a degree in law was a minimum requirement.<sup>47</sup>

Still today, Voltaire is recognised as a pioneer of the rights of man and as an advocate for progress in judicial matters. However, this reputation appears to have been cemented in the last years of his life.<sup>48</sup> Voltaire acquired this reputation thanks to his considerable involvement in far-reaching and paramount judicial cases of the period. His ability to successfully convey the injustices of the criminal justice system to both the public and his contemporaries provoked concern and instigated debate. Although Voltaire appeared to have constantly broached the concept of justice in his publications, it was only in the last decade of his life that he particularly dedicated himself to justice in legal matters. His concern for the role of justice, reason, and humanity in penal reform culminated in 1777 with the publication of his treatise *Prix de la Justice et de l'Humanité*, which was his last publication before his death in 1778.

#### 1.4 Voltaire's Literary Style

Voltaire, similar to other great thinkers of the Enlightenment including Diderot<sup>49</sup> and Rousseau,<sup>50</sup> adopted an unconventional literary style. In the Eighteenth Century, the conventional writing style embraced by some writers consisted of producing long and often overly elaborate compositions.<sup>51</sup> In contrast to other authors writing monotonous treatises

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<sup>44</sup> B. Garnot, *op. cit.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> Diderot's writing style has been described as 'an anticategorical, unsystematic style of critical prose and critical attention.' The Diderotian style was further characterised by 'the breeziness, the playful dialogues and arguments, the mixed modes, the sarcasm, the epigrams, the contradictions, and the carelessnesses.' Mary Tompkins Lewis, *Critical Readings in Impressionism and Post-Impressionism: An Anthology* (Los Angeles: University of California Press, 2007), p. 188.

<sup>50</sup> Rousseau's literary style has been characterised as dramatic. As Robert Wokler explained in his work *Rousseau and Liberty* (Manchester: Manchester University Press, 1995), Rousseau '[desired] to surprise the reader with the shock of the new (or perhaps it should be shock of the old).' (p. 5).

<sup>51</sup> Amanda Ewington, *A Voltaire for Russia: A. P. Sumarokov's Journey from Poet-Critic to Russian Philosopher* (Illinois: Northwestern University Press, 2012).

intended for their fellow scholars,<sup>52</sup> Voltaire and his peers composed works that impacted attitudes on artistic and literary conventions. Perhaps one of the main reasons Voltaire did not forfeit his unique literary style to fit in with his contemporaries was due to his animosity towards the French Academy. Voltaire's hostility toward the Academy was not about the notion of such an Academy, but rather its realisation.<sup>53</sup> Voltaire envisioned an Academy pioneered by celebrated poets and thinkers, as opposed to academics who emphasised theory over practice.<sup>54</sup> Accordingly, Voltaire dismissed literary criticism directed at him from academic institutions and instead wrote for the informed 'gentleman reader' and 'elegant connoisseur' not for the 'dry, labouring professor.'<sup>55</sup>

Voltaire's writings usually took three forms, *poétiques*,<sup>56</sup> *tableaux littéraires*,<sup>57</sup> and *commentaires*.<sup>58</sup> Regardless of the literary genre that Voltaire undertook, he aspired to create short texts that included 'the evident facts, the simple and clear things, that are within everyone's grasp and that make an inevitable impact.'<sup>59</sup> He considered convoluted metaphysical treatises as a medium that was fathomed by few and only incited responses founded on contradictory assumptions.<sup>60</sup> Voltaire affirmed that 'the style that is in fashion [led him] more than ever to write with the greatest simplicity.'<sup>61</sup> Hence, simplicity was one of the most defining elements of Voltaire's style in all genres, as pointedly expressed by Gustave Lanson:<sup>62</sup>

His little sentences trot, run one after the other, detached. Voltaire rejects all these complicated ways of expressing logic dependencies, and of establishing, through tenacious words, the relation of ideas. It is the wild movement of style that connects the sentences,

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<sup>52</sup> Alfred Aldridge, *Voltaire and the Century of Light* (New Jersey: Princeton University Press, 1975).

<sup>53</sup> A. Ewington, *op. cit.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, p. 40.

<sup>56</sup> E.g., *La Henriade* (1723), *Le Mondain* (1736), *Poème sur le désastre de Lisbonne* (1756)

<sup>57</sup> E.g., *Zadig* (1747), *Micromégas* (1752), *Candide* (1759)

<sup>58</sup> E.g., *Commentaires sur Corneille* (1764), *Commentaire sur le livre des délits et des peines* (1767)

<sup>59</sup> 'Les faits évidents, les choses simples et claires, [qui] sont à la portée de tout le monde et [qui] font un effet immanquable.' Voltaire, *Œuvres complètes de Voltaire : Correspondance*, vol. 30 (Paris: Lahure, 1861), p. 147.

<sup>60</sup> A. Aldridge, *op. cit.*

<sup>61</sup> 'Le style qui est à la mode [le] porte plus que jamais à écrire avec la plus grande simplicité.' Voltaire, *Œuvres complètes de Voltaire*, vol. 12 (Paris: F. Didot frères, 1873), p. 420.

<sup>62</sup> Gustave Lanson (1857 - 1934) was a literary scholar and professor at the Sorbonne University in Paris. Jean Albert Bédé, 'Gustave Lanson', *The American Scholar* (Washington D.C: The Phi Beta Kappa Society), n°3, 1935.

that brings them together, like in a farandole where the dancers would not join hands with each other, and would keep their distances only by following the measure.<sup>63</sup>

As pointed out by Lynne Greenberg, legal treatises during the 18<sup>th</sup> Century tended to make ‘use of antiquated legalese and untranslated Latinate expressions’,<sup>64</sup> which are key features that Voltaire employs in *Prix de la Justice et de l’Humanité*. However, the clarity of Voltaire’s style makes his writing accessible to the general public and not just legal scholars. Similar to the 1632 treatise *The Lawes Resolutions of Womens’ Rights*,<sup>65</sup> Voltaire ‘frequently intersperses his discussions with narrative frames, personal asides, subjective opinions, [...] and commentary. These stylistic features of the treatise suggest that the author was writing a text for a broader audience than the legal profession.’<sup>66</sup>

In the *Dictionnaire d’histoire naturelle*, Buffon declared that ‘style is the man himself [...] You will be able to easily guess what Voltaire’s physique was from his writings.’<sup>67</sup> Interpreting this assertion on a superficial level, it could be said that Voltaire’s style was easily identifiable because as Nietzsche puts it:

The merits of his style are everywhere the same: simple naturalness, transparent clarity, lively flexibility, pleasing charm. Warmth and emphasis are not wanting where they are needed; hatred of pomposity and affectation came from Voltaire’s innermost nature; just as when, on the other hand, passion and impetuosity lowered the tone of his discourse.<sup>68</sup>

However, when asserting that ‘style is the man himself’, Buffon wanted to communicate that ‘the genre of style characterises the genre of the genius, the career or direction that follow a man of genius; but not that the style was the essential condition of the inventive genius. Plato and Voltaire were rich in style, they invented nothing.’<sup>69</sup> Taking this refined interpretation into

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<sup>63</sup> ‘*Ses petites phrases trottent, courent les unes après les autres, détachées. Voltaire rejette toutes ces lourdes façons d’exprimer les dépendances logiques, et de matérialiser, par des mots-crampons, les rapports des idées. C’est le mouvement endiablé du style qui lie les phrases, qui les emporte ensemble, comme dans une farandole où les danseuses ne se donneraient pas les mains, et garderaient leurs distances seulement en suivant la mesure.*’ Françoise Berlan, *Langue littéraire et changements linguistiques* (Paris: Université Paris-Sorbonne, 2006), p. 153.

<sup>64</sup> Lynne Greenberg, *Legal Treatises: Essential Works for the Study of Early Modern Woman*, vol. 1 (New York: Routledge, 2005), p. 25.

<sup>65</sup> Thomas Edgar, *The Lawes Resolutions of Women’s Rights: or, the Law’s Provision for Women* (London: More, 1632).

<sup>66</sup> L. Greenberg, *op cit.*, p. 25.

<sup>67</sup> ‘*Le style c’est l’homme même [...] vous pourrez aisément deviner ce qu’étoit le physique de Voltaire, à ses écrits.*’ Société de Naturalistes et d’Agriculteurs, *Nouveau dictionnaire d’histoire naturelle*, vol. 23 (Paris: Crapelet, 1804), p. 363.

<sup>68</sup> Friedrich Nietzsche, *Nietzsche: Untimely Meditations* (Cambridge: Cambridge University Press, 1997), p. 46.

<sup>69</sup> ‘*Le genre de style caractérise le genre de génie, la carrière ou direction que suit un homme de génie ; mais non pas que le style fût la condition essentielle du génie inventif. Platon et Voltaire étaient riches de style, ils n’ont rien inventé.*’ Société de Naturalistes et d’Agriculteurs, *op. cit.*, p. 363.

account, it can be said that Voltaire's success in the literary arena was not dependent on his style. On the other hand, the real genius of Voltaire's style stemmed from his ability to extend his treatment of any situation or condition, in order to gain exceptional recognition from his contemporaries, political figures, and the public.<sup>70</sup> Voltaire never eased his grip on the targets of his discourse, be it the Catholic Church, the criminal justice system, or political institutions. However, through his 'moderate, urbane, measured and witty temper', Voltaire was able to not only make such institutions appear dogmatic and unjust, but ludicrous, and that is where the true brilliance of his style was observed.<sup>71</sup>

## **1.5 Analysis of *Prix de la Justice et de l'Humanité***

### **1.5.1 Organisation of *Prix de la Justice et de l'Humanité***

The structure of *Prix de la Justice et de l'Humanité* is quite similar to that of other notable treatises of the period, in particular Beccaria's *On Crimes and Punishments*.<sup>72</sup> Voltaire's treatise integrates the academic disciplines of criminology and human rights. His writing is appropriate for specialists in the fields of law, human rights, crime, and criminal justice; yet, it is also very accessible to an independent reader. The treatise is divided into twenty-eight articles. Each article is dedicated to a specific crime (e.g., suicide, heresy, sacrilege, etc.) or question associated with the criminal justice process (e.g., 'Must the unjust order of a legitimate power be obeyed?', 'Should the accused be permitted an advisor, a lawyer?' etc.). The reader is presented with a broad overview of early ancient criminal procedure and an examination of its development from ancient times to the late 18<sup>th</sup> Century. Furthermore, the reader observes the unfolding of criminal procedure in France and other European countries from the Middle Ages to the 18<sup>th</sup> Century. Voltaire investigates the influence of criminal procedure throughout history on the administration of justice and legislation in the 18<sup>th</sup> Century. In each article Voltaire's discourse takes both a narrative and argumentative form. He clarifies abstract and antiquated principles of law by examining case holdings, the logic and edicts behind magistrates' rulings and by specifying and elaborating on modern and ancient examples of such rulings.

Similar to French jurist, Adhémar Esmein's famous essay, '*Histoire de l'Ordonnance de 1670 et de la procédure inquisitoire en France*', which won the Bodin prize in 1880,

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<sup>70</sup> The Open University, *The Enlightenment* (Oxford: The Open University, 2016).

<sup>71</sup> *Ibid.*, p. 8.

<sup>72</sup> Cesare Beccaria, *On Crimes and Punishments* (Tuscany: Coltellini, 1764). See also; Montesquieu, *De l'esprit des lois* (Genève: Barrillot & fils, 1748); William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon press, 1765).

Voltaire's treatise not only presents 'the history of Law that has passed away',<sup>73</sup> it also evaluates how it was enforced, administered, and in certain circumstances nullified. Voltaire explores the history of legal concepts and makes his reader question whether they have contributed to 18<sup>th</sup>-century legislation, but also what the history of legal procedure has transferred to modern 21<sup>st</sup>-century criminal legislation.

### **1.5.2 Synopsis of *Prix de la Justice et de l'Humanité***

Voltaire's *Prix de la Justice et de l'Humanité* is a conscious examination of the inner workings of the 18<sup>th</sup>-century criminal justice system. This political work remains a significant culmination of his human rights activism in judicial matters. In *Prix de la Justice et de l'Humanité*, Voltaire not only sheds light upon the fundamental workings of both French and European legislation, but exposes judicial preferences that were commonplace in 18<sup>th</sup>-century society.<sup>74</sup> In line with several of his prior publications, Voltaire directs his discourse in *Prix de la Justice et de l'Humanité* at the general public; however, typical of his brazen character, he more daringly makes reference to the King of France, Louis XVI and his absolutist policy. Similar to Beccaria's *On Crimes and Punishments* (1764), Voltaire also put forward 'many reforms for the rational and fair administration of law' in his treatise.<sup>75</sup> At the forefront of Voltaire's reform discussions is the proposition that punishment should be equated to the gravity of the crime committed. Furthermore, he proposes that a system of legal procedures should be enacted and applied to all individuals regardless of their social class, political, or economic standing; moreover, he insists that judges, sovereigns, and clergy should not interfere in legal proceedings for their own benefit.<sup>76</sup>

### **1.5.3 Significance of the title '*Prix de la Justice et de l'Humanité*'**

The title of the treatise in itself is a significant point of discussion. Voltaire intentionally chose to refer to his work as *Prix de la Justice et de l'Humanité*, but why? Of course, this prize of justice and humanity can be appraised financially speaking; yet, it can also be contemplated in terms of intellectual and moral progress produced from Voltaire's observations and critique.<sup>77</sup> Truth be told, the title remains ambiguous and is open to several possible

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<sup>73</sup> A. Esmein, *op. cit.*, p. 35.

<sup>74</sup> Sophie Delbrel, *Le prix de la justice : histoire et perspectives* (Bordeaux: Presses Universitaires de Bordeaux, 2013).

<sup>75</sup> 'Beccaria, Cesare: Classical School', in Francis T. Cullen and Pamela Wilcox, eds., *Encyclopedia of Criminological Theory* (California: SAGE Publications, 2010), p. 74.

<sup>76</sup> *Ibid.*

<sup>77</sup> S. Delbrel, *op. cit.*



interpretations.<sup>78</sup> It seems that Voltaire used a play on words and wanted his reader to interpret what this ‘prix’ was supposed to represent. As defined in the *Dictionnaire universel françois et latin* (1721), ‘prix’ refers to ‘a reward to be contested and awarded to he who will have the upper hand in some exercise, in some argument’,<sup>79</sup> but also can be interpreted as the ‘value and appraisal of things’,<sup>80</sup> as well as the ‘value of virtues, or of persons: of the respect that one has for them.’<sup>81</sup> The multiple meanings that derive from ‘prix’ are even more significant when the other two key words in the title, ‘justice’ and ‘humanité’, are considered. The concepts of justice and humanity are underpinned by the notion of morality. In his work, *Justice as a Basic Human Need*, Antony Taylor illustrates that morality is a fundamental requirement in order to maintain the condition of our humanity.<sup>82</sup> True morality is found in respecting the rights of all other individuals.<sup>83</sup> Taylor clarifies that justice is therefore an essential prerequisite for our morality. Building on this interpretation of the treatise’s title, Michael A. Pennacchia demonstrates that both human rights and justice possess a relational characteristic: ‘as justice is most noticeable when justice is denied, so also are human rights most noticeable when human rights are denied.’<sup>84</sup> Pennacchia explains that ‘justice upholds human rights, human rights warrants justice.’<sup>85</sup> This statement is further corroborated by Taylor, who insists that ‘justice is the most basic need we have in the maintenance and furtherance of our humanity.’<sup>86</sup> As human beings we have the ‘intentional action and agency’ required in social relationships, which are necessary to create conditions for life.<sup>87</sup> Consequently, this means that ‘the relations that insure our humanity are not natural but intentional; that is we must act so as to maintain them.’<sup>88</sup> Therefore, it appears that Voltaire wanted to allude to both the purpose of writing the treatise and the contents within it by including the concepts of justice and humanity in its title. In doing so, Voltaire illustrated the prize or virtue associated with justice and humanity as well as the price or value that justice and humanity hold for mankind.

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<sup>78</sup> Rodger Pearson, *Voltaire Almighty* (New York: Bloomsbury Publishing, 2008).

<sup>79</sup> ‘*Une récompense à disputer, et à adjuger à celui qui aura l’avantage à quelque exercice, à quelque dispute.*’ Trevoux (collectif), *Dictionnaire universel françois et latin, contenant la signification et la définition tant des mots de l’une & l’autre langue, avec leurs différens usages, que des termes propres de chaque état & de chaque profession* (Paris: Delaulne, 1721), p. 847.

<sup>80</sup> ‘*Valeur et estimation des choses.*’ *Ibid.*

<sup>81</sup> ‘*La valeur des vertus, ou des personnes : de l’estime qu’on en fait.*’ *Ibid.*

<sup>82</sup> Antony James William Taylor, *Justice as a Basic Human Need* (New York: Nova Publishers, 2006).

<sup>83</sup> *Ibid.*

<sup>84</sup> Michael A. Pennacchia, *Perspectives: Redemption, Economics, Law, Justice, Mediation, Human Rights* (Indiana: Xlibris Corporation, 2012), p. 48.

<sup>85</sup> *Ibid.*, p. 47.

<sup>86</sup> A.J.W Taylor, *op. cit.*, p. 13.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

#### **1.5.4 The theme of corruption in *Prix de la Justice et de l'Humanité***

Throughout *Prix de la Justice et de l'Humanité*, Voltaire brings the issue of corruption to the foreground. He exposes how corruption manifested itself at different stages of the criminal justice process. Firstly, Voltaire details how corruption materialised as a result of the inconsistency that reigned during the law-making process. He illustrates how those in power, who were entrusted with protecting and upholding the rights of the citizen, abused this responsibility. He compares France to other nations that, in his view, had much more civilised and evolved law-making procedures at the time. In doing so, he reveals the injustice inflicted on citizens, by exposing the disproportion between the punishments administered in relation to the crime committed. Voltaire questions whether the overly severe punishments in place equated to the value of life to the nation. He confronts the root of this injustice, and plainly declares to the reader that the unfair punishments in place for crimes such as suicide, theft, and sacrilege, benefited one individual in particular: the king. Taking suicide as an example, Voltaire describes how the law not only reprimanded the person who committed suicide, but also their kin, by stripping them of any possessions and land left by the person who took their own life. The king took ownership of their belongings, and in doing so, left orphans and deprived them of their rightful inheritance.

Secondly, corruption occurred during criminal proceedings. Voltaire explains how convictions came to pass even when evidence was weak or altogether lacking. He constantly acknowledges how during the criminal procedure, arguments for conviction were for the most part founded on ignorance. With regard to evidence, presumptions were not drawn from logic and reasoning, but rather from superstition or fear of perceived danger. In some of the most grievous cases extreme torture was implemented to secure a confession, be it genuine or not, the outcome would still be the same: the death penalty. Furthermore, some serious crimes were less likely to be prosecuted, such as duel and adultery. These crimes, as Voltaire reveals, were sheltered by society and rather than punishing them they were just overlooked.

Finally, Voltaire denounces how corruption unfolded during the application of punishment. The punishments that were employed were not conceived with the intention of preventing future criminal activity. Voltaire upholds the outlook of putting a stop to a crime before proposing to kill the person who committed the act. The mentality of prevention is better than cure is evident throughout his treatise. Moreover, rather than implementing such heinous punishments, Voltaire questions why the criminals should not be disciplined by making them facilitate duties that would be of worth to the motherland. It must be understood that Voltaire

clearly differentiates between useful and lenient punishment. Voltaire does not advocate that the criminal be reprimanded by means of unexacting labour. On the contrary, Voltaire emphasises that punishment should be perpetual and physical effort mandatory, in order to produce improved men who would be useful to the nation. He demonstrates that another killing in response to a crime does not contribute to its decline, and alternatives to the death penalty that would promote rehabilitation of the criminal and provide a service to the State should be applied. Speaking on imprisonment, Voltaire underscores how the institution's reputation often overshadowed its service to State power. Prisons were a reflection of the despotic and arbitrary government in power. Voltaire describes them as 'a cruel torture' that was experienced 'before being judged', and that 'charity and the good police should remedy this inhumane and dangerous negligence.'<sup>89</sup> Voltaire asserts that imprisonment was already a punishment in itself, so the duration of the sentence should be proportional to the crime committed.

### 1.5.5 Social optimism in *Prix de la Justice et de l'Humanité*

Central to Voltaire's humanist perspective in *Prix de la Justice et de l'Humanité* is the notion of social optimism. He upholds that man is fundamentally good and not intrinsically immoral but is rather corrupted by his futile environment.<sup>90</sup> Voltaire affirms in his *Dictionnaire Philosophique*: 'let the punishments of criminals be useful. A hanged man is good for nothing; a man condemned to public works still serves the country and is a living lesson.'<sup>91</sup> Similarly, in the conclusion of *Prix de la Justice et de l'Humanité* Voltaire proclaims that the only way this 'spectacle of horror' will be transformed 'into an object of deference' is if the governments of Europe are inspired 'with the means to transform even criminals into servants of the motherland, and to punish them in an exemplary manner, without spilling essential blood to the State.'<sup>92</sup>

This perspective is comparable to that of one of his most celebrated works *Candide*, in which Voltaire maintains that those who produce something of worth become the most important individuals to society. The ideology behind the simple statement 'il faut cultiver

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<sup>89</sup> 'Ils éprouvent un supplice cruel avant d'être jugé. La charité et la bonne police devraient remédier à cette négligence inhumaine et dangereuse.' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 189.

<sup>90</sup> Milan Zafirovski, *The Enlightenment and Its Effects on Modern Society* (New York: Springer, 2010).

<sup>91</sup> 'Que les supplices des criminels soient utiles : un homme pendu n'est bon à rien, et un homme condamné aux ouvrages publics sert encore la patrie, et est une leçon vivante.' Voltaire, 'Dictionnaire Philosophique', in *Œuvres complètes de Voltaire*, vol. 56 (Paris: Baudouin frères, 1826), p. 492.

<sup>92</sup> 'Vous changerez ce spectacle d'horreur en objet de complaisance si vous inspirez aux gouvernements de l'Europe les moyens de changer des scélérats même en serviteurs de la patrie, et de les punir exemplairement sans répandre un sang nécessaire à l'État.' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 203.

notre jardin'<sup>93</sup> prevails throughout *Prix de la Justice et de l'Humanité*. Voltaire insists that criminals could be rehabilitated and reintroduced into society as improved individuals, who would contribute positively to the community for the rest of their lives.<sup>94</sup> He makes reference to kingdoms where 'edicts, rulings, and judgments have been published in order to make this dreadful multitude of beggars, who dishonour human nature, useful to itself and to the State; however, 'there is so far from an edict to its execution, that the wisest project has been the vainest.'<sup>95</sup>

Voltaire's approach to crime and punishment is firmly consequentialist in nature. In his view, the paramount function of criminal punishment is to legitimately safeguard society by discouraging potential criminals, rather than pursuing retribution, or reinforcing the authority of the king.<sup>96</sup> Voltaire contends that punishment should only materialize from infringements of civil law and that such offenses should be differentiated from original sin.<sup>97</sup> He also argues that penalties should be expeditious and not arbitrary. Therefore, in law-making it is essential that criminal law be clearly defined, instead of granting political and court authorities the power to operate at their discretion.

### **1.5.6 Voltaire's outlook on torture and capital punishment**

In *Prix de la Justice et de l'Humanité*, Voltaire takes on the role of a conscious social thinker. He accepts that the French judicial system is flawed; however, he proposes that it could be significantly improved if the superstition and ignorance that characterised it were superseded by rational and judicious thought. In doing so, Voltaire specifically addresses issues of intolerance and judicial tyranny. In particular, his assessment of the death penalty, torture, and imprisonment underscore the inhumane treatment imposed under the rule of Louis XVI.

Capital punishment is a focal point of Voltaire's discourse in *Prix de la Justice et de*

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<sup>93</sup> 'We must cultivate our garden.' Voltaire, 'Candide, ou l'Optimisme', in *Œuvres complètes de Voltaire*, vol. 48 (Oxford: Voltaire Foundation, 1968), p. 259.

<sup>94</sup> Andrew Hammel, *Ending the Death Penalty: The European Experience in Global Perspective* (Palgrave MacMillan: New York, 2010).

<sup>95</sup> 'Dans les royaumes florissants on a publié des édits, des ordonnances, des arrêts, pour rendre cette multitude effroyable de gueux qui déshonorent la nature humaine utile à elle-même et à l'État. Mais il y a si loin d'un édit à l'exécution, que le projet le plus sage a été le plus vain.' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 55.

<sup>96</sup> Michael Scharf, *The Theory and Practice of International Criminal Law* (Leiden: Nijhoff, 2008).

<sup>97</sup> As Tatha Wiley clarified in her work, *Original Sin: Origins, Developments, Contemporary Meanings* (New York: Paulist, 2002), 'Voltaire argued that moral evil is inevitable to human nature. He turned Pascal's contradictories into evidence of human nature's strength, versatility, and creativity. Cassirer writes of Voltaire's view that 'were it not for our weaknesses, life would be condemned to stagnation, since the strongest impulses of life arise from our appetites and passions, that is, ethically considered, from our shortcomings. To allow for possibility of human creativity, God permits evil.' (p. 110).

*l'Humanité*. Throughout the 18<sup>th</sup> Century, enlightenment reformers questioned and contested the workings of the judicial system in France and Europe through their compositions.<sup>98</sup> Corporal punishment, judicial torture, and the death penalty were focal points of this discourse, as observed in Montesquieu's *Lettres persanes* (1721),<sup>99</sup> and *L'Esprit des lois* (1748) as well as Beccaria's *On Crimes and Punishments* (1764), to name but a few. In his treatise, Voltaire speaks about how the death penalty was implemented excessively and consequently was not always ordered for legitimate reasons.<sup>100</sup> He illustrates the inhumanity and brutality of torture and executions.<sup>101</sup> In order to create a contemporary and refined society, both liberal and humane in nature, he implies that an end needs to be put to torture for criminal offenses. Voltaire firmly exposes how the authorities in power were in violation of human rights.<sup>102</sup> Thereby, making reference to some of the most spotlighted criminal cases of the Eighteenth Century, notably the de la Barre and Calas affairs. Voltaire even purports the guilt of any party ordered by law to torture an individual. He states: 'It is said that the executors, the henchmen of justice must blindly obey; that it is not their responsibility to examine if the torture of which they are only the instruments is fair or not'<sup>103</sup>, and to this Voltaire responds: 'I tell you that those people are as criminal as the judges, when they administer a sentence, evidently recognised as unjust and barbarous, to the Court of Conscience of all men.'<sup>104</sup>

Voltaire's knowledge of political and social ideology enabled him to recognise the

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<sup>98</sup> Council of Europe, *The Death Penalty: Abolition in Europe*, vol. 285 (Strasbourg: Council of Europe Publishing, 1999).

<sup>99</sup> Montesquieu, *Lettres persanes* (Cologne: Pierre Marteau, 1721).

<sup>100</sup> David Williams (ed.) echoes this sentiment in his work, *Voltaire: Political Writings* (Cambridge: Cambridge University Press, 1994), in which he explains that 'death, often accompanied by tortures of Gothic extravagance, was the normal penalty (though not always exacted) for a wide range of offences in mid-eighteenth-century France. Voltaire's arguments against it are both humanitarian and utilitarian. The death penalty caused suffering for the victim and brutalised society generally. It was also an economic irrationality. Here Voltaire follows Beccaria and Montesquieu in insisting that severe penalties serve to increase crime levels rather than reduce them.' (p. 26).

<sup>101</sup> *Ibid.*

<sup>102</sup> See Article XX in Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*

*'Un crime est toujours crime, soit qu'il ait été commandé par un prince dans l'aveuglement de sa colère, soit qu'il ait été revêtu de patentes scellées de sang froid avec toutes les formalités possibles. La raison d'État n'est qu'un mot inventé pour servir d'excuse aux tyrans. La vraie raison d'état consiste à vous précautionner contre les crimes de vos ennemis, non pas à en commettre. Il y a même de l'imbécillité à leur enseigner à vous détruire en vous imitant.'* (p. 161).

(A crime is always a crime, be it that it has been ordered by a prince in the blindness of his anger, or, be it that it has been sealed with letters patent in cold blood with all the possible formalities. State policy is only a word invented to serve as an excuse for tyrants. True State policy consists of protecting you from the crimes of your enemies, not of committing any. There is even some imbecility to teach them to destroy you by imitating you.)

<sup>103</sup> *'On dit que les exécuteurs, les suppôts de la justice doivent obéir aveuglément ; que ce n'est point à eux à examiner si le supplice dont ils ne sont que les instruments est équitable ou non.'* *Ibid.*, p. 162.

<sup>104</sup> *'Je vous dis que ces gens-là sont aussi criminels que les juges, quand ils mettent à exécution une sentence reconnue évidemment injuste et barbare au tribunal de la conscience de tous les hommes.'* *Ibid.*

importance of an individual's dignity.<sup>105</sup> During the Enlightenment, attitudes towards the human body were transformed, it was increasingly recognized as a divine and independent presence that merited the privilege of life purely by virtue of existing.<sup>106</sup> In line with this belief, to make moral progress Voltaire questions whether 'love of honour and fear of shame' are not 'better moralists than the executioners' and declares: 'The countries where prizes are given to virtue, are they not better civilised than those where pretexts are sought after to spill blood, and to inherit from guilty parties?'<sup>107</sup>

In his treatise Voltaire acknowledges civil liberty and freedom of speech. He emphasises how the voices of so many were quelled due to the continual fear that they felt towards their government. Fear of persecution led individuals to relinquish their freedom of expression. Severe punishments in place ensured that citizens from the third estate would retreat from giving their opinions in the public sphere and consequently the absolute regime continued to reign. Voltaire saw the progress that could be made from advocating free speech.<sup>108</sup> In *Prix de la Justice et de l'Humanité*, his outspoken and daring nature are as prevalent as ever. Speaking on the crime of theft, he has the boldness criticise the King of France. He questions if the death penalty for such an infraction was 'to make amends for the harm done to the king?'<sup>109</sup> because, as Voltaire asserts, 'he is certainly the man of the kingdom who is impoverished the least by stealing from him.'<sup>110</sup> In the end, Voltaire resolves to 'keep quiet' as he 'would have too much to say.'<sup>111</sup>

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<sup>105</sup> Ira Wade explains in his work, *Intellectual Development of Voltaire* (New Jersey: Princeton, 1969) that 'Voltaire conceived of natural law as applying to all men; he conceived of it as a law of reason, better still, as a law of justice, and, best of all, as a law of human dignity. Voltaire's ideas on this point are clear and genuine. Every man may not have intelligence, but he does have a sense of what is right and wrong in his terms. Every man may not have an ideal, but he does have a sense of what constitutes his dignity. In each case, someone may be terribly limited, or his actual viewpoint may be impossibly restricted, or he may be subject to all sorts of impeding circumstances. These things are realities. Yet, on another plane, reason, justice, and dignity are also realities, and every man in Voltaire's world participates in them to some degree.' (p. 740).

<sup>106</sup> Lisa Silverman, *Tortured Subjects: Pain, Truth, and the Body in Early Modern France* (Chicago: University of Chicago Press, 2001).

<sup>107</sup> '[...] l'amour de l'honneur et la crainte de la honte sont de meilleurs moralistes que les bourreaux ? Les pays où l'on donne des prix à la vertu, ne sont-ils pas mieux polices que ceux où l'on ne cherche que des prétextes de répandre le sang, et d'hériter des coupables ?' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 204.

<sup>108</sup> Robert Trager and Donna Dickerson, *Freedom of Expression in the 21<sup>st</sup> Century* (California: Pine Forge Press, 1999). 'Like Locke, Voltaire believed that the most fundamental rights of mankind were personal freedom and right of property. Yet, unlike Locke, Voltaire's concept of these freedoms was much more practical. It was rooted in the political ferment of the 1700s, when nations were writing constitutions and developing stable legal systems. Freedoms, in Voltaire's writing, become rights that not only are to be nourished but also to be protected. The logical way to realize and defend rights is through freedom of expression. Hence, Voltaire argues that only with freedom of thought and expression can citizens participate meaningfully in their government and promote policies and laws that enhance rights.' (p. 51).

<sup>109</sup> 'Est-ce pour réparer le tort fait au roi ?' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 58.

<sup>110</sup> 'Il est certainement l'homme du royaume qu'on appauvrit le moins en le volant.' *Ibid.*

<sup>111</sup> 'Je n'ai plus qu'à me taire, j'aurais trop à dire.' *Ibid.*

### 1.5.7 Heresy and fanaticism in *Prix de la Justice et de l'Humanité*

In keeping with advocating freedom of speech, Voltaire also firmly upholds freedom of conscience. Deep-rooted in Voltaire's argument in *Prix de la Justice et de l'Humanité* is the belief that 'the enemy, at a political as well as ideological level was the Church.'<sup>112</sup> Speaking on heresy in *Prix de la Justice et de l'Humanité*, Voltaire contends that 'reason has made at least as much progress at Versailles, since Jesus no longer permits the Jesuites or Jesuits to govern this pleasant kingdom.'<sup>113</sup> In his *Dictionnaire Philosophique* he protests that 'once fanaticism has infected the brain, the malady is almost incurable.'<sup>114</sup> In line with his comments on fanaticism, in *Prix de la Justice et de l'Humanité* Voltaire demonstrates how 'fanatics are people whose madness is fuelled by murder; those who assassinated Henri IV and so many others were sick people, all suffering from the same mad rage.'<sup>115</sup> Moreover, when Voltaire directs his attention to those 'who govern arbitrarily and in ignorance and/or defiance of the law, tyrants are seen as the willing accomplices, puppets or co-conspirators of ecclesiastical authorities.'<sup>116</sup> Furthermore, Voltaire accentuates that 'the malignant presence of the Roman Church in the executive and legislative arms of government in Catholic countries constituted [...] the major cause of civil disorder, intolerance, persecution and judicial corruption.'<sup>117</sup> Voltaire believes that a model religion should promote the instruction of moral teachings instead of dogma.<sup>118</sup> Speaking on the Saint-Bartholomew's Day massacre, Voltaire exclaims

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<sup>112</sup> D. Williams, *op. cit.*, p. 20.

<sup>113</sup> 'La raison a fait pour le moins autant de progrès à Versailles depuis que Jésus ne permet plus que les jésuites ou jésuites gouvernent cet agréable royaume.' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 93. Martha Edmunds clarifies in *Piety and Politics: Imaging Divine Kingship in Louis XIV's Chapel at Versailles* (Newark: University of Delaware Press, 2002), that 'the Jesuits were never officially connected with the Versailles Chapel, but members of the order were selected as Louis XIV's confessors throughout his entire reign: first Paulin, then Annat (1645-70), Ferrier (1670-74), La Chaise (1675-1709), and finally Le Tellier until the king's death in 1715. As has been pointed out repeatedly by historians of Louis XIV, the Jesuits were extremely powerful at Versailles because they had the king's ear. The court diaries record Louis XIV's regular Friday meetings with his confessor. Moreover, the king's confessor sat near him in the chapel on the holy days when he took Communion and could attend chapel with him at any other time. After his Communion, the king would closet himself with his confessor and then announce the distribution of benefices. There were many noted Jesuit preachers in this period, and members of the order superseded the Oratorians as the most frequent preachers at court.' (p. 90).

<sup>114</sup> 'Lorsqu'une fois le fanatisme a gangréné un cerveau, la maladie est presque incurable.' Voltaire, 'Dictionnaire philosophique', in *Œuvres complètes de Voltaire*, vol. 7 (Paris: F. Didot frères, 1874), p. 564.

<sup>115</sup> *Ibid.*, p. 191. See also R. Grandroute, *op. cit.*, p. 186, 'J'oserais croire qu'il n'a été qu'un seul cas où la torture parut nécessaire, c'est l'assassinat de Henri IV, l'ami de notre république, ami de l'Europe, celui du genre humain. Le crime de sa mort perdait la France, exposait nos provinces, troublait vingt états.'

(I would dare to believe that there was only a single case where torture seemed necessary, it is the assassination of Henry IV, the friend of our republic, friend of Europe, that of humankind. The crime of his death lost France, exposed our provinces, troubled twenty states.)

<sup>116</sup> D. Williams, *op. cit.*, p. 20.

<sup>117</sup> D. Williams, *op. cit.*, p. 21. See Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, Article XXIV, p. 187; Article VIII, p. 87; Article XIX, p. 155; Article XI, p. 120.

<sup>118</sup> I. Wade, *op. cit.*

that the happenings of that day were an atrocious example of the inhumanity and bloodshed that could transpire from misinterpreting the teachings of Jesus.

In his *Traité sur la Tolérance*, Voltaire affirms that:

tolerance has been responsible for not a single civil war, whereas intolerance has covered the earth with corpses. Christian Europeans should regard not only other Christians from Europe as their brothers, but everyone [...] All men had a right to believe as their conscience dictated, provided their dissent was peaceful.<sup>119</sup>

Similarly, Voltaire continues his plea for religious tolerance in *Prix de la Justice et de l'Humanité*. In the article on marriages between people of different sects, Voltaire questions whether 'there a more lenient and more sure way to finally establish this tolerance that Europe desires.'<sup>120</sup> As Juan Pablo Domínguez (2016) explains, Enlightenment views on religion were in 'opposition to bigotry and ecclesiastic authority based on a particular interpretation of the European Wars of Religion.'<sup>121</sup> Voltaire promotes religious tolerance and freedom of conscience in *Prix de la Justice et de l'Humanité*. He demonstrates that all men should be treated as equals, a principle which today is 'an essential feature of modern civilization.'<sup>122</sup>

### **1.5.8 Impact of *Prix de la Justice et de l'Humanité***

It is perhaps leading up to 1789 that the full force of Voltaire's last humanitarian publicity campaign, *Prix de la Justice et de l'Humanité*, was felt. It cannot be understated that the unfolding of the French Revolution in terms of its ideals and logic was a culmination of what was expressed and articulated by Enlightenment philosophers.<sup>123</sup> Although Voltaire's propositions were quite familiar, he was one of the most widely read authors of the 18<sup>th</sup> Century, and he continually developed and disseminated revolutionary ideas through his literary pursuits.<sup>124</sup>

In February 1778, Voltaire would make his last journey to Paris.<sup>125</sup> Now at the age of eighty-three, he resolved to travel to the capital as he trusted that no grief would come his way

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<sup>119</sup> David Deming, *The Origin of Chemistry, the Principle of Progress, the Enlightenment and the Industrial Revolution* (North Carolina: McFarland, 2016), p. 170.

<sup>120</sup> 'Y a-t-il une manière plus douce et plus sure d'établir enfin cette tolérance que l'Europe désire, tolérance si nécessaire, que c'est la première loi, comme nous l'avons dit de tout l'empire Russie.' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 143.

<sup>121</sup> Juan Pablo Domínguez, 'Introduction: Religious toleration in the Age of Enlightenment', *History of European Ideas* (United Kingdom: Routledge), n°4, 2016, p. 273.

<sup>122</sup> *Ibid.*

<sup>123</sup> Jason Porterfield, *Voltaire: Champion of the French Enlightenment* (New York: Rosen Publishing, 2006).

<sup>124</sup> *Ibid.*

<sup>125</sup> Anne L. Poulet, *Jean-Antoine Houdon: Sculptor of the Enlightenment* (Chicago: Chicago University Press, 2005).



considering his age.<sup>126</sup> He was welcomed with open arms from his contemporaries and his followers.<sup>127</sup> However, this would be Voltaire's ultimate visit to Paris, and he would pass away there three months later on 30 May 1778. During his stay, Louis XVI seemed to overlook Voltaire's residency in Paris. Although Voltaire was in Paris for only a brief period of time, he still managed to pen one last letter before his death, addressed to General Lally.<sup>128</sup> This is not the first time that Voltaire acknowledged the fate of Count Thomas-Arthur Lally. In article XXII of *Prix de la Justice et de l'Humanité*, titled 'On the nature and force of evidence and presumptions', Voltaire affirms:

We are asked today under a legitimate king to review this appalling trial. What glory will the council be covered with, if its equity can reform, by way of the laws, the pitiless ruling decreed against General Lally, under the guise of the laws.<sup>129</sup>

In the last letter that he penned before his death, Voltaire declared that 'the judicial murder committed by Pasquier upon the person of Lally was avenged by the Council of the King.'<sup>130</sup>

Other issues that Voltaire addressed in *Prix de la Justice et de l'Humanité*, as well as in his other works, appear to have been considered and gradually acted upon by King Louis XVI. In 1779, Louis XVI put an end to serfdom within any land under royal jurisdiction.<sup>131</sup> Yet, it could be said that Louis XVI's greatest impact came when he abolished torture in the French judicial system, which was a subject continually broached by Voltaire in *Prix de la Justice et de l'Humanité*. In 1780, three years after the publication of Voltaire's treatise, Louis XVI had a type of torture known as *la question préparatoire* abolished.<sup>132</sup> This torture was implemented to extract confessions from those in custody. Then eight years later, he put an end to *la question préalable*, which aimed to get suspects in custody to reveal their accomplices.<sup>133</sup> Furthermore, in 1787, Louis XVI enacted the Edict of Versailles, which called for religious tolerance for non-Catholics.<sup>134</sup> Non-Catholics could not be discriminated against because of

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<sup>126</sup> James L. Christian, *Philosophy: An Introduction to the Art of Wondering* (California: Cengage Learning, 2008).

<sup>127</sup> *Ibid.*

<sup>128</sup> Evelyn Beatrice Hall, *Voltaire in his Letters, being a Selection from His Correspondence* (New York and London: G. P. Putnam's Sons, 1910), p. 513

<sup>129</sup> 'On nous mande aujourd'hui sous un roi juste on revoit ce funeste procès. De quelle gloire se couvrira le conseil si son équité peut reformer par les lois l'arrêt impitoyable porté contre le général Lally à l'abri des lois !' Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 177.

<sup>130</sup> E.B Hall, *op. cit.*

<sup>131</sup> Brison Dowling Gooch, *Europe in the Nineteenth Century: A History* (New York: Macmillan, 1970).

<sup>132</sup> John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 2012).

<sup>133</sup> *Ibid.*

<sup>134</sup> *Encyclopedia of the Age of Political Revolutions and New Ideologies, 1760-1815*, Gregory Fremont-Barnes ed. (Connecticut: Greenwood Publishing Group, 2007).

their faith and were permitted to register births, deaths, marriages and property.<sup>135</sup>

Voltaire's treatise on reform in the criminal justice system significantly demonstrates how political discourse can initiate debate in society. Throughout *Prix de la Justice et de l'Humanité*, Voltaire upholds that the essential root of human suffering and human folly lay in society. Therefore, if human beings and human society are the prime origins of evil in human nature, then societal change is most definitely imperative and more importantly advantageous. Essentially, the absolutist regime never provided any concrete solutions to problems in society and was beginning to approach a dead end.<sup>136</sup> Voltaire's *Prix de la Justice et de l'Humanité*, although today not as famous as his other works, was a capstone piece in the course of his literature that contested the inequality and oppression of the old regime, all the while advocating what we recognise today as basic human rights in the judicial process: the right to a fair trial, to be justly represented, to be heard by an impartial jury, that will deliver a fair and unbiased verdict based on the evidence presented and not on hearsay.

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<sup>135</sup> *Ibid.*

<sup>136</sup> Julian Swann and Joël Félix, *The Crisis of the Absolute Monarchy: From the Old Regime to the French Revolution* (Oxford: Oxford University Press, 2013).

## **2. Prologue**

# **Translation Strategy**

## 2.1 Strategic Decisions

Strategic decisions are the initial considerations that the translator deals with before beginning to carefully translate the source text.<sup>137</sup> Reasoned decisions are made in response to questions about the text's 'message; the salient linguistic features; principal effects; target readership; functions; implications of these factors; and prioritising choices.'<sup>138</sup>

### 2.1.1 Ethical Considerations

It went without saying that this translation was always going to have its own distinct characteristics; however, to translate effectively and moreover ethically, it had to be ensured that the properties of the original were preserved.<sup>139</sup> These properties included the organisation of the text, the text's coherence and cohesion, its language use, and the mechanics of the text. Translation, like any other profession, possesses a code of ethics. Translation 'plays a significant role in shaping societies and nations in different ways such that translation can make pivotal changes on the globalised world',<sup>140</sup> therefore, it must be guided by an ethical code. According to the International Federation of Translators' code of ethics, an ethical translation 'shall be faithful and render exactly the idea and form of the original - this fidelity constitutes both a moral and legal obligation for the translator.'<sup>141</sup> Scholars have expressed contrasting views on how to fulfil this obligation as an ethical translator. For example, Wilhelm von Humboldt maintains that foreign elements in the source text should not be impaired in the target language translation, and Friedrich Schlegel upholds that the translator should 'enable the target reader to hear the voice of the original writer, rather than the voices of any other party.'<sup>142</sup> In addition, Antoine Berman encourages literal translation in order to preserve the original text's composition and meaning.<sup>143</sup> Although these perspectives vary to some degree, one property that unites them is maintaining the original author's vision; therefore, to fulfil this objective I ensured that I did not distort the meaning, form, and content of the source text.

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<sup>137</sup> Sándor Hervey and Ian Higgins, *Thinking French Translation* (London: Routledge, 2002).

<sup>138</sup> Stella Craigie and Ann Pattison, *Thinking English Translation* (London: Routledge, 2017), p. 64.

<sup>139</sup> The treatise as presented in Robert Granderoute and Shiela Mason, eds., *Œuvres complètes de Voltaire*, vol. 80B (Oxford: Voltaire Foundation, 2009) has been reproduced alongside the English translation.

<sup>140</sup> Rafat Y. Alwazna, 'Ethical Aspects of Translation: Striking a Balance between Following Translation Ethics and Producing a TT for Serving a Specific Purpose', in *English Linguistics Research*, n° 1, 2014.

<sup>141</sup> International Federation of Translators (FIT). *The Translator's Charter* (approved by the Congress at Dubrovnik in 1963 and amended in Oslo on 9 July 1994). Retrieved from: [https://multi-languages.com/translations-shtml/translators\\_ethics-shtml/](https://multi-languages.com/translations-shtml/translators_ethics-shtml/) (Accessed: 29 July 2019).

<sup>142</sup> R. Y. Alwazna, *op. cit.*, p. 51.

<sup>143</sup> *Ibid.*

### 2.1.2 Objectives

Before beginning to translate Voltaire's *Prix de la Justice et de l'Humanité*, one of the most important exercises to undertake was to identify and solidify a personal translation strategy. At the outset of my research on translation practices, one of the most eye-opening assertions about translation theory came from Friedrich Schleiermacher's essay, *On the Different Methods of Translating*, originally published in 1813. As quoted in Lawrence Venuti's *The Translator's Invisibility: A History of Translation*, Schleiermacher maintained that translation strategy can be whittled down to two types, 'either the translator leaves the author in peace as much as possible and moves the reader toward him; or he leaves the reader in peace as much as possible and moves the author toward him.'<sup>144</sup> This was a principal challenge for the translation in question; rendering an 18<sup>th</sup>-century text for a 21<sup>st</sup>-century audience, all the while ensuring that it was readable and most importantly faithful to Voltaire's original vision and style. Therefore, the translation technique used had to maintain a just balance between respecting the author and catering for readership.

### 2.1.3 Translation Purpose and Intended Audience

The central objective of the translation was to produce a scholarly representation of Voltaire's opinions and assessment of the 18<sup>th</sup>-century criminal justice system, which was both reliable and accessible for an academic audience. As the text was intended for a primarily academic audience, the utmost attention was placed on producing a target language text that upheld ethical aspects of translation as well as transmitting *Prix de la Justice et de l'Humanité's* composition and content. This was an important objective as the literary values embodied in the source text, including Voltaire's 'views on the human condition', the text's 'function of reflecting or shaping society', and the text's capacity to '[civilise] in [its] promotion of aesthetical and moral values'<sup>145</sup> could not be compromised in the target language translation.

### 2.1.4 Safeguarding Literary Values and Author's Style

Literary translation<sup>146</sup> in contrast to other styles of translation is extremely specific. Of course, every translation is an act of interpretation; however, as a literary translator it was

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<sup>144</sup> Lawrence Venuti, *The Translator's Invisibility: A History of Translation* (Abingdon: Routledge, 2008), p. 84.

<sup>145</sup> *Literary Value*. Retrieved from: <http://englishtextualconcepts.nsw.edu.au/content/literary-value> (Accessed: 24 July 2019).

<sup>146</sup> The difference between literary translation and technical translation lies with its focus 'on linguistic effects that exceed simple communication (tone, connotation, polysemy, intertextuality) and are measured against domestic literary values, both canonical and marginal.' Lawrence Venuti, 'Strategies of translation', in Mona Baker, ed., *The Routledge Encyclopedia of Translation Studies* (London: Routledge, 2001), p. 244.

essential that the translation in question carry the ‘same pulse as the original.’<sup>147</sup> Accordingly, this meant that every effort had to be made to safeguard the spirit, vision, and style of the original, and just as important, to consolidate similar emotions and reactions from the target language audience.

Throughout the translation process, I actively endeavoured to safeguard an interpretation of the past by closely modelling the English translation on the original French text. It is important to note that literary value does not reside in the ‘values expressed or implied in a text, but refers specifically to how one can attribute worth to a text in terms of its value to ‘civilisation’, a culture, a society, or a particular group of people.’<sup>148</sup> It was imperative that the English translation demonstrate a high degree of dependability and reliability so that it could fulfil this function for the intended audience. As Peter Robinson explains in his work *Poetry and Translation: The Art of the Impossible*, the fidelity of a text can be deliberated ‘by comparing and contrasting the character of the autonomous original with that of the related secondary text.’<sup>149</sup> The translation itself must demonstrate its fidelity and trustworthiness. These qualities, as Robinson clarifies, require another figure ‘towards which [they] can be manifested.’<sup>150</sup> In the case of writing, trust includes three key terms: ‘writer, text, and reader’; however, with regard to translation, trust must consist of six terms: ‘writer, text, reader, translator, related text, and reader (bilingual or not).’<sup>151</sup>

When considering how to accurately transfer Voltaire’s style in the translation of *Prix de la Justice de l’Humanité*, the criteria concerning reliability and fidelity were taken into account so that the social function of translation could be satisfied to a high standard. As previously stated, Voltaire did not write for the ‘dry, labouring professor’, but rather for the ‘informed gentleman reader.’<sup>152</sup> He demonstrated the potential of simplicity in communication, which was a feature of his style that I endeavoured to maintain in the translated text. Although the intended readership for the present translation is an academic audience, the manner of expression throughout should be very accessible to the independent reader, just as Voltaire intended with the original. Moreover, clarity, another key feature of Voltaire’s style, was emphasised in the English translation. Particular attention was given in order clearly convey

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<sup>147</sup> Cecilia Rossi, ‘Literary translation and disciplinary boundaries’, in Kelly Washbourne and Ben Van Wyke, eds., *The Routledge Handbook of Literary Translation* (Abingdon: Routledge, 2018), p. 42.

<sup>148</sup> *Literary Value*. Retrieved from: <http://englishtextualconcepts.nsw.edu.au/content/literary-value> (Accessed: 25 July 2019).

<sup>149</sup> Peter Robinson, *Poetry & Translation: The Art of the Impossible* (Liverpool: Liverpool University Press), p. 156.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> A. Ewington, *op. cit.*, p. 40.

the narrative frames, personal asides, and subjective opinions that Voltaire included in his treatise. In no way was the present translation manipulated to pursue personal or ideological objectives that would have jeopardised the constructive function of the original text.<sup>153</sup>

## **2.2 Decisions of Detail and Principles Underlying the Translation**

Decisions of detail are the ‘reasoned decisions concerning the specific problems of syntax, vocabulary, etc. encountered in translating particular expressions or stretches of text in their particular context.’<sup>154</sup> Nevertheless, at this stage, the translator must be prepared to adapt and revise their translation strategy when ‘problems of detail’ lead to ‘unforeseen strategic issues.’<sup>155</sup>

### **2.2.1 Translation Process: Initial Strategic Issues**

The most paramount feature of a literary translation is utmost attention to detail. This feature being the most important was also one of the most challenging aspects of the translation process. This attention to detail extended to syntactic, semantic, and positional characteristics, among others. To effectively translate these elements of the source text for the English-speaking reader, it was essential that a decision be made about adopting a foreignizing or domesticating translation strategy. For the most part, foreignizing strategies have been put into practice with literary translations; yet, domesticating strategy can help to make the text more familiar for the target language reader.

Because the text being translated was quite sizeable, as a starting point, the preface and the first three articles of the text were translated to explore translation style and process. Consultation with my supervisor regarding these initial translations facilitated self-evaluation of these trial productions. Moreover, discussion with my supervisor about translation process prompted self-learning and called into question what the translation would infer to the target language reader and how it would affect their understanding of the source text. A colour-coded highlighting system was adopted by my supervisor throughout the translation process, which enabled me to refine and correct problematic sections of the translations. This system was crucial when revising challenging paragraphs, as the type of error or improvement needed was indicated; however, it was always my role to find the most appropriate solution. From this point on, it was obvious that developing a literary translation strategy was not a clear-cut exercise,

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<sup>153</sup> Rachel Lung, *Interpreters in Early Imperial China* (Amsterdam: John Benjamins Publishing Co., 2011).

<sup>154</sup> S. Hervey and I. Higgins, *op. cit.*, p. 6.

<sup>155</sup> *Ibid.*

but rather a process of trial and error.

When I reviewed the first draft translations, it was clear that they were overly domesticated. From this point forward, as I worked my way through each article, I favoured the foreignizing strategy as it ensured that meaning did not have to be sacrificed. In the following sections, I detail how word choice throughout the translation of the articles often reflects this strategy. Rather than opting for a word that would be more readily recognisable to the English-speaking reader, a word that may appear more archaic to a 21st-century audience was selected (e.g., un ravisseur – a ravisher, un ergoteur – a pettifogger, la canaille – the rabble). Yet, this strategy allowed me to safeguard the literary values and style that Voltaire demonstrated in his writing. Naturally, this strategy was only applicable at certain stages of the translation process, as if it was overly implemented incomprehension would result, and the translation produced would not be the most dependable and trustworthy one possible. Consequently, when Voltaire made reference to a culturally specific marker that either did not exist in the English language, or sounded alien when translated, an equivalent had to be rendered which would be clear to the target language reader, and yet remained faithful to the original expression.

## 2.2.2 Accuracy: Linguistic Context

To develop a lexicon for this translation that was similar to that of the original 18<sup>th</sup>-century source text, the influence that the French language had on the English language was examined. From the 11<sup>th</sup> Century, the English language lexically borrowed from French.<sup>156</sup> This superstrate borrowing was particularly visible from 1258 to 1362, whereby an increase in French loanwords was observed in several lexical fields.<sup>157</sup> Particularly significant to this translation was the courtly vocabulary that was borrowed during this period.<sup>158</sup> Moreover, in England, when Latin ceased to be the language of law, the English adopted the French language.<sup>159</sup> This meant that French words associated with law were assimilated into the English lexicon.<sup>160</sup> Furthermore, a synonymy between the languages can be observed from the

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<sup>156</sup> This was in part due to Edward the Confessor's period of exile in Normandy. When he ascended to the throne in 1042, the early influence of French on English came to light. However, it was during the Norman Conquest of 1066, that the Anglo-French language came into being. This meant that Anglo-French was used alongside Latin in state affairs. Isabel Roth, 'Explore the influence of French on English', *Leading Undergraduate Work in English Studies*, vol. 3, 2010.

<sup>157</sup> *Ibid.*

<sup>158</sup> E.g., coronation, princess, royal. *Ibid.*, p. 256.

<sup>159</sup> *Ibid.*

<sup>160</sup> E.g., la justice (justice), le juge (judge), le jury (jury), l'atorné/l'avocat (attorney - old French), la curt/la cour (court - old French). Samuel Johnson, *A Dictionary of the English Language: In which the Words are Deduced from Their Originals [...]* (Glasgow: James Duncan & Son, 1792).



12<sup>th</sup> Century.<sup>161</sup> Synonymy, as observed throughout this translation was greatly affected by nuances of meaning associated with the 18<sup>th</sup> Century and meant that particular attention had to be paid when borrowing. To help with this, relevant French and English historical dictionaries of the period were consulted.<sup>162</sup> For example, in Article II on Theft, Voltaire poses the question: ‘Quel est l’effet de cette loi inhumaine qui met ainsi dans la balance une vie précieuse contre dix-huit serviettes ?’,<sup>163</sup> which was translated as: ‘What is the effect of this inhumane law, which thereby balances a precious life against eighteen napkins?’ In the 15<sup>th</sup> Century, the English language borrowed the noun ‘serviette’ from the French language, which referred to the ‘cloth placed before each dinner guest.’<sup>164</sup> However, since the 19<sup>th</sup> Century, the word ‘napkin’ has overshadowed the use of ‘serviette’ in the English language.<sup>165</sup> Nowadays, you might come across slightly pretentious if you use the latter term at the dinner table. As this was not Voltaire’s intention in the original, borrowing was used in this instance to favour content and connotation rather than literal translation.

One of the main aims while developing this translation process was to create a readable text. However, it was soon discovered that there was a significant difference between producing a translation that was reader orientated versus reader friendly. This translation factor played a key role in the lexicon employed. It was necessary that the reader acknowledged that this translation reflected a text that was produced during the 18<sup>th</sup> Century and in a different culture. Therefore, to bring Voltaire’s style, his word play, irony, and humour to the foreground, it was decided that the evolution of language in *Prix de la Justice et de l’Humanité* would be used to guide the translation process. It was important to constantly keep in mind that Voltaire decided to use a word or an expression for a specific reason. This is where shades of meaning and nuances came into play. One of the greatest contrasts noted between the French and English language, throughout the translation process, was the multiple parallel meanings that a single French word or verb could carry, whereas English word choice was much more precise. With this greater precision, it had to be ensured that word choice manifested the author’s original connotations. This was troublesome at times because overly assimilating or appropriating the source text reduced the reliability of the translation. Therefore, two strategies were narrowed

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<sup>161</sup> I. Roth, *op. cit.*

<sup>162</sup> E.g., *A Dictionary of the English Language: A Digital Edition of the 1755 Classic by Samuel Johnson*. Last modified: 14 June 2017. Brandi Besalke, ed. Retrieved from: <https://johnsonsdictionaryonline.com/quoted-authors/>. (Accessed: 12 January 2019); *Centre national de ressources textuelles et lexicales (CNRTL)* Retrieved from: <https://www.cnrtl.fr/> (Accessed: 10 December 2018).

<sup>163</sup> Voltaire, ‘Prix de la Justice et de l’Humanité’, in Robert Grandroute and Shiela Mason, eds., *Œuvres complètes de Voltaire*, vol. 80B (Oxford: Voltaire Foundation, 2009), p. 57.

<sup>164</sup> Mark Morton, *A Dictionary of Culinary Curiosities* (Toronto: Insomniac Press, 2004), p. 273.

<sup>165</sup> *Ibid.*

down to help overcome this issue. Firstly, in certain instances, when language could not be unambiguously translated, the decision was made to safeguard tone as reflected in the text. For example, in Article IV on Duel, Voltaire questions: *Ne nous direz-vous point pourquoi les Scipions, les Métellus, les Césars et les Pompées, n’allaient point sur le pré pousser de tierce et de quarte [...] ?*,<sup>166</sup> which was translated as: ‘Will you not tell us why the Scipions, the Metellus, the Caesars, and the Pompeys, did not go to the field to parry in a sword fight [...]?’ The expression ‘pousser de tierce et de quarte’ is a fencing term used in the 18<sup>th</sup> Century, which has fallen into disuse. If a literal translation was rendered, it would read ‘to push with the tierce and the quarte.’ This direct translation is incomprehensible; therefore, it was decided to explain these fencing terms in detail through a descriptive footnote so that the reader could understand the origin and meaning of the expression. It was assured that Voltaire’s tone and connotation was assured by using fencing vocabulary that accurately mirrored the original expression. In modern fencing terminology, the term ‘tierce’ is described as the ‘3rd Guard or Parry (Hand in Pronation)’ and the ‘quarte’ is defined as the ‘4th Guard or Parry.’<sup>167</sup> Accordingly, the verb ‘to parry’ was implemented to communicate this obsolete expression to the reader. Secondly, language choices were opted for that at times may result in the reader having to work a bit more diligently. For example, in Article XVIII on Rapt, Voltaire explains that ‘La loi Caroline, les ordonnances en France établissent la peine de mort contre un ravisseur’,<sup>168</sup> which was translated as: ‘The Carolina law, the rulings in France establish the death penalty against a ravisher.’ The noun ‘raveur’ could have easily been translated by ‘abductor’ or ‘kidnapper’, terms which would be readily recognisable to a 21<sup>st</sup> Century reader. However, ‘raveur’ influenced the English noun ‘ravisher’, which originated from the French verb ‘ravier’, meaning to seize or take away.<sup>169</sup> As the term ‘ravisher’ was in use in the English language during the 18<sup>th</sup> Century and it accurately reflected the meaning of ‘raveur’, this word was used instead of a more familiar equivalent because as David Katan expressed in his article ‘Translating the ‘literary’ in literary translation in practice’, heightened cognitive effort from word choice can lead to increased cognitive effect, and accordingly enhanced understanding of the author’s vision and meaning.<sup>170</sup>

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<sup>166</sup> Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 73.

<sup>167</sup> Mick Dennis, *Illustrations of The Seven Sabre Guards for a Righthanded fencer (2000)*. Retrieved from: [http://www.foiledagain.co.uk/wp-content/uploads/2018/04/Sabre-lines\\_5521430bb0ce8.pdf](http://www.foiledagain.co.uk/wp-content/uploads/2018/04/Sabre-lines_5521430bb0ce8.pdf) (Accessed: 25 July 2019).

<sup>168</sup> Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 152.

<sup>169</sup> Guy Miège, *A New Dictionary French and English, with another English and French, etc, Volume 1* (London: Thomas Basset, 1679).

<sup>170</sup> D. Katan, *op. cit.*

### **2.2.3 Accuracy: Socio-cultural Context**

The utmost was done to read within the context that Voltaire shaped, in order to construct meaning from the cultural references that were alluded to throughout the text. This step was crucial and could not be overlooked, as it directly affected my ability to accurately map the author's thoughts, stemming from my understanding of the references that were included in the text. The challenge involved transferring this knowledge that was integral to the source text, but perhaps unfamiliar to a reader from a different country. This required sifting through all the references that Voltaire made in each article about individuals, events, practices, political happenings, and traditions, among others, so that an enhanced meaning could be delivered to the reader. In doing so, the original connotations and associations that Voltaire wanted his audience to read and interpret could be revealed. Such references were elaborated on by means of explanatory and cultural footnotes, which encompassed mini-commentaries, clarifications of events and individuals alluded to in the text, and translations of original notes included by Voltaire and the editors of the Kehl edition of the text.<sup>171</sup> These annotations are indispensable for the English-speaking reader, so that they can fully appreciate the source language text. Rather than risking misinterpretation or misunderstanding about the references made, the reader can instead read for enjoyment and instruction.

### **2.3 The Revision Process and Technique Overview**

Throughout the prologue, this translation project has been referred to as a process. This process can be condensed in the words of Italo Calvino who stated that 'you only really read an author when you translate him.'<sup>172</sup> It can safely be said that translation is one of the greatest exercises to undertake in order to build a considerable understanding of an author, but also of another culture. This in my case, was most apparent during the revision phase of the translation. At that stage, the source text had been read and re-read multiple times, annotations were produced to accompany in-text references, the context surrounding the history and publication of the text were examined; yet, new opportunities continually arose to mould the language used in a more precise manner to improve the literary translation. During this revision stage, two of the main features that were reemphasised throughout were continuity and sensitivity to the

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<sup>171</sup> Unless otherwise stated, all subsequent references to original notes by Voltaire and the Kehl edition editors in the footnote section are from the OCV 80B edition. The French text is italicised and in quotation marks, and the English translation appears below it in parentheses. Translations of French contextual footnotes into English are my own unless otherwise stated.

<sup>172</sup> Ginevra Grossi, 'Calvino and Weaver on translation: in theory and in practice', *Lingue e Linguaggi*, n° 14, 2015, p. 198.

author's original vision. As Voltaire intended for his treatise to be read and understood by a broad audience, I also wanted to ensure that the present translation echoed this objective. Looking back on the translation technique that I adopted, it is clear that I closely modelled my English translation on the French source text. Taking my initial objectives, audience as well as ethical considerations into account I opted for literal translation when it permitted me to safeguard grammatical and meaningful content in the target language, when it complied with linguistic rules of the target language, and when it enabled me to express the original text verbatim without causing miscomprehension. Indeed, I realised throughout the translation process that it was impossible to always do this. However, when this was the case, I always endeavoured to interrelate the translation and its content as thoughtfully as possible.

**Voltaire**

*Prix de la Justice et de l'Humanité*

*The Prize of Justice and Humanity*

## **PRÉFACE**

**GAZETTE DE BERNE, NUMÉRO 14, 15 FÉVRIER 1777.**

**DE BERNE, 13 FÉVRIER**

Un ami de l'humanité, qui content de faire le bien veut se soustraire à la reconnaissance publique en cachant son nom, touché des inconvénients qui naissent de l'imperfection des lois criminelles de la plupart des Etats de l'Europe, a fait parvenir à la Société économique de cette ville, un prix de cinquante louis d'or neufs en faveur du Mémoire que la Société jugera le meilleur sur l'objet qui suit.

Composer et rédiger un plan complet et détaillé de législation sur les matières criminelles sous ce triple point de vue.

## PREFACE

GAZETTE OF BERNE,<sup>173</sup> NUMBER 14, 15 FEBRUARY 1777.<sup>174</sup>

BERNE, 13 FEBUARY

A friend of humanity,<sup>175</sup> who, pleased to do good, wants to avoid public acknowledgement by concealing his name,<sup>176</sup> moved by the inconveniences that are born of the imperfection of the criminal laws of the majority of European States, has sent to this town's economic Society a prize of fifty new gold louis<sup>177</sup> in favour of the essay that the Society will judge the best on the subject that follows.

Compose and write a complete and detailed legislative proposal on criminal matters, under this threefold point of view.

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<sup>173</sup> The *Gazette de Berne* was printed in Berne, Switzerland from 1689 until 1798. Simon Burrows, 'The Cosmopolitan Press, 1759-1815', in Hannah Barker and Simon Borrows, eds., *Press, Politics and the Public Sphere in Europe and North America, 1760-1820* (Cambridge: Cambridge University Press, 2002).

<sup>174</sup> Voltaire's treatise *Prix de la Justice et de l'Humanité* was first published in the 14<sup>th</sup> issue of *Nouvelles Extraordinaires de Divers Endroits* (Extraordinary news from various places), dated 15 February 1777. The newspaper was also recognised under titles including the *Gazette de Leyde* (Gazette of Leiden) and the *Gazette de Berne* (Gazette of Berne). It was printed in the French language from its headquarters in the town of Leiden, Netherlands. As one of the most considerable political newspapers in the latter half of the 18<sup>th</sup> Century, the publication prevailed as a significant global European newspaper from its inauguration in 1677 until its abolition in 1798, following France's invasion of the Netherlands. Jack Censer and Jeremy Popkin, *Press and Politics in Pre-revolutionary France* (Los Angeles: University of California, 1987).

<sup>175</sup> The following is an original note included by Voltaire, as documented by Robert Grandroute in 'Prix de la justice et de l'humanité', in Robert Grandroute and Shiela Mason, eds., *Œuvres complètes de Voltaire*, vol. 80B (Oxford: Voltaire Foundation, 2009). From this point on, all original notes included by Voltaire in the *Œuvres complètes de Voltaire*, vol. 80B, will be referred to as: Voltaire original note, *op. cit.*

*'Il ne faut pas entendre ici par humanité humanum genus, la nature humaine, le genre humain. Homo sum, humani nihil à me alienum puto, car on ne donne pas un prix au genre humain, à la nature humaine, mais à l'âme la plus humaine, la plus sensible, qui aura joint le plus de justice à cette vertu. Voyez le dictionnaire de l'Académie française.'* (p. 49).

(Humanity should not be understood here as *humanum genus*, human nature, humankind. *Homo sum, humani nihil à me alienum puto* (I am human, and I think nothing of which is human alien to me), because a prize is not being given to humankind, to human nature, but to the most humane, the most sensitive soul, that will have combined the most justice with this virtue. See *Le dictionnaire de l'Académie Française*.)

<sup>176</sup> Voltaire is referring to Parisian lawyer Jean-Baptiste-Jacques Élie de Beaumont (1732 - 1786). De Beaumont was an avid correspondent of Voltaire's and this gave rise to a cordial friendship between the two men. Sebastian Longchamps and Jean-Louis Wagnière, *Mémoires sur Voltaire : et sur ses ouvrages* (Paris: Lebel, 1826).

<sup>177</sup> William Arthur Shaw reports in *The History of Currency, 1252 to 1896* (New York: Sentry Press, 1967), that the louis d'or was a gold coin established in 1640 by King Louis XIII of France. The coin was introduced in conjunction with reform in the French monetary system. It acquired its name from the figure of Louis XIII that appeared on the obverse of the coin and the royal crest on the reverse. The coin was in operation until 1792 and saw its collapse during the French Revolution.

1°) Des crimes et des peines proportionnées qu'il convient de leur appliquer.

2°) De la nature et de la force des preuves et des présomptions.

3°) De la manière de les acquérir par la voie de la procédure criminelle, en sorte que la douceur de l'instruction et des peines soit conciliée avec la certitude d'un châtement prompt et exemplaire, et que la société civile trouve la plus grande sûreté possible pour la liberté et l'humanité.

Les pièces de concours doivent être adressées franco à M. le docteur Tribolet, secrétaire perpétuel de la Société, et seront reçues jusqu'au 1<sup>er</sup> juillet 1779.



1°) On crimes and proportional punishments that should be applied to them.<sup>178</sup>

2°) On the nature and strength of evidence and presumptions.

3°) On the means to acquire them through criminal proceedings, to ensure that the mildness of the inquiry and the punishments be reconciled with the certainty of a prompt and exemplary punishment, and that civil society finds the greatest possible security for liberty and humanity.<sup>179</sup>

The competition entries must be addressed postage paid to Dr. Tribolet,<sup>180</sup> Permanent Secretary of the Society, and will be received until 1 July 1779.<sup>181</sup>

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<sup>178</sup> In the same vein, Cesare Becarria considers the nature of distinct criminal acts in his work *On Crimes and Punishments* (1794). He examines legitimate and deserved punishment for such crimes and affirms that ‘punishments are unjust when their severity exceeds what is necessary to achieve deterrence.’ Cesare Becarria, *On Crimes and Punishments*, Trans., Graeme Newman and Pietro Marongiu (New Jersey: Transaction, 2009), p. 14.

<sup>179</sup> As stated in the *Œuvres Complètes de Voltaire*, vol. 80B, the following is the continuation and conclusion of the article taken from the *Gazette de Berne*.

‘*Quoique jusqu’à présent la société se soit appliquée d’une manière plus particulière à la physique et à l’agriculture, elle aime cependant trop la recherche du vrai et de l’utile dans tous les genres, pour ne pas se charger avec plaisir de la publication d’une question si intéressante pour toutes les nations, et qui tend à répandre de nouvelles lumières sur une des branches les plus importantes de la législation. Le prix sera adjugé à la fin de l’année 1779, et les pièces de concours doivent être adressées franco à M. le docteur Tribolet, secrétaire perpétuel de la société, et seront reçues jusqu’au 1<sup>er</sup> juillet 1779. Elles pourront être écrites en latin, français, allemand, italien, ou anglais. Le nom de l’auteur sera renfermé dans un billet cacheté qui portera la même devise que le mémoire qui l’accompagnera.*’ (p. 50).

(Although up until present, the Society more particularly applied itself to physics and agriculture, it nonetheless still too likes research of truth and usefulness in all genres, that it could not but publish with pleasure such an interesting question for all nations, and which aims to spread new light upon one of the most important branches of legislation. The prize will be awarded at the end of the year 1779, and the competition entries must be addressed postage paid to Dr. Tribolet, Permanent Secretary of the Society, and will be received until 1 July 1779. They may be written in Latin, French, German, Italian, or English. The author’s name will be enclosed in a sealed letter that will bear the same motto as the essay which will accompany it.)

<sup>180</sup> ‘*M. Tribolet, Docteur en Médecine fut élu à sa place, et reçut en même tems Membre ordinaire de la Société et du Comité.*’ François Humblot and the Société économique, *Mémoires et observations recueillies par la Société œconomique de Berne* (Lyon: La Société Économique, 1770), p. 14.

(Mr. Tribolet, Doctor of Medicine, was elected in his place, and at the same time was received as an ordinary member of the Society and Committee.)

<sup>181</sup> As noted by Emmanuelle De Champs in her work *Enlightenment and Utility* (Cambridge: Cambridge University Press, 2015), it was not Voltaire’s intention to enter the competition proposed by the Economic Society of Berne. By writing his treatise, he aspired to encourage others to compose contest entries. Voltaire’s work was first published in the *Gazette de Berne* in 1777. The actual prize was postponed and presented in 1782. This delay was on account of the significant number of treatises submitted to the Society (46 in total). Two German entrants Von Globig and Hulster were awarded the prize. They wrote their entry in German. Despite their success, their essay was not given any attention in Germany. Adhémar Esmein, *A History of Continental Criminal Procedure: With Special Reference to France*, Trans., John Simpson (New Jersey: The Lawbook Exchange, 2000).

Un autre inconnu touché du même zèle, ajoute cinquante louis d'or au prix proposé, et les fait déposer dans les mêmes mains, afin que la Société puisse à son gré augmenter le prix ou donner des accessits.

Nous présentons à ceux qui travailleront, nos doutes sur un sujet si important, afin qu'ils les résolvent s'ils les en jugent dignes.

Another anonymous individual<sup>182</sup> touched by the same zeal, adds fifty gold louis to the proposed prize and deposits them in the same hands, so that the Society may at its discretion increase the prize or give honourable mentions.

We present to those who will work, our doubts on such an important subject, so that they may resolve them should they judge them worthy of it.

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<sup>182</sup> As clarified in *Documents of Catherine the Great: The Correspondence with Voltaire and the Instruction of 1767 in the English Text of 1768*, ed., William Reddaway (New York: Cambridge University Press, 2012), Voltaire was the second benefactor. From 1758 to 1778, Voltaire spent a substantial amount of time in Ferney and became an ardent correspondent of several writing companions, one of whom was Empress Catherine II of Russia. He enlisted her support to inspire competition submissions. In a letter dated 5 December 1777, Voltaire wrote the following to Catherine II:

*'J'ai pris la liberté d'adresser, il y a quinze jours, à votre majesté, par les chariots de poste d'Allemagne, le Prix de la justice et de l'humanité. C'est un petit coup de cloche qui annonce vos bienfaits au genre humain. Nous sommes deux membres de la société de Berne qui avons déposé chacun cinquante louis d'or pour le concurrent qui fera le projet d'un code criminel le plus approchant de vos lois, et le plus convenable au pays où nous vivons.'* (p. 213).

(I have taken the liberty to send to your majesty, a fortnight ago, by the German postal wagons, *Prix de la justice et de l'humanité*. It is a little gesture that acknowledges your good deeds to humankind. We are two members of the Society of Berne who have each deposited fifty gold louis for the competitor who will produce the criminal code proposal that is the most similar to your laws and the most appropriate for the country where we are living.)

~ ARTICLE I ~

**DES CRIMES, ET DES CHÂTIMENTS PROPORTIONNÉS**

Les lois ne peuvent que se ressentir de la faiblesse des hommes qui les ont faites. Elles sont variables comme eux.

Quelques-unes ont été dictées chez les grandes nations par les puissants pour écraser les faibles. Elles ont été si équivoques que mille interprètes se sont empressés de les commenter ; et comme la plupart n'ont fait leur glose que comme on fait un métier, pour gagner quelque argent, ils ont rendu le commentaire plus obscur que le texte. La loi est devenue un poignard à deux tranchants qui égorge également l'innocent et le coupable. Ainsi ce qui devait être la sauvegarde des nations en est si souvent devenu le fléau, qu'on est parvenu à douter si la meilleure des législations ne serait pas de n'en point avoir.

En effet, si on vous fait un procès dont dépend votre vie, qu'on mette d'un côté les compilations des Bartoles, des Cujas, etc., que de l'autre on vous présente vingt juges peu savants, mais qu'ils soient des vieillards exempts des passions qui corrompent le cœur, au-dessus du besoin qui l'avilit, et accoutumés aux affaires dont l'habitude rend presque toujours le sens droit ; dites-moi par qui vous choisiriez d'être jugé, ou par cette foule de babillards orgueilleux, aussi intéressés qu'inintelligibles, ou par ces vingt ignorants respectables ?

~ ARTICLE I ~

ON CRIMES, AND PROPORTIONAL PUNISHMENTS

Laws can only suffer from the weakness of the men who have made them. They are variable like them.<sup>183</sup>

Some of them have been dictated among the great nations by the powerful to crush the weak. They have been so equivocal that a thousand interpreters have hastened to comment on them; and as the majority have only made their gloss as one makes a living, to earn some money, they have made the commentary more obscure than the text.<sup>184</sup> The law has become a double-edged sword that equally cuts the throat of the innocent and the guilty. Thus, what was to be the safeguard of nations, has so often become its scourge, that we have come to doubt if the best of legislations would not be to have any.

Indeed, if you were put on trial, which your life depended thereon, let us put the compilations of the Bartholes,<sup>185</sup> the Cujas,<sup>186</sup> etc. aside, on the other side, you are presented with twenty somewhat learned judges, but they are old men, free from the passions that corrupt the heart, above need which degrades it and accustomed to the affairs, of which custom nearly always renders common sense; tell me by whom would you choose to be judged, either by that crowd of arrogant prattlers, as self-interested as they are unintelligible, or by those twenty respectable novices?

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<sup>183</sup> Voltaire also makes reference to the inconsistent nature of the laws in his 'Dialogues et Entretiens Philosophiques', in *Œuvres complètes de Voltaire*, vol. 18 (Paris: Hachette, 1860):

'[...] et n'est-ce pas une chose absurde et affreuse que ce qui est vrai dans un village se trouve faux dans un autre ? Par quelle étrange barbarie se peut-il que des compatriotes ne vivent pas sous la même loi ?' (p. 182).

([...] and is it not an absurd and awful thing that what is true in one village is considered false in another? By what strange barbarity can it be that countrymen do not abide by the same law?)

<sup>184</sup> Comparably, Beccaria stated that 'if the interpretation of laws is bad, it is even more evident that their obscurity inevitably makes it so and is made worse when the laws are written in a language that is foreign to ordinary people.' C. Beccaria, Trans., G. Newman and P. Marongiu, *op. cit.*, p. 17.

<sup>185</sup> Bartolus of Sassoferrato (1314 - 1357) was an Italian lawyer and led a faction of Italian medieval jurists who served as postglossators from the mid-1350s. They primarily interpreted Roman civil law, in order to make it applicable to the 14<sup>th</sup>-century political situation. Cecil Woolf, *Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought* (Cambridge: Cambridge University Press, 2012).

<sup>186</sup> In his review of the great jurists of the world, Coleman Phillipson reports in his article 'Jacques Cujas', *Journal of the Society of Comparative Legislation*, (Cambridge: England), n°1, 1912, that Jacques Cujas (1522 - 1590) was a renowned French jurist and scholar during the Renaissance period. His work centred on Roman law and he had a prominent role in the humanist resurgence of classical culture.

Après avoir bien senti la difficulté presque insurmontable de composer un bon code criminel, également éloigné de la rigueur et de l'indulgence, je dis à ceux qui entreprendront cette tâche pénible ; je vous supplie, Messieurs, de m'éclairer sur les délits auxquels la misérable nature humaine est le plus sujette. Un Etat bien policé ne doit-il pas les prévenir autant qu'il est possible, avant de penser à les punir ?

Je vous proposerais de récompenser les vertus dans le peuple, selon la loi établie dans le plus ancien empire et le mieux policé de la terre, si nous n'étions pas astreints par notre sujet à nous en tenir aux châtimens des crimes.

Commençons par le vol qui est la plus commune des transgressions.

After having certainly felt the almost insurmountable difficulty of composing a good penal code, equally distant from rigour and indulgence, I say to those who will undertake this difficult task; I implore you, Sirs, to enlighten me about the crimes that miserable human nature is most subject to. Should a well civilised State not prevent them<sup>187</sup> as much as possible, before thinking of punishing them?<sup>188</sup>

I would propose to you to reward the virtues among the people, according to the law established in the most ancient empire and the best civilised on earth,<sup>189</sup> if we were not obliged by our subject matter to confine ourselves to the punishment of crimes.

Let us begin with theft, which is the most common of transgressions.

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<sup>187</sup> Voltaire also asserted in his 'Commentaire sur le livre des délits et des peines', in *Œuvres complètes de Voltaire*, vol. 5 (Paris: F. Didot frères, 1843) that: '*Il valait bien mieux prévenir ces malheurs, qui sont assez ordinaires, que se borner à les punir. La véritable jurisprudence est d'empêcher les délits [...]*.' (p. 462). (It was better to prevent these misfortunes, which are fairly ordinary, than to content oneself with punishing them. The true case law is to prevent crimes [...].)

<sup>188</sup> This view is also supported by Beccaria who wrote that 'if a punishment is to serve its purpose, it is enough that the harm of punishment should outweigh the good which the criminal can derive from the crime, and into the calculation of this balance, we must add the unerringness of the punishment and the loss of the good produced by the crime. Anything more than this is superfluous and, therefore, tyrannous.' C. Beccaria, Trans., G. Newman and P. Marongiu, *op. cit.*, p. 43.

<sup>189</sup> Voltaire is referring to China as the most ancient and civilised empire in the world. As Ira Wade clarified in *Intellectual Development of Voltaire* (New Jersey: Princeton University Press, 1969), the Chinese 'were unskilled as natural scientists but excellent in creating 'la morale'. The basis of their government was the family, and their religion was simple, free from all superstition and barbarity. Never were there religious quarrels, never wars between priests and the people, and their revered Confucius taught the purest morality.' (p. 729).

**~ ARTICLE II ~**

**DU VOL**

Le filoutage, le larcin, le vol, étant d'ordinaire le crime des pauvres, et les lois ayant été faites par les riches, ne croyez-vous pas que tous les gouvernements qui sont entre les mains des riches, doivent commencer par essayer de détruire la mendicité, au lieu de guetter les occasions de la livrer aux bourreaux ?

Dans des royaumes florissants on a publié des édits, des ordonnances, des arrêts pour rendre cette multitude effroyable de gueux qui déshonorent la nature humaine, utile à elle-même, et à l'Etat.



~ ARTICLE II ~

ON THEFT

Swindling, larceny, and theft<sup>190</sup> ordinarily being the crimes of the poor, and the laws having been made by the rich, do you not believe that all governments that are in the hands of the rich, must begin by trying to destroy mendicants, instead of watching out for opportunities to hand them over to the executioners?<sup>191</sup>

In flourishing kingdoms, edicts, rulings, and judgments have been published in order to make this dreadful multitude of beggars, who dishonour human nature, useful to itself and to the State.<sup>192</sup>

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<sup>190</sup> As observed in the *Œuvres complètes de Voltaire*, vol. 19, *op. cit.*, Voltaire makes a distinction between ‘larcin’ and ‘vol’, both of which are forms of theft. Voltaire stated that: ‘*La peine de mort étant la même pour un petit larcin que pour un vol considérable, il est évident qu’ils chercheront à voler beaucoup. Ils pourront même devenir assassins quand ils croiront que c’est un moyen de n’être pas découverts.*’ (p. 481).

(The death penalty being the same for a petty theft as for a considerable theft, it is evident that they (thieves) will try to steal a great deal. They may even become murderers when they will believe that it is a way to avoid discovery.)

<sup>191</sup> The following is an original footnote included by the editors of the Kehl edition of *Prix de la Justice et de l’Humanité*, as documented in ‘Prix de la justice et de l’humanité’, in Robert Grandroute and Shiela Mason, eds., *Œuvres complètes de Voltaire*, vol. 80B (Oxford: Voltaire Foundation, 2009). From this point on, all original notes by the Kehl edition editors in the OCV edition will be referred to as: Kehl edition editors’ original note, *op. cit.* ‘*Dans tout pays où par l’effet des mauvaises lois une grande partie des habitants n’a ni propriété foncière ni capitaux, la société est nécessairement affligée de ce fléau. Il est bon, sans doute, qu’il y ait des maisons où l’on offre du pain à ceux qui ne peuvent gagner leur vie, en les assujettissant à un travail qu’ils soient capables de faire ; mais ces asiles doivent être libres. Les hommes humains et justes seront toujours blessés de voir condamner un malheureux à la perte de sa liberté parce qu’il a demandé du secours à un autre homme. Avec de bonnes lois les mendiants seraient rares, et le petit nombre qu’il pourrait y avoir encore, ne serait ni incommode ni dangereux.*’ (p. 55).

(Society is inevitably afflicted with this plague in every country whereby operation of bad laws, a large number of the inhabitants have neither landed property, nor capital. Undoubtedly, it is good practice that there are houses where bread is offered to those who cannot earn their living, by subjecting them to a job that they are capable of doing; but these refuges must be free. Humane and fair men will always be hurt to see a poor person condemned to lose his liberty because he asked another man for help. With good laws mendicants would be rare, and the little number that still could remain would neither be inconvenient, nor dangerous.)

<sup>192</sup> As remarked by William Doyle, ed., in the *The Oxford Handbook of the Ancien Régime* (Oxford: Oxford University Press, 2012), the latter years of the Ancien Régime in France saw two main ‘Poor Laws’ that were underscored by heightened vigilance and oppression. The first decree was the Royal Declaration of 1724, issued during the reign of Louis XV. This decree was based on the convention that labour punishment was a crucial reaction to destitution and under its terms a considerable policy of internment was introduced. Hospitals were transformed into hubs of incarceration for the poor, hospital superiors and royal constables were entrusted with the duty of making arrests, as the government prioritised fashioning a labour force from the masses of poor to work on the country’s economic enterprises. However, this decree proved a failure, as few cities were equipped with the means, nor had the inclination to execute the strategy. Following this failure, another venture was led by L’Averdy in 1764, that enacted more severe punishments for able-bodied beggars, with a first offense acquiring a three-year detention in the galleys. This scheme also oversaw the production of dépôts de mendicité (workhouses for beggars) throughout the country, which from the year 1767 acted as the pillar against itineracy in French society. These workhouses were infested with disease and working conditions were severe.

Mais il y a si loin d'un édit à l'exécution, que le projet le plus sage a été le plus vain. Ainsi ces grands Etats sont toujours une pépinière de voleurs de toute espèce.

On y pend les petits larrons comme on sait ; le vol domestique est puni et non empêché par la potence.

On a vu pendre dans une ville très riche il n'y a pas longtemps, une fille de dix-huit ans d'une rare beauté. Quel était son crime ? elle avait pris dix-huit serviettes à une cabaretière sa maîtresse, qui ne lui payait point ses gages.

Toute la canaille qui court à ces spectacles comme au sermon, parce qu'on y entre sans payer, fondait en larmes : et aucun n'aurait osé délivrer la victime, quoique tous eussent volontiers lapidé la barbare qui la faisait périr.

Quel est l'effet de cette loi inhumaine qui met ainsi dans la balance une vie précieuse contre dix-huit serviettes ? c'est de multiplier les vols. Car quel est le maître de maison qui osera abjurer tout sentiment d'honneur et de pitié au point de livrer son domestique coupable d'un tort si petit pour être pendu à sa porte ? on se contente de le chasser ; il va voler ailleurs, et il devient souvent un brigand meurtrier. C'est la loi qui l'a rendu tel : c'est elle qui est coupable de tous ses crimes.

But an edict is so far away from being enacted, that the wisest project has been the vainest. Thus, these great States are always a breeding ground for all kinds of thieves.

As everyone knows, petty thieves are hanged there; domestic theft is punished and not prevented by the gallows.

We have seen hang in a very rich town, not long ago, an eighteen-year-old girl of rare beauty. What was her crime? She had taken eighteen napkins from an innkeeper, her mistress, who did not pay her the wages due to her.<sup>193</sup>

All the rabble who rush to these spectacles like to the sermon because one can enter there without paying, burst into tears: and none of them would have dared free the victim, although all would have willingly stoned the female barbarian who had her killed.

What is the effect of this inhumane law, which thereby balances a precious life against eighteen napkins? It increases the thefts. For who is the master of the house who will dare to abjure all sentiment of honour and pity to the point of delivering his servant, guilty of such a small wrongdoing, to be hanged on his doorstep? They content themselves with dismissing him; he is going to steal elsewhere, and he often becomes a murderous bandit. It is the law that has made him so: it is the law that is guilty of all his crimes.<sup>194</sup>

En Angleterre on n'a point encore abrogé la loi qui punit de mort tout larcin au-dessus de douze sous. Cela n'est pas cher. Ailleurs le larcin du moindre meuble dans une maison royale mène à la corde ; et il y en a des exemples.

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<sup>193</sup> Voltaire is referring to the case of Antoinette Toutan. As recorded by the Membres de la Commission de Statistique in the *Archives Historiques et Statistiques du Département du Rhone*, vol. 9-10 (Lyon: Barret, 1828-1829), Toutan was convicted in the town of Lyon in 1772 for having stolen 'vingt-huit serviettes' (twenty-eight napkins) from the widow Antoinette Drivet, who was residing at the Royal Palace. Toutan was condemned to death by hanging, as pronounced by the criminal lieutenant from the jurisdiction of a seneschal on 6 March 1772 and this was confirmed by the judgement passed by the superior council on the 13<sup>th</sup> of the same month. Furthermore, it was stated that:

*'Elle était en outre véhémentement soupçonnée d'avoir aussi volé à un anglais [...] une tabatière de porcelaine, et à sa fille de cet anglais, une manchette de mousseline brodée.'* (p. 386).

(Furthermore, she was strongly suspected of also having stolen a porcelain tobacco pouch from an English man [...] and an embroidered chiffon cuff from the daughter of this English man.)

<sup>194</sup> As observed in the *Œuvres complètes de Voltaire*, vol. 19, *op. cit.*, Voltaire asserted that it would be a greater benefit to society if criminals were sentenced to reform themselves through physical labour:

*'Mais si la peine est proportionnée au délit, si le voleur domestique est condamné à travailler aux ouvrages publics, alors le maître dénoncera sans scrupule ; il n'y aura plus de honte attachée à la dénonciation ; le vol sera moins fréquent. Tout prouve cette grande vérité, qu'une loi rigoureuse produit quelquefois les crimes.'* (p. 481).

(But if the punishment is proportioned to the crime, if the thieving servant is condemned to work on public works, then the master will report on him without any qualms; there will no longer be any shame associated with denunciation; theft will be less frequent. There is evidence of this great truth, that sometimes a rigorous law produces crimes.)

Est-ce pour réparer le tort fait au roi ? Il est certainement l'homme du royaume qu'on appauvrit le moins en le volant. Est-ce parce qu'on regarde le délinquant comme un fils qui a volé son père ? Un père pardonnerait. Est-ce parce que l'esclave a volé son maître ? Je n'ai plus qu'à me taire ; j'aurais trop à dire.

La postérité croira-t-elle qu'en Angleterre où les derniers siècles ont vu naître tant de lois favorables au peuple, cependant on ait pu porter peine de mort pour la contrebande d'une peau de mouton ? Croira-t-on qu'en 1624 le roi d'Espagne, Philippe IV, ait par un édit, condamné à la potence quiconque fait passer une livre d'or, ou d'argent, ou de cuivre, hors de son royaume ? Et c'est le maître des mines du Mexique et du Pérou qui a fait cette loi !

In England, the law that punishes all larceny above twelve sous by death has not yet been abrogated.<sup>195</sup> That is not a lot of money.<sup>196</sup> Elsewhere, the theft of the least important piece of furniture in a royal household leads to the rope; and there are some examples of it.

Is it to make amends for the harm done to the king? He is certainly the man of the kingdom who is impoverished the least by stealing from him. Is it because the delinquent is regarded as a son who has stolen from his father? A father would pardon. Is it because the slave has stolen from his master? All I can do is keep quiet; I would have too much to say.<sup>197</sup>

Will posterity believe that in England, when the past centuries have seen the birth of so many laws favourable to the people, the death penalty could yet be imposed for smuggling a sheepskin? Will it be believed that in 1624, the King of Spain, Philip IV, had by an edict, condemned to the gallows whoever passed a pound of gold, or silver, or copper outside his kingdom?<sup>198</sup> And it is the master of the mines of Mexico and Peru who made this law!

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<sup>195</sup> Kehl edition editors' original note, *op. cit.*

*'Cette loi n'est pas exécutée. L'usage est ou d'éluider la loi, ou de s'adresser au roi, pour qu'il change la peine. Presque partout les mœurs sont plus douces que les lois qui ont été faites dans des temps où les mœurs étaient féroces. Il est singulier que l'Angleterre, où les premiers de la nation sont si éclairés, laisse subsister une si grande quantité de lois absurdes. Elles ne sont plus exécutées, il est vrai ; mais elles forcent la nation à laisser, à la puissance exécutrice, le droit de modifier ou d'enfreindre la loi.'* (p. 58). (This law is not executed. The function is either to elude the law, or to be addressed to the king, in order to get him to change the punishment. Almost everywhere the customs are more lenient than the laws, which were made in times when the customs were brutal. It is strange that England, where the nation's first peoples are so enlightened, allow such a large quantity of absurd laws to subsist. They are no longer executed, it is true; but they force the nation to leave the right to modify or break the law for the executive power.)

<sup>196</sup> As detailed by Jean Raikem, Mathieu Polain, and Stanislas Borman in *Coutumes Du Pays de Liège*, vol. 1 (Brussels: Gobbaerts, 1870), the 'sou' or 'sol' was an old French coin that was circulated during the 13<sup>th</sup> Century and was mainly used in accounting. During this period, types of coin employed included 'le sou d'or' (the gold sou), 'le sou d'argent' (the silver sou) and 'le denier d'argent' (the silver denier). The gold sou was worth forty deniers of silver, and the silver sou was valued at twelve deniers.

<sup>197</sup> Voltaire's literature was noted for its witty and daring nature. He often addressed the monarchy and more specifically the king in a satirical manner, something which very few writers would dare to do at the time as it could be construed as a form of heresy. In his writings, Voltaire liked to 'poke fun' in order to provide 'amusing anecdotes' to his readership. Therefore, Voltaire became 'a remarkable and instantly recognisable voice, concise, ironical, often cheeky.' Nicholas Cronk, *Voltaire: A Very Short Introduction* (Oxford: Oxford University Press, 2017), p. 44.

<sup>198</sup> As noted by De Warville in *Bibliothèque Philosophique du Legislateur, du Politique, du Jurisconsulte*, vol. 5 (Paris: Hatchette, 1782-1785), Philip IV reigned as King of Spain from 1621 to 1665. From 1621 until 1643, Philip IV appointed Conde-Duque de Olivares as his chief minister who oversaw the country's foreign and domestic policy. De Warville pointed out that:

*'Ce qu'il y a de bien étrange, ce qui prouve aux législateurs leur faiblesse, quand leurs loix choquent la nature des choses, c'est que par contrebande on exporte d'Angleterre une prodigieuse quantité de laines et beaucoup de lingots d'Espagne.'* (p. 12).

(What is quite strange, what demonstrates their weakness to legislators, when their laws disturb the nature of things, it is through smuggling that we export a tremendous quantity of wool from England and a lot of ingots from Spain.)

Dans presque tous les pays catholiques qu'on vole un calice, un ciboire, ce qu'on appelle un soleil, la peine ordinaire est d'être brûlé, nous disent les *Institutes au droit criminel de France*, page 445.

On n'examine pas si dans un temps de famine un père de famille aura dérobé ces ornements pour nourrir sa famille mourante ; si le coupable a voulu outrager Dieu, si on peut l'outrager, si un ciboire lui est nécessaire ; si le voleur a su ce que c'est qu'un ciboire ; si ce ciboire d'argent doré n'était pas abandonné par négligence ; ce qui diminuerait le délit. Le sacristain qui a fait cette loi, a-t-il bien songé qu'un homme brûlé vif ne peut plus se repentir et réparer ses fautes ?

In almost all the Catholic countries, if one steals a chalice, a ciborium, what is called a sun,<sup>199</sup> the ordinary punishment is to be burned, the *Institutes au Droits Criminel de France*, page 445,<sup>200</sup> tell us.

It is not being examined if in a time of famine, a father stole these ornaments to feed his dying family; if the culprit wanted to outrage God, if he can be outraged, if a ciborium is necessary to him; if the thief knew what a ciborium was; if this ciborium of gilded silver was not abandoned through negligence; which would lessen the crime. The sacristan who made this law, did he consider that a man burned alive can no longer repent and make amends for his wrongdoings?<sup>201</sup>

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<sup>199</sup> As defined in the *Dictionnaire de l'Académie Française*, vol. 2 (Paris: Smits, 1798), the 'sun' or 'soleil' that appears on a chalice or ciborium is:

'[...] un cercle d'or ou d'argent garni de rayons, dans lequel est enchâssé un double cristal destiné à renfermer l'hostie consacrée, et qui est posé sur un pied ordinairement du même métal.' (p. 579). ([...] a circle of gold or silver embellished with sunbeams, in which a twin crystal is encased, destined to enclose the blessed host and which is placed on a pedestal usually of the same metal.)

<sup>200</sup> Voltaire is referring to the work *Institutes au Droits Criminel ou Principes Généraux sur ces Matières suivant le droit civil, canonique, et la jurisprudence du royaume, avec un traité particulier des crimes* (Paris: Le Breton, 1757). The article that he is specifically referencing is entitled '*Des crimes de lèse-majesté divine au second chef*' (Crimes of divine high treason in the second degree.) In this article it is asserted:

'Il paraît que notre jurisprudence a suivi dans l'imposition des peines contre ces sortes de sacrilèges les règles établies par le droit humain, c'est-à-dire qu'elle proportionne ces peines aux différents degrés d'atrocité de ces délits ; ainsi lorsque le vol est fait des choses sacrées telles que le soleil du saint sacrement, le ciboire et le calice, la peine ordinaire est celle du feu, surtout si ce vol a été fait en brisant ou forçant le tabernacle [...].' (p. 445).

(It seems that our case law has adhered to the imposition of the punishments against these types of sacrilege, the rulings established by human right, that is to say, it equates these punishments with the different degrees of atrocity of these crimes; thus, when sacred things are stolen, such as the sun of the blessed sacrament, the ciborium and the chalice, the ordinary punishment is that of fire, especially if this theft was committed by breaking or forcing the tabernacle [...].)

<sup>201</sup> Kehl edition editors' original note, *op. cit.*

'En 1780, un malheureux fut condamné, par arrêt du parlement de Paris, à être brûlé vif, comme véhémentement soupçonné d'avoir volé un calice. Cependant il n'existe aucune loi formelle qui prononce la peine du feu contre ce délit ; aussi le même tribunal n'a-t-il condamné pour ce crime qu'aux galères, toutes les fois qu'un des juges a eu le courage de réclamer les droits de la raison et ceux de l'humanité.' (p. 60).

(In 1780, a poor person, vehemently suspected of having stolen a chalice, was condemned in a ruling by the Parliament of Paris to be burned alive. However, no formal law exists that imposes a sentence to be burned for this crime; also, didn't the same courthouse only condemn to the galleys for this crime, whenever one of the judges had the courage to demand the rights of reason and those of humanity.)

On a pendu à Londres cette année 1777, le plus fameux prédicateur d'Angleterre nommé Dod, et non seulement grand prédicateur, mais directeur des consciences les plus timorées ; et non seulement directeur des consciences, mais promoteur des établissements les plus charitables. Il était convaincu d'avoir volé trois mille livres sterling par un crime de faux, en contrefaisant la signature du jeune comte de Chesterfield dont il était le chapelain et le pensionnaire. On prétend que plus de vingt mille citoyens ont en vain demandé sa grâce, et que le gouvernement s'est cru obligé de la refuser, parce que le crime de faux était trop commun chez cette nation guerrière et marchande. Toutes les dévotes du chapelain Dod ont pleuré en le voyant pendre, et il a édifié tous les spectateurs. Il est certain que son châtement eut été plus exemplaire et plus utile, si on l'avait vu pendant une ou deux années, une chaîne au cou, nettoyer de ses mains sacerdotales le milieu très sale des rues de Londres, et si on l'eût envoyé ensuite préparer la morue dans l'île de Terre-Neuve, qui a besoin de manœuvres.

Il aurait prêché à son aise les dévotes de ces quartiers ; il y aurait civilisé les mercenaires de l'île et les sauvages ; il s'y serait marié ; il aurait eu des enfants, qu'il aurait élevés dans la crainte de Dieu et dans l'amour du prochain.



England's most famous preacher named Dodd<sup>202</sup> was hanged in London this year 1777, and not only a great preacher, but father confessor of the most timorous consciences; and not only a father confessor, but a promoter of the most charitable organisations. He was convicted of having stolen three thousand pounds sterling through a crime of forgery, by copying the signature of the young Count of Chesterfield,<sup>203</sup> of whom he was chaplain and lodger. It is alleged that more than twenty thousand citizens begged in vain for his pardon, and the government felt obliged to refuse it because the crime of forgery was too common among this warlike and trading nation. All chaplain Dodd's female devotees wept while seeing him hang, and he edified all the spectators. It is certain that his punishment would have been more exemplary and more useful if he had been seen for one or two years, a chain around his neck, cleaning the extremely dirty milieu of the streets of London with his sacerdotal hands, and afterward if he had been sent to prepare codfish on the island of Newfoundland, which needs labourers.

He would have preached at ease to the female devotees of these areas; he would have civilised the island's mercenaries and the savages there; he would have married there; he would have had children whom he would have raised to be God-fearing and to love their neighbour.<sup>204</sup>

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<sup>202</sup> William Dodd (1729 - 1777) was an English clergyman who was convicted of having forged the name of Philip Stanhope, the fifth earl of Chesterfield. Dodd did so to acquire £4200 in order to clear his debts. He was convicted on 22 February and executed on 27 June, despite the efforts made by English writer Samuel Johnson, who managed to gather a petition containing 23,000 signatures demanding clemency for Dodd. Adam Rounce, *Fame and Failure 1720-1800: The Unfulfilled Literary Life* (Cambridge: Cambridge University Press, 2013).

<sup>203</sup> Philip Stanhope (1755 - 1815) was the fifth earl of Chesterfield. *Ibid.*

<sup>204</sup> In his *Commentaire sur le livre des délits et des peines*, *op. cit.*, Voltaire presented a similar argument: '*Rarement les voleurs sont-ils punis de mort en Angleterre ; on les transporte dans les colonies [...] Ce changement heureux nous étonne ; mais rien n'est plus naturel. Ces condamnés sont forcés à un travail continuel pour vivre. Les occasions du vice leur manquent : ils se marient, ils peuplent. Forcez les hommes au travail, vous les rendrez honnêtes gens.*' (p. 410).

(Rarely are thieves punished by death in England; they are taken to the colonies [...] This happy change surprises us; but nothing is more natural. These convicted individuals are forced to work continually in order to live. Opportunities of vice evade them: they marry, they populate. Force men to work, you will make them honest people.)

Monsieur l'abbé La Coste qui travailla longtemps dans Paris à un journal nommé *l'Année littéraire*, et qui s'oublia au point de tomber dans le même crime que le prédicateur Dod, ne fut condamné qu'aux galères. C'était un homme bien fait et robuste. Il a été utile à sa patrie tant qu'il a vécu.

En Allemagne et en France on fait expirer sur la roue sans distinction, ceux qui ont commis des vols sur le grand chemin, et ceux qui ont joint le meurtre à la rapine. Comment n'a-t-on pas vu que c'était avertir ces brigands d'être assassins, afin d'exterminer les objets et les témoins de leurs crimes ? En Angleterre les voleurs sont très rarement meurtriers, parce qu'ils ne sont pas forcés au meurtre par une loi qui n'aurait pas assez distingué la rapine et l'assassinat.

Punissez, mais ne punissez pas aveuglément. Punissez : mais utilement. Si on a peint la justice avec un bandeau sur les yeux, il faut que la raison soit son guide.

The abbot Lacoste,<sup>205</sup> who worked for a long time in Paris at a newspaper named *l'Année littéraire*, and who forgot himself to the point of committing the same crime as preacher Dodd, was only condemned to the galleys. He was a well-built and strong man. He was useful to his homeland as long as he lived.

In Germany and France, those who have committed highway robberies, and those who have combined murder with robbery are made to perish on the wheel without distinction.<sup>206</sup> How was it not obvious that it was advising these bandits to be killers, in order to exterminate the objects and the witnesses of their crimes? In England, the thieves are very rarely murderers because they are not forced to murder by a law which would not have sufficiently distinguished between rapine and murder.

Punish, but do not punish blindly. Punish: but usefully. If justice has been painted with a blindfold over its eyes, reason must be its guide.<sup>207</sup>

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<sup>205</sup> Emmanuel-Jean Lacoste was a celestine monk who was convicted of forgery. On 28 August 1760, he was sentenced 'to be attached for three consecutive days to a post set for this purpose, the first day on the Place de Grève, the second in the Carrefour de Bussy, and the third, in the square of Palais-Royal, to remain there each day from noon to 2 p.m., wearing a placard with these words inscribed: *'Escroc et fabricant de fausse Lotterie et de Libelles Diffamatoires'* (Swindler, counterfeiter of lottery tickets, author of defaming libels).' He was also sentenced to the galleys for life. Richard Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789: The System of Criminal Justice*, vol. 1 (Cambridge: Cambridge University Press, 1994), p. 314.

<sup>205</sup> *L'Année Littéraire* was a French periodical founded in Paris in 1754 by journalist Élie Catherine Fréron. Paul Van Tieghem, *L'année littéraire : (1754-1790) comme intermédiaire en France des littératures étrangères* (Geneva: Slatkine, 1966).

<sup>206</sup> Edmond Lecesne detailed in his *Exposé de la législation coutumière de l'Artois* (Arras: Courtin, 1869) that: *'Le supplice de la roue était réservé aux voleurs de grands chemins, aux assassins et meurtriers par guet-apens, aux voleurs de nuit dans les maisons habitées, avec violence et mauvais traitements, aux valets pour meurtres de leurs maîtres, aux criminels de lèse-majesté.'* (p. 504).

(The torture of the wheel was reserved for highway robbers, for assassins and those who murder by ambush, for night thieves who rob occupied houses, with violence and brutality, for valets who kill their masters, for criminals of high treason.)

<sup>207</sup> In line with this view, Beccaria upheld that 'a crime already committed, which by definition cannot be rectified, should be punished by political society only with the intent to deter others from committing the same crime.' (p. 91). Furthermore, he also contended that 'it is not the intensity of punishment that has the greatest effect on the human mind, but its duration; for our sensibility is more easily and surely affected by minimal but repeated impressions than by a strong but fleeting one.' (p. 40). C. Beccaria, Trans., G. Newman and P. Marongiu, *op. cit.*

~ ARTICLE III ~

**DU MEURTRE**

C'est à vous, Messieurs, d'examiner dans quel cas il est équitable d'arracher la vie à votre semblable à qui Dieu l'a donnée.

On dit que la guerre a rendu de tout temps ces meurtres non seulement légitimes, mais glorieux. Cependant, d'où vient que la guerre fut toujours en horreur chez les Bracmanes, autant que le porc était en exécration chez les Arabes et chez les Egyptiens ? D'où vient que les Pythagoriciens, les Thérapeutes, les Troglodites, les Esséniens, et ceux qui voulurent quelque temps les imiter, ne regardèrent les batailles tant vantées, si souvent ordonnées par les Dieux de toute espèce, et honorées de leur présence, que comme d'infâmes assassinats multipliés, et comme l'assemblage de tous les crimes ?

~ ARTICLE III ~

ON MURDER

It is your duty, Sirs, to examine in which case it is equitable to take the life of your fellow man that God has given to him.

It is said that since time immemorial war has rendered these murders not only legitimate, but glorious. However, why is it that war was always loathed among the Brahmins,<sup>208</sup> as much as pork was execrated among the Arabs and among the Egyptians? Why is it that the Pythagoreans,<sup>209</sup> the Therapeutae,<sup>210</sup> the Troglodytes,<sup>211</sup> the Essenes,<sup>212</sup> and those who wanted to imitate them for some time, have only regarded the much-extolled battles, so often ordered by Gods of all kinds, and honoured by their presence, as multiplied infamous murders and as the assemblage of all crimes?

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<sup>208</sup> In Voltaire's 'Questions sur l'Encyclopédie, par des Amateurs', in *Œuvres complètes de Voltaire*, vol. 7 (Paris: F. Didot frères, 1869), he also made reference to the Brahmins loathing war:

*'Nous parlerons ailleurs du Shafra ; c'est le premier livre de théologie des brahmanes, écrit environ quinze cents ans avant leur Veidam, et antérieur à tous les autres livres. Leurs annales ne font mention d'aucune guerre entreprise par eux en aucun temps. Les mots d'armes, de tuer, de mutiler ne se trouvent ni dans les fragments du Shafra, que nous avons, ni dans l'Ezourveidam, ni dans le Cormoveidam. Je puis du moins assurer que je ne les ai point vus dans ces deux derniers recueils : et ce qu'il y a de plus singulier, c'est que le Shafra qui parle d'une conspiration dans le ciel, ne fait mention d'aucune guerre dans la grande presque île enfermée entre l'Indus et le Gange.'* (p. 278).

(We will speak elsewhere of the *Shafra*; it is the Brahmin's first book of theology, written around fifteen hundred years before their *Veidam* (the sacred book of the ancient Brahmins) and prior to all the other books. Their annals do not mention any war waged by them at any time. The words about weapons, killing, mutilating, are not found neither in the passages of the *Shafra*, that we have, neither in the *Ezourveidam*, nor in the *Cormoveidam*. I can at least guarantee that I have not seen them in these two latter collections: and what is stranger, is that the *Shafra*, which speaks of a plot in the sky, does not mention any war in the great peninsula enclosed between Indus and the Ganges.)

<sup>209</sup> Pythagoreans were advocates of the Greek philosopher Pythagoras (570 B.C. - 490 B.C.). They continued to spread the philosopher's ideology and aligned themselves with a way of living that centred on the belief that the soul is detached from the body after death and is reincarnated into a new life form. This reincarnation was contingent on the degree of virtue that the soul attained. It was affirmed that the greatest resolution at the end of man's life would be a soul purified by the cultivation of intellectual virtues. Loenid Zhmud, *Pythagoras and the Early Pythagoreans* (Oxford: Oxford University Press, 2012).

<sup>210</sup> The Therapeutae were a Jewish faction that settled near Alexandria, Egypt during the first century A.D. Julius Scott, *Jewish Backgrounds of the New Testament* (Washington: Baker Academic, 2000).

<sup>211</sup> A troglodyte can be defined as a '[...] people chiefly ancient or prehistoric, who dwell in caves or in cave-like structures carved into cliff faces and hillsides or dug into the ground.' Ralph Crane and Lisa Fletcher, *Cave: Nature and Culture* (London: Reaktion Books, 2015), p. 45.

<sup>212</sup> As defined in *The Encyclopaedia Britannica: Or, A Dictionary of Arts, Sciences, and Miscellaneous Literature*, vol. 12 (Edinburgh: Encyclopaedia Press, 1815), 'the Essenes were Pythagoreans, both in discipline and doctrine; without ever considering that the former existed some hundred years before the birth of Pythagoras. The Pythagoreans, therefore, were connected with the Essenes, and the Essenes with the Kasideans who engaged to preserve and adorn the temple of Jerusalem.' (p. 649).

Les Primitifs, auxquels on a donné le nom ridicule de Quakres, ont fui et détesté la guerre pendant plus d'un siècle, jusqu'au jour où ils ont été forcés par leurs frères les chrétiens de Londres, de renoncer à cette prérogative, qui les distinguait de presque tout le reste de la terre. On peut donc à toute force se passer de tuer des hommes.

Mais voilà des citoyens qui vous crient, un brutal m'a crevé un œil, un barbare a tué mon frère, vengez-nous ; donnez-moi un œil de l'agresseur qui m'a éborgné, donnez-moi tout le sang du meurtrier par qui mon frère a été égorgé, exécutez l'ancienne, l'universelle loi du talion.

Ne pouvez-vous pas leur répondre, quand celui qui vous a fait borgne aura un œil de moins, en aurez-vous un de plus ? Quand j'aurai fait mourir dans les tourments celui qui a tué votre frère, ce frère sera-t-il ressuscité ? Attendez quelques jours ; alors votre juste douleur aura perdu de sa violence ; vous ne serez pas fâché de voir de l'œil qui vous reste une grosse somme d'argent que je vous ferai donner par le mutilé. Elle vous fera passer doucement votre vie ; et de plus, il sera votre esclave pendant quelques années, pourvu que vous lui laissiez ses deux yeux pour vous mieux servir pendant ce temps-là.

A l'égard de l'assassin de votre frère, il sera votre esclave tant qu'il vivra. Je le rendrai toujours utile à vous, au public et à lui-même.

C'est ainsi qu'on en use en Russie depuis quarante années. On force les criminels qui ont outragé la patrie à servir toujours la patrie. Leur supplice est une leçon continuelle ; et c'est depuis ce temps-là que cette vaste partie du monde n'est plus barbare.

The primitives, who have been given the ridiculous name of Quakers, have shunned and detested war for more than a century, until the day when they were forced by their Christian brothers from London, to renounce this prerogative that distinguished them from almost all the rest of the earth.<sup>213</sup> We can, therefore, by any means possible refrain from killing men.

But there are some citizens who cry out to you, a brute blinded me in one eye, a barbarian murdered my brother, avenge us, give me an eye of the aggressor who blinded me, give me all the blood of the murderer who slit my brother's throat, execute the ancient, the universal talion law.<sup>214</sup>

Can you not respond to them, when he who has made you blind in one eye has one eye less, will you have one eye more? When I have killed in torment he who has murdered your brother, this brother will he rise from the dead? Wait a few days; then your just pain will have lost its violence; you will not be upset to see the eye that remains a large sum of money for you, which I will make the mutilator give to you. It will allow you to go through life comfortably; and moreover, he will be your slave for a few years, provided that you leave him his two eyes to serve you better during that time.

With regard to your brother's murderer, he will be your slave for as long as he lives. I will always make him useful to you, to the public, and to himself.

This is how they have been handling them in Russia for forty years. Criminals who have outraged the homeland are forced to always serve the homeland. Their torture is a continual lesson; and it is since this time that this vast part of the world is no longer barbaric.

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<sup>213</sup> In Voltaire's 'Lettres sur les Anglais', in *Œuvres complètes de Voltaire*, vol. 5 (Paris: F. Didot frères, 1863), he details the Quakers' relationship with war:

*'Nous n'allons jamais à la guerre : ce n'est pas que nous craignons la mort, au contraire nous bénissons le moment qui nous unit à l'Être des êtres ; mais c'est que nous ne sommes ni loups, ni tigres, ni dogues, mais hommes, mais chrétiens.'* (p. 4).

(We never war or fight in any case; but it is not that we are afraid, for so far from shuddering at the thoughts of death, we on the contrary bless the moment which unites us with the being of beings; but the reason of our not using the outward sword is, that we are neither wolves, tigers, nor mastiffs, but men and Christians.) Voltaire, *Letters concerning the English Nation*, vol. 34, Part II. (London: Tonson, 1767), p. 7.

<sup>214</sup> Montesquieu also refers to the law of retaliation (la loi du talion) in his work 'De l'esprit des lois', in *Œuvres complètes de Montesquieu* (Paris: F. Didot frères, 1843). He asserts that:

*'Les États despotiques, qui aiment les loix simples, usent beaucoup de la loi du talion : les états modérés la reçoivent quelques fois. Mais il y a cette différence, que les premiers la font exercer rigoureusement, et que les autres lui donnent presque toujours des tempéraments.'* (p. 236).

(Despotic States, which like simple laws, implement the law of retaliation a great deal: moderate States receive it sometimes. But there is this difference that the former has it exercised rigorously, and the others almost always give it at their own disposition.)

A Dieu ne plaise que je fasse l'éloge des mœurs atroces qui régnèrent en Europe dans la décadence de l'Empire romain, et au temps de Charlemagne. Quiconque avait quatre cents écus dont il ne savait que faire, pouvait tuer à son choix un antrustion, ou un évêque. Chaque assassinat avait son prix fait. En Pologne jusqu'à nos derniers temps tout pauvre gentillâtre *elector regum et destrutor tiranorum*, pouvait assassiner noblement un cultivateur, un serf de glèbe, pour environ trente francs de notre monnaie. La vie de ces hommes nos semblables n'était pas plus chère dans l'ancien gouvernement féodal.

Je ne propose pas sans doute l'encouragement du meurtre, mais le moyen de le punir sans un meurtre nouveau. Le moyen de venger la famille et de pardonner. En Turquie, lorsqu'un meurtrier est condamné à perdre la vie, il est libre à l'héritier du mort de lui faire grâce ; c'est l'ancienne loi que les Turcs ont apportée des bords de la mer d'Hircanie.



May heaven forbid that I praise the atrocious customs that reigned in Europe in the decadence of the Roman Empire and in the time of Charlemagne.<sup>215</sup> Whoever had four hundred crowns that he did not know how to spend, could kill of his choice an antrustion,<sup>216</sup> or a bishop. Each assassination had its fixed price. In Poland, until recently, every poor lordling, *elector regum et destrusor tyrannorum*,<sup>217</sup> was able to nobly assassinate a farmer, a serf of the glebe,<sup>218</sup> for around thirty francs in our currency. The lives of these men, our fellowmen, were not dearer in the former feudal government.

I am certainly not offering encouragement of murder, but the means to punish it without a new murder. The means to avenge the family and to pardon. In Turkey, when a murderer is condemned to lose his life, he is free to the heir of the dead person to pardon him; it is the ancient law that the Turks brought from the coasts of the Caspian Sea.<sup>219</sup>

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<sup>215</sup> Charlemagne (742 A.D. - 814 A.D.) reigned as King of the Franks and as Holy Roman Emperor. Dale Gelfand, *Charlemagne* (New York: Chelsea House Publishers, 2003).

<sup>216</sup> See Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 66-67.

*'C'étaient des principaux officiers ou des favoris du prince, qui recevait leur serment de fidélité, et s'engageait de son côté à les protéger et défendre. Ce mot vient de trustes, de la basse latinité, qui veut dire foi, fidélité, et tirait son origine du teuton trost ou trust. On peut apprécier la considération dont jouissaient ces officiers par la différence de l'amende imposée à celui qui avait mutilé (castraverat) ou tué un homme salique réputé noble, ou un antrustion. Il n'en coûtait pour le premier que 600 sous de ce temps-là, et 1800 pour le second. Voyez le Glossaire de Ducange.'*

(These were major officers or the favourites of the prince, who received their oath of loyalty, and for his part committed himself to protect and to defend them. This word comes from 'trustes', with a latin root, which means faith, loyalty, and drew its origin from 'teuton', 'trost', or 'trust'. One can appreciate the respect that these officers possessed, by the difference of the fine imposed on the person who had mutilated (punished) or killed a Salic man of noble reputation, or a major officer. At that time, it only cost 600 sous for the former and 1,800 for the latter. See the *Glossaire* by Ducange.)

<sup>217</sup> '[...] electors of kings and destroyers of tyrants.' *The Critical Review, Or, Annals of Literature, Volume 45*, Tobias George Smollett, ed., (London: W. Simpkin and R. Marshall, 1778), p. 95.

<sup>218</sup> As affirmed by the Centre National de la Recherche Scientifique (CNRS), *Encyclopédie ou dictionnaire raisonné des sciences, des arts et des métiers* (Chicago: University of Chicago, 2001), a serf of the glebe was:

*'Celui qui étoit attaché à la glebe, c'est-à-dire à un fonds pour le cultiver. Ils étoient de deux sortes ; les uns appellés adscripti gleboe, les autres addicti gleboe. Les premiers étoient des especes de fermiers qui cultivoient la terre pour leur compte, moyennant une rétribution qu'ils en rendoient au propriétaire pendant leur bail. Les seconds, addicti gleboe, étoient de vrais serfs, qui cultivoient la terre pour le seigneur ou propriétaire, et demeuroient attachés pour toujours à cette glebe. Voyez le gloss de Ducange au mot ascriptitii, et au mot servi.'* (He who was attached to feudal land, that is to say, to a land to cultivate. There were two types of them; the ones called *adscripti gleboe*, the others *addicti gleboe*. The former were types of farmers who cultivated the land for their pay, by means of a wage that they gave to the landowner during their leasing. The latter, *addicti gleboe*, were true serfs, who cultivated the land for the lord or landowner, and always resided near to this land. See the *gloss* by Ducange, to the word *ascriptitii*, and to the word *servi*.)

<sup>219</sup> The Caspian Sea was also known as the Hyrcanian Sea. Igor Zonn, Aleksey Kosarev, Michael Glantz, & Andrey Kostianoy, *The Caspian Sea Encyclopedia* (Berlin: Springer-Verlag, 2010).

C'était la loi de tous les anciens peuples de la Scythie.

Peuples, qui en cultivant les hautes sciences et les arts aimables, avez conservé des lois plus qu'iroquoises, songez que des philosophes scythes firent autrefois rougir les Grecs !

Vous qui travaillez à réformer ces lois, voyez avec le jurisconsulte M. Beccaria, s'il est bien raisonnable que pour apprendre aux hommes à détester l'homicide, des magistrats soient homicides, et tuent un homme en grand appareil.

It was the law of all the ancient people of Scythia.<sup>220</sup>

People, who while cultivating the great sciences and agreeable arts, have maintained more barbaric laws,<sup>221</sup> imagine that in the past some Scythian philosophers made the Greeks blush!

You who work to reform these laws, see with the jurisconsult Mr. Beccaria, if to teach men to detest murder, it is reasonable that some magistrates are murderers and kill a man while attired in their ceremonial robes.

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<sup>220</sup> Voltaire original note, *op. cit.*

*'Une société qui a composé trois volumes pleins d'une érudition utile sur l'Esprit des Lois a fait usage d'une passage curieux des Voyages de Chardin, que je trouve au second volume de l'édition en deux colonnes in-4°, 1711, page 297 ; le voici : 'Quand j'arrivai en Perse, je pris les Persans pour des barbares, voyant qu'ils ne procédaient pas méthodiquement comme nous. J'étais surpris qu'ils n'eussent point comme nous de prisons publiques, point d'exécuteur public, point d'ordre ni de méthode. Je pensais que c'était faute d'être aussi policés que nous le sommes ... Mais, après avoir passé quinze ans dans l'Orient, j'ai vu que c'était parce que les crimes n'arrivaient pas fréquemment ... On n'entend presque jamais parler d'enfoncer les maisons, d'y égorger le monde ; on ne sait ce que c'est qu'assassinat, que rencontre, que poison ... Dans tout le temps que j'ai été en Perse, je n'ai vu exécuter qu'un seul homme. Ensuite Chardin raconte comment le juge exhorte la famille d'un mort à composer avec le meurtrier ; mais il raconte aussi comment ces ivrognes de sophis s'abandonnent aux plus incroyables barbaries. La Perse, depuis Chardin, n'est qu'un théâtre des plus incroyables assassinats. La guerre civile a tout saccagé pendant soixante années. C'est presque le temps de Charles IX en France, et de Charles I<sup>er</sup> en Angleterre, si pourtant quelque chose a pu approcher de nos guerres religieuses.'* (pp. 67-68).

(A society that has composed three volumes filled with useful knowledge about *L'Esprit des Lois* has used a curious passage from *Voyages de Chardin*, which I find in the second volume of the edition in two columns in-quarto, 1711, page 297; here it is: 'When I arrived in Persia, I regarded the Persians as barbarians, seeing that they were not proceeding methodically like us. I was surprised that unlike us, they did not have public prisons, no public executor, no order, nor method. I used to think that it was for lack of being civilised as we are... But, after having spent fifteen years in the East, I saw that it was because crimes did not occur frequently ... One almost never hears of knocking down houses, of cutting everyone's throat there; murder, duel, and poison are unknown ... For all the time that I was in Persia, I only saw one man executed. Then Chardin tells of how the judge exhorts the family of a dead person to compromise with the murderer; but he also tells of how these drunkards of Sophis give into the most incredible barbarities. Persia, since Chardin, is only a theatre of the most incredible murders. The civil war devastated everything for sixty years. It is almost the time of Charles IX in France, and of Charles I in England, if only something could echo our Wars of Religion.)

<sup>221</sup> The historian Charlevoix referred to the Iroquois people as 'barbarians.' Furthermore, they were accountable for acts of violence that 'the mere telling of which would cause alarm.' David John Culpin, 'Charlevoix and the American savage: The 18<sup>th</sup> century traveller as a moralist', in Adrien Delmas and Nigel Penn, eds., *Written Culture in a Colonial Context: Africa and the Americas 1500-1900* (Cape Town: UCT Press, 2011), p. 159.

Voyez s'il est nécessaire de le tuer quand on peut le punir autrement ; et s'il faut gager un de vos compatriotes pour massacrer habilement votre compatriote, excepté dans un seul cas, c'est celui où il n'y aurait pas d'autre moyen de sauver la vie du plus grand nombre. C'est le cas où l'on tue un chien enragé.

Dans toute autre occurrence condamnez le criminel à vivre pour être utile ; qu'il travaille continuellement pour son pays, parce qu'il a nui à son pays. Il faut réparer le dommage, la mort ne répare rien.

On vous dira peut-être, « M. Beccaria se trompe, la préférence qu'il donne à des travaux pénibles et utiles qui dureront toute la vie, n'est fondée que sur l'opinion que cette longue et ignominieuse peine, est plus terrible que la mort, qui ne se fait sentir qu'un moment. On vous soutiendra que s'il a raison c'est lui qui est le cruel, et que le juge qui condamne à la potence, à la roue, aux flammes, est l'homme indulgent. »

See if it is necessary to kill him when he can be punished differently; and if it is necessary to wager one of your compatriots to craftily massacre your fellow countryman, except in one sole case, it is the one where there would be no other means to save the life of the greatest number of people.<sup>222</sup> It is the case where one kills a rabid dog.

In all other circumstances, condemn the criminal to live to be useful; let him work continually for his country because he has harmed his country.<sup>223</sup> The damage must be repaired; death repairs nothing.

You will be told perhaps: 'Mr. Beccaria is mistaken, the preference that he gives to difficult and useful work, that will last a lifetime, is only founded upon the opinion that this long and ignominious punishment is more terrible than death, which is only felt for a moment.'<sup>224</sup> We will insist to you that if he is correct, it is he who is the brute, and that the judge who condemns to the gallows, to the wheel, to the flames, is the lenient man.'

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<sup>222</sup> In Voltaire's 'Questions sur l'Encyclopédie (C - E)', in *Œuvres complètes de Voltaire*, vol. 7 (Paris: F. Didot frères, 1862), Voltaire echoes similar views about when it is appropriate to kill one's fellow countryman:

*'Il est défendu de tuer ; tout meurtrier est puni, à moins qu'il n'ait tué en grande compagnie, et au son des trompettes.'* (p. 451).

(It is forbidden to kill; every murderer is punished, unless he has killed in great company and to the sound of trumpets.)

<sup>223</sup> Voltaire presented a similar argument in his *Commentaire sur le livre des délits et des peines*, *op. cit.*, in which he asserted that:

*'On a dit, il y a longtemps, qu'un homme pendu n'est bon à rien, et que les supplices inventés pour le bien de la société doivent être utiles à cette société.'* (p. 410).

(It has been said, a long time ago, that a hanged man is good for nothing, and that the tortures invented for the good of society must be useful to that society.)

<sup>224</sup> Beccaria insisted that punishment for a criminal act should be rational and result in the betterment of society. Thus, Beccaria favoured deterrence over retribution as a form of punishment, which he viewed as more profitable to society, as criminals would not be as likely to reoffend, and it would also discourage others from committing a similar offence. From Beccaria's standpoint, immediate and absolute punishment are the optimum measures to prevent and control crime; punishment for any other motive is impulsive and exploitive. He explains that 'it is not the intensity of punishment that has the greatest effect on the human mind, but its duration; for our sensibility is more easily and surely affected by minimal but repeated impressions than by a strong but fleeting one.' C. Beccaria, Trans., G. Newman and P. Marongiu, *op. cit.*, p. 40.

Vous répondrez sans doute, qu'il ne s'agit pas ici de discuter quelle est la punition la plus douce, mais la plus utile. Le grand objet, comme nous l'avons dit, est de servir le public. Et sans doute un homme dévoué pour tous les jours de sa vie à préserver une contrée d'inondation par des digues, ou à creuser des canaux qui facilitent le commerce, ou à dessécher des marais empestés, rend plus de service à l'Etat qu'un squelette branlant à un poteau par une chaîne de fer, ou plié en morceaux sur une roue de charrette.

You will certainly respond that here it is not a question of discussing what the most lenient punishment is, but the most useful. The grand purpose, as we have said, is to serve the public. And without doubt, a man devoted for all the days of his life to protecting a flooded region with embankments, or digging canals that facilitate trade, or drying out plagued marshes, provides more service to the State than a trembling skeleton secured to a post by an iron chain, or broken<sup>225</sup> on a cart's wheel.<sup>226</sup>

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<sup>225</sup> Daniel Mannix explains in *The History of Torture* (New York: Dell Publishing, 1964) that the execution wheel, or breaking wheel, became one of the most common methods implemented to execute criminals. The torture involved securing a cart's wheel in a vertical position on a scaffold. The convict was 'tied spread-eagled on the wheel, his arms and legs extended as far as possible and fastened to the rim, so they were approximately at right angles to the spokes. The executioner then broke each bone separately with an iron bar, finally killing the prisoner with a blow across the chest.' (p. 87).

<sup>226</sup> Kehl edition editors' original note, *op. cit.*

*'Depuis l'avènement d'Elisabeth, on n'a puni de mort en Russie qu'un très petit nombre de personnes dont on a jugé que la vie pouvait être dangereuse. L'empereur vient d'abolir la peine de mort dans ses États. Dans ceux du roi de Prusse, l'assassinat est le seul crime capital, du moins parmi les délits civils. Avouons que, dans ce prétendu siècle de corruption et de délire, la raison et l'humanité ont pourtant gagné quelque chose. Croirait-on que, dans la canaille de la littérature française, il s'est trouvé quelques hommes assez imbéciles et assez lâches pour prendre le parti des bourreaux contre les philosophes ? Hé, Messieurs, déchirez nos ouvrages, calomniez nos principes ou nos actions, dénoncez nos personnes ; mais du moins quand nous crions d'épargner le sang des hommes, n'excitez point à le verser.'* (p. 72).

(Since the accession of Elisabeth, only a very small number of persons have been punished by death in Russia, whose existence has been judged as possibly being dangerous. The emperor has just abolished the death penalty in his States. In those of the King of Prussia, murder is the only capital crime, at least among civil offences. Let us admit that in this so-called century of corruption and delirium, reason and humanity have yet won something. Would it be believed that among the crooks of French literature, some fairly idiotic and fairly cowardly men have been found to take the side of the executioners against the philosophers? Hey, Sirs, tear up our works, calumniate our principles or our actions, denounce our people; but at least when we cry out to spare the blood of men, do not incite to spill it.)

~ ARTICLE IV ~

**DU DUEL**

Ne parlerez-vous point du duel, qui chez nos nations modernes est honorable et pendable ? Ne nous direz-vous point pourquoi les Scipions, les Métellus, les Césars et les Pompées, n'allaient point sur le pré pousser de tierce et de quarte, et pourquoi c'est la gloire d'un sous-lieutenant basque ou gascon, qui pour prix de sa vaillance, et en exhaussement de chevalerie, est condamné à être pendu ?

Ne remarquerez-vous pas que toute société s'empresse à chasser un coquin, de qualité ou non, qui est surpris trompant au jeu, ne s'agirait-il que de quelques pistoles ?



~ ARTICLE IV ~

ON DUEL

Will you not speak of duelling, which among our modern nations is honourable and blameworthy?<sup>227</sup> Will you not tell us why the Scipions,<sup>228</sup> the Metellus,<sup>229</sup> the Caesars,<sup>230</sup> and the Pompeys,<sup>231</sup> did not go to the field to parry<sup>232</sup> in a sword fight,<sup>233</sup> and why it is the glory of a Basque or Gascon sub-lieutenant, who for the prize of his valour, and for being knighted, is condemned to be hanged?

Will you not behold that all society hastens itself to hunt a scoundrel, of quality or not, who is caught cheating at gambling, would it only amount to a few pistoles?<sup>234</sup>

tandis que toute société se fait un devoir de protéger, de sauver, d'aider tous les coupables des deux crimes les plus funestes au genre humain, le duel et l'adultère ? On se pique de protéger

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<sup>227</sup> John Locke as quoted in Peter Olsthoorn's *Honor in Political and Moral Philosophy* (Albany: University of New York Press, 2015), asserted that 'murders in duels, when fashion has made them honourable, are committed without remorse of conscience.' (p. 57; Essay I.ii.9).

<sup>228</sup> The Scipions were an influential Roman aristocratic family from 101 to 300 B.C. Henri Etcheto, *Les Scipions : Famille et pouvoir à Rome à l'époque républicaine* (Bordeaux: Ausonius, 2012).

<sup>229</sup> The Caecilius Metellus were among the most influential and prosperous families in the Roman Republic. The family held political power in Rome from the 3<sup>rd</sup> Century B.C. until the 1<sup>st</sup> century B.C. They occupied all functions in the *cursus honorum* and many military duties. Matthew Dillon and Lynda Garland, *Ancient Rome: Social and Historical Documents from the Early Republic to the Death of Augustus* (New York: Routledge Publishing, 2015).

<sup>230</sup> Julius Caesar (110 B.C. - 44 B.C.) was a great politician and general who played a considerable part in the collapse of the Roman Republic and the establishment of the Roman Empire. Tom Stevenson, *Julius Caesar and the Transformation of the Roman Republic* (New York: Routledge Publishing, 2015).

<sup>231</sup> Pompey (106 B.C. - 48 B.C.), also known as Pompey the Great, held positions of both military commander and political leader in the Roman Republic. Paul Zoch, *Ancient Rome: An Introductory History* (Oklahoma: University of Oklahoma, 2000).

<sup>232</sup> In Mick Dennis's illustrations of *The Seven Sabre Guards for a Righthanded fencer* (2000) the 'tierce' is described as the '3<sup>rd</sup> Guard or Parry (Hand in Pronation)', the 'quarte' is defined as the '4<sup>th</sup> Guard or Parry (hand in Half Pronation).' Pronation refers to the 'knuckles of the sword hand pointing upwards' and half pronation refers to the 'knuckles pointing towards the sword arm side of the body with the thumb on top of the sword handle.' The tierce position is used to protect 'the sword arm, chest, and cheek' and the quarte position is used to shield the chest and cheek. Retrieved from: [http://www.foiledagain.co.uk/wp-content/uploads/2018/04/Sabre-lines\\_5521430bb0ce8.pdf](http://www.foiledagain.co.uk/wp-content/uploads/2018/04/Sabre-lines_5521430bb0ce8.pdf) (Accessed: 5 May 2019).

<sup>233</sup> As described by Pierre Richelet in the *Dictionnaire françois : contenant les mots et les choses, plusieurs nouvelles remarques sur la langue française* (Widerhold: Geneva, 1680), the expression 'pousser de tierce et de quarte' is a fencing term that has been defined as: 'Position du poignet tourné en dedans, dans une situation horizontale, l'épée de l'adversaire étant à la gauche.' (p. 448). (The wrist in the varus position, in a horizontal position, the sword of the adversary being to the left.)

<sup>234</sup> The 'pistole' or 'pistolet' was a unit of currency implemented in several countries. Its usage in France appears to have spanned from the 16<sup>th</sup> to the 19<sup>th</sup> Century. The coin equated to ten 'livres' and to three 'écus'. Helen Harrison, *Pistoles/paroles: Money and Language in Seventeenth-century French Comedy* (Virginia: Rookword Press, 1996).

ces deux délits, dont l'un détruit les défenseurs de l'Etat, et l'autre donne à tant de pères de famille, à tant de princes, des héritiers qui ne sont pas leurs enfants ! Ne trouvez-vous pas les barbares Turcs beaucoup plus sages que nos barbares polis Occidentaux ? Les Turcs ne connaissent ni la vaine gloire du duel, ni la galanterie de l'adultère. Ne conviendrez-vous pas d'ailleurs qu'il est des délits qu'il faut toujours tâcher d'ignorer ?

while all society makes a point of protecting, saving, and helping all the culprits of the two most grievous crimes to humankind, duel and adultery?<sup>235</sup> We pride ourselves on protecting these two crimes, one of which destroys the defenders of the State, and the other gives to so many fathers, to so many princes, heirs that are not their children! Do you not find the barbaric Turks far wiser than our polite barbaric Westerners?<sup>236</sup> The Turks know neither of the vain glory of duel, nor the gallantry of adultery. Will you not agree, incidentally, that one must always try to ignore some crimes?

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<sup>235</sup> Sir William Blackstone as quoted by Frank Mclynn in *Crime and Punishment in Eighteenth Century England* (London: Routledge Publishing, 1989), asserted that manslaughter was an act that resulted in an ‘unintentional killing in the course of an ‘idle, dangerous and unlawful sport, as for example, during a boxing match, a duel, or a wrestling contest [...] Manslaughter meant that you actually had to be fighting at the time the mortal stroke was given. The one exception was for a husband to find a man in bed with his wife. Although to catch adulterers in flagrante was not permitted as a pretext for justifiable homicide, the rule of thumb was that a slaying in such a case was manslaughter rather than murder, since adultery was regarded as the worst possible kind of provocation.’ (p. 37).

<sup>236</sup> In *The representation of the Ottoman Orient in Eighteenth Century English Literature: Ottoman Society and Culture in Pseudo-Oriental Letters, Oriental Tales and Travel Literature* (Hannover: ibidem-Verlag, 2010), Hasan Baktir examines the interplay between the Ottoman Orient and eighteenth-century Europe. Examining the text *Letters Writ by a Turkish Spy* (1691), Baktir studies the observations made by an Ottoman spy named Mahmut who is very inquisitive about French society, including its manners and customs and he reports his findings to many correspondents. Commenting on French nobility, Mahmut mocks them and believes that duelling is ‘foolish’ and considers it peculiar that ‘the greatest affairs as well as the smallest are therein decided by the sword.’ (p. 48). When speaking about adultery, Mahmut explains that ‘here in the west, they are all for intriguing and gallantry. They accuse the Mussulmans for having more wives than one, and for keeping as many concubines as they please; whilst they themselves have their wives almost in common, and lie with every wench that comes in their way; adultery passes with them for good breeding; and fornication is esteemed as innocent an action as eating and drinking; whereas thou knowest, among the true believers, these crimes are punished with death.’ (p. 87).

~ ARTICLE V ~

**DU SUICIDE**

Après avoir parlé de ceux qui tuent leur prochain, disons un mot de ceux qui se tuent eux-mêmes. Ils s'embarrassent peu quand ils sont bien morts que la loi ordonne en Angleterre de les traîner dans les rues avec un bâton passé au travers du corps, ou que dans d'autres Etats les bons juges criminalistes les fassent pendre par les pieds, et confisquent leur bien. Mais leurs héritiers prennent la chose à coeur. Ne vous semble-t-il pas cruel et injuste de dépouiller un enfant de l'héritage de son père, uniquement parce qu'il est orphelin ? Ces anciennes coutumes aujourd'hui négligées, mais qui ne sont pas légalement abolies, étaient autrefois des lois sacrées ; car l'Eglise partageait avec le seigneur féodal, soit roi, soit baron, l'argent comptant, la terre et les meubles de l'homme qui s'était dégoûté de la vie. On le regardait comme un esclave qui s'était enfui de son maître et on prenait son pécule.

Cependant, le droit canon qui avait servi de code criminel à nos ignorants et barbares ancêtres, n'avait jamais pu trouver, ni dans l'Ancien, ni dans le Nouveau Testament un seul passage qui défende le suicide.

Virgile dit dans son sixième chant que ceux qui se sont donné la mort passent leur temps dans le vestibule des Enfers, à regretter leur vie.

~ ARTICLE V ~

ON SUICIDE

After having spoken of those who kill their fellow man, let us say a word about those who kill themselves. They worry little when they are dead that in England the law orders them to be dragged in the streets with a stick passed through the body, or that in other States, the good criminal judges have them hang by their feet and confiscate their possessions.<sup>237</sup> But their heirs take this to heart. Does it not seem cruel and unfair to you to strip a child of his father's inheritance, simply because he is an orphan? These former customs, today disregarded, but which are not legally abolished, were formerly sacred laws; because the Church shared with the feudal lord, either king, or baron, the coins, the estate, and the furniture of the man who had been disgusted with life.<sup>238</sup> He was regarded as a slave who had run away from his master and his savings were taken.

However, canon law which had served as penal code for our ignorant and barbaric ancestors, had never been able to find, neither in the Old, nor in the New Testament, a single passage that supports suicide.<sup>239</sup>

Virgil says in his sixth canto that those who committed suicide spend their time in the vestibule of Hell, to lament their life.

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<sup>237</sup> As quoted in *Crime and Punishment in Eighteenth-Century England*, *op. cit.*, Blackstone questioned: 'What punishment can human laws inflict on one who has withdrawn himself from their reach?' In response to this question, Mclynn (1989) asserted: 'The answer of course was, none. But society was determined that the suicide should not go unpunished. His reputation could be ruined and his memory desecrated. Hence arose the custom of burying suicides at crossroads with stakes driven through their bodies. This, and other peculiar folkways, was the elite's way of co-opting the common people into a detestation of suicide, even though its own motives were very different.' (p. 51).

<sup>238</sup> In the Eighteenth Century, the code that was in place following a suicide permitted 'forfeiture of the suicide's property to the king [...] No more striking a demonstration of the fanaticism with which the elite clung to the theory of deterrence can be seen than in this provision regarding the goods and chattels of suicides.' *Ibid.*, p. 51.

<sup>239</sup> The Catechism of the Catholic Church asserts in section II of the Ten Commandments, under article I, entitled 'Respect for Human Life' under the subsection entitled 'Suicide' that: 'Everyone is responsible for his life before God who has given it to him. It is God who remains the sovereign Master of life. We are obliged to accept life gratefully and preserve it for his honor and the salvation of our souls. We are stewards, not owners, of the life God has entrusted to us. It is not ours to dispose of.' (2280) It is also stated that: 'Suicide contradicts the natural inclination of the human being to preserve and perpetuate his life. It is gravely contrary to the just love of self. It likewise offends love of neighbor because it unjustly breaks the ties of solidarity with family, nation, and other human societies to which we continue to have obligations. Suicide is contrary to love for the living God.' (2281) Michael Allsopp, *Ethics and the Catechism of the Catholic Church* (Pennsylvania: University of Scranton Press, 1999), p. 158.

..... *Quam vellent æthere in alto,*

Nunc, et pauperiem, et duros perferre labores !

Virgile les plaint, quoiqu'il soit fort douteux s'ils sont à plaindre ; mais il ne les condamne pas. L'empereur Marc-Antonin ordonne qu'on ne trouble point leurs cendres, et que leurs testaments soient très valables (Loi du divin Marc-Antonin, code liv. 50, tit. I<sup>er</sup>).

L'Abbé de Saint Ciran, le patriarche des jansénistes, autrefois homme célèbre pour un peu de temps, écrivit, en 1608 un livre en faveur du suicide.

Tout ce qu'on a dit pour détourner de cette action, représentée tantôt comme courageuse, tantôt comme lâche, se réduit à ceci. Vous appartenez à la république, il ne vous est pas permis de quitter votre poste sans son ordre.

Tout ce qu'on a dit pour la justifier consiste dans ceci.

..... *Quam vellent æthere in alto,*  
Nunc, et pauperiem et duros perferre labores!<sup>240</sup>

Virgil sympathises with them, although it is highly doubtful if they are to be pitied; but he does not condemn them.<sup>241</sup> Emperor Mark Antony orders that their ashes be not disturbed, and that their testaments remain valid<sup>242</sup> (Law of the divine Mark Antony, code book. 50, title I).

The abbot of Saint-Cyran,<sup>243</sup> the patriarch of the Jansenists, formerly a famous man for a short while, wrote in 1608 a book in favour of suicide.

All that has been said to deter from this action, sometimes represented as courageous, sometimes as cowardly, only amounts to this. You belong to the republic; you are not permitted to leave your post without its order.

All that has been said to justify it consists of this.

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<sup>240</sup> See Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, p. 77.

*'Comme ils voudraient à présent, sous les cieus élevés / endurer la pauvreté et les travaux pénibles !'* (*Énéide*, VI, 436-437).

(As they would want at present, under the raised heavens / to endure poverty and difficult work! (Aeneid, VI, 436-437.)

<sup>241</sup> In Virgil's Aeneid, Queen Dido commits suicide. As William Scovil Anderson explains, Virgil presents Dido's character progression in a sympathetic manner. In doing so, he does not include the character of Aeneas in the last act so that the reader 'can concentrate with full sympathy, on this magnificent woman, fallen from noble queen to pathetic state of helpless lover.' Dido's suicide is not a Catonian suicide, but rather a means by which she can confess, it is 'a manifestation of personal failure.' (p. 54). *Art of Aeneid: 2<sup>nd</sup> Edition* (Illinois: Bolchazy-Carducci Publishers, 2005).

<sup>242</sup> Carmine Ruff remarks that the Romans and Greeks appear to have had similar views on suicide. That is to say, since the gods did not bestow life, they were not outraged when someone took their own life. Ruff elaborates by explaining that 'during the early Republic self-killing seems to have been extremely rare and the heroic self-irrationation of Decius Mus, Appius Claudius and Lucretia seem to have been remote from the mania which characterized the early empire. As the fabric of Roman life its religion, its family structure, its mores, and its confidence dissipated, the reluctance to suicide faded also.' *The complexity of Roman suicide* (master's dissertation), UR Scholarship Repository, (Richmond: USA, 1974).

<sup>243</sup> The abbot or priest of Saint-Cyran (1581 - 1643), also known as Jean du Vergier de Hauranne, was a French priest who established Jansenism in France. *Encyclopaedia Britannica*, vol. 8 (London: University of Cambridge, 1910). He defended suicide in his *Casus Regius* (1608), in which he argues that 'men are often bound to kill themselves; and that this obligation being one of the most difficult and important, the performance of it requires an extraordinary courage and firmness.' Pierre Bayle, *The Dictionary Historical and Critical of Mr. Peter Bayle*, vol. 5 (London: Knapton, 1738), p. 14.

La république se passera très bien de moi après ma mort, comme elle s'en est passée avant ma naissance. Je suis mécontent de ma maison, j'en sors, au hasard de n'en pas trouver une meilleure.

Mais vous ! quelle est votre folie de me pendre par les pieds quand je ne suis plus ? et quel est votre brigandage de voler mes enfants ?



The republic will manage very well without me after my death, as it did without me before my birth. I am unhappy with my home, I am leaving it, on the chance that a better one might not be found.

But you! What is your madness to hang me by my feet when I am no longer alive? And what is your thievery to steal from my children?<sup>244</sup>

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<sup>244</sup> Kehl edition editors' original note, *op. cit.*

*'Le suicide peut être, dans certains cas, une faute contre la morale, mais il ne peut jamais devenir un délit. Il n'offense directement ni les droits d'un autre homme ni ceux de la société. La peine infligée pour le suicide ne peut ni prévenir le crime ni le réparer : elle ne tombe point sur le coupable. Des mœurs féroces, une vile superstition, ont inspiré à nos grossiers aïeux l'idée de ces farces barbares, et l'avarice y a joint la confiscation. Cette loi est presque tombée en désuétude en France. Si on l'exécute encore quelquefois pour contenter les sots et amuser la populace, c'est contre des malheureux dont la famille trop pauvre ou trop obscure ne mérite pas que son honneur soit compté pour quelque chose.'* (p. 78).

(In certain cases, suicide can be a sin against morality, but it can never become a crime. It does not directly offend neither the rights of another man, nor those of society. The punishment imposed for suicide can neither prevent the crime, nor rectify it: it is not inflicted on the guilty person. Ferocious customs, a vile superstition, have inspired our uncouth ancestors with the idea of these barbaric farces, and greed has combined confiscation with it. This law has nearly fallen into disuse in France. If it is still executed now and again to content the fools and to entertain the populace, it is against unfortunate people whose family, too poor or too unintelligible, does not deserve that its honour be counted for something.)

~ ARTICLE VI ~

**DES MÈRES INFANTICIDES**

Si j'ai trop excusé ceux qui se tuent, je tremble d'excuser trop de mères qui exposent leurs enfants, et surtout des filles victimes malheureuses de l'amour et de l'honneur, ou plutôt de la honte.

~ ARTICLE VI ~

ON INFANTICIDAL MOTHERS

If I have exceedingly excused those who kill themselves, I fear to exceedingly excuse mothers who endanger their children,<sup>245</sup> and especially girls, unfortunate victims of love and honour, or rather of shame.<sup>246</sup>

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<sup>245</sup> The crime of infanticide has for the most part been represented as an act committed in secret and exclusively by women. Motives for infanticide have been linked to shame, poverty, and unemployment. However, Jennifer Thorn explains that ‘closer attention to eighteenth century legal records reveals that many of those accused of the crime were neither unmarried nor female. Court documents for a considerable number of homicide and infanticide cases disclose the involvement of fathers in the murder of either their pregnant partners (married or unmarried) or their partners and children.’ *Writing British Infanticide: Child-murder, Gender, and Print, 1722-1859* (London: Associated University Presses, 2003), p. 45.

<sup>246</sup> Similarly, Voltaire recalls the inconsistency and unjust nature of the laws about infanticide in his *Commentaire sur le livre des délits et des peines, op. cit.* Voltaire refers to the case of an eighteen-year-old girl who having concealed her baby was condemned to death:

*‘La loi est positive contre la fille dans la province dont je parle ; mais cette loi n’est-elle pas injuste, inhumaine, et pernicieuse ? Injuste parce qu’elle n’a pas distingué entre celle qui tue son enfant et celle qui l’abandonne ; inhumaine, en ce qu’elle fait périr cruellement une infortunée à qui on ne peut reprocher que sa faiblesse et son empressement à cacher son malheur ; pernicieuse, en ce qu’elle ravit à la société une citoyenne qui devait donner des sujets à l’État, dans une province où l’on se plaint de la dépopulation.’* (p. 404).

(The law is positive against the girl in the province that I am speaking about; but this law, is it not unjust, inhumane, and pernicious? Unjust because it has not distinguished between she who kills her child and she who abandons it; inhumane, inasmuch as it punishes an unfortunate girl by death, whom one can only reproach for her weakness and her promptness to hide her misfortune; pernicious because it dispossesses society of a citizen, who had to give subjects to the State, in a province where one complains about the depopulation.)

On a vanté et mis en vigueur, le célèbre édit du roi de France Henri II, qui ordonne qu'on punisse de mort toute femme ou fille

The celebrated edict of the King of France Henry II has been praised and brought into force, which orders that every woman or girl be punished by death<sup>247</sup>

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<sup>247</sup> See Pierre Le Ridant, *Code Matrimonial, Ou Recueil Complet De toutes les Loix Canoniques*, vol. 1 (Paris: Herissant, 1770), which details the edict enacted by King of France, Henry II (1519 - 1559), about the punishment in place for infanticide:

*'Henri, par la grâce de Dieu, roi de France ; à tous présens et à venir, salut... Parce que plusieurs femmes ayant conçu enfans par moyens deshonnêtes, ou autrement, persuadées par mauvais vouloir et conseil, déguisent, occultent et cachent leurs grossesses sans en rien découvrir ni déclarer [...] Ordonnons que toute femme qui se trouvera duement atteinte et convaincue d'avoir célé, couvert et occulté, tans sa grossesse que son enfantement, sans avoir déclaré l'un ou l'autre, et sans avoir pris de l'un ou l'autre, témoignage suffisant, même de la vie ou mort de son enfant, lors de l'issue de son ventre ; et après se trouve l'enfant avoir été privé tant du sacrement de baptême, que de la sépulture publique et accutumée, soit telle femme tenu et réputée d'avoir homicidé son enfant ; et pour réparation, punie de mort et dernier supplice, et de telle rigueur que la qualité particulière du cas le méritera ... Donné à Paris, au mois de février 1556.'* (p. 104).

(Henry, by the grace of God, King of France; salutes all present and to come ... Because several women having conceived children by dishonest means, or by other means, persuaded by bad faith and counsel, disguise, mask, and hide their pregnancies without anything discovered, nor declared of it [...] Let it be ordered that any woman who will be duly found in violation and convicted of having concealed, covered, and masked, in her pregnancy as her childbirth, without having declared either, and without having sufficient evidence of one or the other, even of the life or death of her child, while born of her stomach; and after finds the child having been deprived of the sacrament of baptism, as of the public and accustomed grave, either such woman thought to and deemed to have killed her child; and to make amends, punished by death and executed, and with such rigour that the particular quality of the case will merit it ... Given in Paris, in the month of February 1556.)

qui ayant celé sa grossesse accouche d'un enfant trouvé mort sans avoir été baptisé.

who having concealed her pregnancy, gives birth to a child found dead without having been baptised.<sup>248</sup>

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<sup>248</sup> Kehl edition editors' original note, *op. cit.*

*'Cette loi est du cardinal Bertrand, chancelier sous Henri II. Forcer une fille à déclarer à un juge ce qu'on appelle sa honte, la punir du dernier supplice, si, n'ayant pas voulu se soumettre à cette humiliation, ou ayant trop tardé à la subir, elle accouche d'un enfant mort ; présumer le crime ; punir non le délit, puisqu'on n'attend pas qu'il soit prouvé, mais la désobéissance à une loi cruelle et arbitraire, c'est violer à la fois la justice, la raison, l'humanité. Et pourquoi ? pour prévenir un crime qu'on ne peut commettre qu'en étouffant les sentiments de la nature, qu'en s'exposant à des accidents mortels. Cependant ce ne sont point les malheureuses qui commettent ce crime que l'on en doit accuser, c'est le préjugé barbare qui les condamne à la honte et à la misère, si leur faute devient publique ; c'est la morale ridicule qui perpétue ce préjugé dans le peuple. Le moyen que propose M. de Voltaire est le seul raisonnable ; mais il faudrait que ces hôpitaux fussent dirigés par des médecins qui ne verraient, dans les infortunées confiées à leurs soins, que des femmes coupables d'une faute légère déjà trop expiée par ses suites. Il faudrait qu'on y fût assuré du secret, que les soins qu'on y prendrait des accouchées ne fussent point bornés à quelques jours ; qu'elles pussent, si elles n'avaient point d'autre ressource, rester dans l'hôpital comme ouvrières ou comme nourrices. On pourrait, en retenant les enfants dans ces maisons jusqu'à un âge fixé, et en leur apprenant des métiers, et surtout les métiers nécessaires à la consommation de la maison ; en y attachant des jardins, des terres qu'ils cultiveraient, rendre leur éducation très peu coûteuse, épargner même de quoi donner des dots aux garçons et aux filles, si, en sortant de la maison, ils se mariaient à une fille ou à un garçon qui aurait été élevé comme eux. Ces mariages auraient l'avantage d'épargner à ces infortunés les dégoûts auxquels leur état les expose parmi le peuple. Au lieu d'empêcher les legs faits aux bâtards, il faudrait que la loi accordât à tout bâtard reconnu, une portion dans les biens du père et de la mère. Il faudrait permettre les dispositions en faveur des concubines ou mères d'un enfant reconnu, ou résidentes dans la maison d'un homme libre ; défendre aux juges d'admettre dans aucun cas contre une donation l'allégation qu'elle a eu pour cause une liaison de ce genre ; ne point avoir d'autres lois, une autre police contre les courtisanes que contre les autres citoyens domiciliés. Telles sont les seules lois de ce genre qui pourraient empêcher la corruption des mœurs qu'entraîne l'inégalité des fortunes. Mais celles que la bigoterie, la tyrannie des pères de famille, le mépris pour la faiblesse et l'indigence, et surtout l'avidité des gens de police ont imaginées, ne font que rendre la corruption plus générale, plus crapuleuse et plus funeste.'* (pp. 79-80).

(This is Cardinal Bertrand's law, Chancellor under Henry II. To force a girl to declare to a judge, what one calls her shame, to punish her with the death penalty if not being willing to comply with this humiliation, or having been too late to endure it, she gives birth to a dead child; presume the crime; punish not the crime, since one is not waiting for its validation, but the refusal to obey a cruel and arbitrary law, it is to violate justice, reason, humanity at the same time. And why? In order to prevent a crime that one can only commit by stifling the sentiments of nature, by exposing oneself to mortal accidents. However, it is not the poor persons who commit this crime who must be accused of it, it is the prejudiced barbarian who condemns them to shame and to misery, if their wrongdoing becomes public; it is ridiculous morality that perpetuates this prejudice among the people. The only reasonable means are those proposed by Mr. Voltaire; but these hospitals would have to be managed by doctors who would not only see in the unfortunate women entrusted with their care, women guilty of a minor wrongdoing, already overly expiated by its consequences. The secret would have to be assured there that the care that would be taken of the pregnant women there was not confined to a few days; that they could, if they had no other resource, stay in the hospital as labourers or as wet nurses. One could, by keeping the children in these houses until a fixed age, and by teaching them jobs and especially the necessary jobs to the intake of the house, by assigning them gardens, land that they would cultivate, to make their education inexpensive, to even save dowries to give to the boys and to the girls, if while leaving the house, they would marry a girl or a boy who would have been raised like them. These marriages would have the advantage of sparing these unfortunate persons from the disgusts that their state exposes them to among the people. Instead of preventing the legacies left to bastards, the law would have to accord a share of the possessions of the father and mother to every recognised bastard. It would be necessary to permit the provisions in favour of common law wives or mothers of a recognised child, or residents in the house of a free man; to forbid the judges to accept in any case a donation against the allegation that it had by reason of a liaison of this kind, to have no other laws, another policy against courtesans than for other domiciled citizens. These are the only laws of this kind that could prevent the corruption of the customs that bring about the inequality of fortunes. But those that bigotry, tyranny of fathers, contempt for weakness and destitution, and especially avidity of the police has imagined, only have corruption rendered more general, more heinous, and more grievous.)

Le code de Charles-Quint, connu sous le titre de la Caroline, veut qu'on ne condamne la mère au supplice qu'en cas que l'enfant soit venu au monde en vie.

La loi d'Angleterre, encore moins sévère, veut que la mère échappe à la condamnation, si elle trouve un seul témoin qui dépose qu'elle est accouchée d'un enfant mort.

La contradiction qui règne entre ces lois, ne fait-elle pas soupçonner qu'elles ne sont pas bonnes, et qu'il eût bien mieux valu doter des hôpitaux où l'on eût secouru toute personne du sexe qui se fût présentée pour accoucher secrètement ? par là on aurait à la fois sauvé l'honneur des mères, et la vie des enfants.

Trop souvent un prince ne manque point d'argent pour faire une guerre injuste, qui dévaste, et qui ensanglante une moitié de l'Europe ; mais il en manque pour les établissements les plus nécessaires, qui consoleraient le genre humain.



The code of Charles-Quint, known as the Carolina, wants the mother to be condemned to torture only in the event that the child came into the world alive.<sup>249</sup>

The English law, even less severe, wants the mother to avoid conviction, if she finds a single witness who testifies that she gave birth to a dead child.<sup>250</sup>

Does not the inconsistency that reigns between these laws raise suspicion that they are not good, and that it would have been much better to equip hospitals, where help would have been provided to each person of the sex who had presented herself to give birth secretly? Thereby, both the honour of the mothers and the lives of the children would have been saved.

Too often a prince does not lack money to wage an unjust war, which destroys and bloodies half of Europe, but he lacks it for the most necessary establishments, which would console humankind.

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<sup>249</sup> Sonia Rappaz highlighted in her article, 'La Noyade judiciaire dans la république de Genève', *Crime, History, and Societies* (Genève-Paris: France), n° 1, 2009, that:

*'Dès le milieu du XV<sup>e</sup> siècle, à la suite du durcissement pénal contre les délits moraux, l'infanticide et l'avortement sont désormais qualifiés aussi gravement que la sorcellerie ou l'hérésie. En 1480, 1556 et 1586, en France, les Édits royaux témoignent de cette sévérité et condamnent la mère criminelle au bûcher. En 1532 dans le Saint Empire germanique, un article de la Caroline propose d'enterrer vivante ou de noyer la coupable.'* (p. 10).

(From the middle of the 15<sup>th</sup> Century, following the penal intensification against moral crimes, infanticide and abortion are henceforth considered to be just as serious as sorcery or heresy. In 1480, 1556, and 1586, in France, the royal edicts demonstrate this severity and condemn the criminal mother to the stake. In 1532, in the Holy Roman Empire, an article from the Carolina proposes to bury alive or to drown the guilty woman.)

<sup>250</sup> The English law that Voltaire is referring to is the Infanticide statute (1624). Marilyn Francus explains that this law 'presumed that unless the mother could conclusively demonstrate her innocence, mere concealment of a dead child proved infanticide. The law placed the burden of proof squarely on the defence, both to circumvent the evidentiary difficulties of obtaining a conviction without a witness, and to pre-empt the claim of stillbirth as a maternal defence. As such, women were convicted of infanticide based on nothing more than circumstantial evidence of dead children found in privies or closets, or testimony by witnesses who noticed maternal weight loss, illness, bloody linen, and the like.' 'Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth-Century England', *Eighteenth-Century Life* (North Carolina: USA), n° 2, 1997, p. 133.

~ ARTICLE VII ~

**D'UNE MULTITUDE D'AUTRES CRIMES**

Vous nous apprendrez peut-être comment une infinité de scélérats pourraient faire autant de bien à leur pays, qu'ils leur auraient fait de mal. Un homme qui aurait brûlé la grange de son voisin, ne serait point brûlé en cérémonie, parce qu'un peu de foin et de paille n'équivaut pas à la vie d'un homme qui meurt par un si cruel supplice. Mais après avoir aidé à rebâtir la grange, il veillerait toute sa vie, chargé de chaînes et de coups de fouet, à la sûreté de toutes les granges du voisinage.

Mandrin, le plus magnanime de tous les contrebandiers, aurait été envoyé au fond du Canada se battre contre des sauvages, lorsque sa patrie possédait encore le Canada.

~ ARTICLE VII ~

ON A MULTITUDE OF OTHER CRIMES

You will teach us perhaps how an infinity of criminals could do as much good for their country, as they would have done bad for it. A man who would have burned down<sup>251</sup> his neighbour's barn would not be burned in ceremony because a little hay and straw does not equate to the life of a man who dies by such a cruel torture.<sup>252</sup> But after having helped to rebuild the barn, he would keep watch all his life, weighed down by chains and cracks of the whip, to ensure the safety of all the neighbourhood's barns.

Mandrin,<sup>253</sup> the most magnanimous of all the smugglers, would have been sent to the depths of Canada to fight against savages, while his homeland still possessed Canada.

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<sup>251</sup> The punishment for arson was similar to that of theft. De Warville, as quoted in André Abbiateci's article, 'Les incendiaires en France au XVIII<sup>e</sup> siècle. Essai de typologie Criminelle', *Économies, Sociétés, Civilisations*, n°1, 1970, asserted that:

*'Comme le larcin et la filouterie sont ordinairement le crime des pauvres, comme les vols sont souvent occasionnés pour les ¾ par la misère, on doit commencer par la détruire [...] Point de mendiants, point de voleurs.'* (p. 241).

(As larceny and knavery are ordinarily the crime of the poor, as thefts are often caused for ¾ by misery, one must begin by destroying it [...] No beggars, no thefts.) To which Abbiateci added: *'point de mendiants, points de menaces de feu.'* (no beggars, no threat of fire.)

<sup>252</sup> André Ferrer details in 'Les incendies dans le ressort du Parlement de Besçanon au XVIII<sup>e</sup> siècle', in François Vion-Delphin and François Lassus, eds., *Les hommes et le feu de l'antiquité à nos jours : du feu mythique et bienfaiteur au feu dévastateur* (Besçanon: Presses Universitaires de France-comté, 2007), that the crime of arson yielded a severe punishment:

*'[...] les tribunaux comtois condamnent souvent les incendiaires à la peine capitale tandis que la peine des galères est moins utilisée. Certes, il n'y a plus d'incendiaire condamné à être brûlé vif mais, jusqu'à la veille de la Révolution, la peine du feu est encore appliquée au cadavre après l'exécution par la roue ou la pendaison : « Le corps mort [est] jetté sur un bûcher pour y être réduit en cendres et icelles jettées au vent. »'* (p. 300).

([...] the France-comté courts often condemn arsonists to capital punishment, while punishment by sending to the galleys is used less. Certainly, there is no longer any arsonist condemned to be burned alive, but up until the aftermath of the Revolution, punishment by burning is still applied to the body after execution by the wheel or by hanging: "The dead body [is] thrown on a stake, so there to be reduced to ashes and it thrown to the wind.")

<sup>253</sup> Louis Mandrin (1725 - 1755) was a famous French smuggler and bandit who operated in France during the 18<sup>th</sup> Century. Accounts of Mandrin document how he engaged in criminal activity from a young age by counterfeiting, which led him to flee from his home in Saint-Geoirs. He then went on a 'spree of cold-blooded killings, raids, prison breaks, and attacks on farm guards and royal soldiers.' Mandrin's criminal activity eventually caught up with him. In 1755, he was betrayed by two of his men and captured by the tax collectors known as the Ferme Générale and was executed on the wheel. Michael Kwass, *Contraband: Louis Mandarin and the making of a global underground* (Massachusetts: Harvard University Press, 2014), p. 254.

Un faux-monnayeur est un excellent artiste. On pourrait l'employer dans une prison perpétuelle à travailler de son métier à la vraie monnaie de l'Etat, au lieu de le faire mourir dans une cuve d'eau bouillante, comme l'ordonnent Charles-Quint et François I<sup>er</sup>.

Un faussaire enchaîné toute sa vie, pourrait transcrire de bons ouvrages, ou les registres de ses juges, et surtout sa sentence.

A counterfeiter<sup>254</sup> is an excellent artist. He could be employed in a lifelong imprisonment, to carry out his profession with the true currency of the State, instead of having him perish in a cistern of boiling water, as Charles-Quint<sup>255</sup> and Francis I<sup>256</sup> order it.

A forger, enchained all his life, could transcribe good works, or the registers of his judges and especially his sentence.<sup>257</sup>

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<sup>254</sup> Voltaire explained in his *Commentaire sur le livre des Délits et des peines*, *op. cit.* that:

*'Le crime de faire de la fausse monnaie est regardé comme haute trahison au second chef, et avec justice : c'est trahir l'État que voler tous les particuliers de l'État.'* (p. 415).

(The crime of forging fake currency is regarded as high treason in the second degree, and justly: to steal all the private goods of the State is to betray the State.)

<sup>255</sup> Voltaire is referring to article III of the *Code criminel de l'Empereur Charles V : Code criminel de l'empereur Charles V : vulgairement appelé la Caroline : contenant les loix qui sont suivies dans les juridictions criminelles de l'Empire : et à l'usage des Conseils de guerre des troupes suisses* (Neuveville: Jean-Jacques Marolf, 1742) entitled *'De la punition des faux monnayeurs et de ceux qui, sans droit, fabriquent des Monnaies.'*

(On the punishment of counterfeiters and those who, without the right, counterfeit currencies.) In this article it is stated:

*'[...] ceux qui fabriquent de la fausse Monnaie, qui la marquent ou qui l'échangent, se l'approprient, et ensuite la débitent ainsi sciemment, et avec malice, pour tromper les autres, seront condamnés suivant l'usage et l'Ordonnance des Loix à perdre la vie par la peine de feu.'* (pp. 162-63).

([...] those who make fake currency, who mark it or who exchange it, appropriate it and then debit it thereby deliberately and with malice to trick others, will be condemned in accordance with practices and the ordinance to lose their life by the punishment of burning.)

<sup>256</sup> The reign of Francis I lasted from 1494 to 1547. During the 15<sup>th</sup> and 16<sup>th</sup> Centuries 'boiling in oil was a punishment sometimes used in France, Germany, and a few other countries for counterfeiters.' However, 'the Parlement of Paris, for example, ceased to boil counterfeiters after the mid-Sixteenth Century.' Julius Ruff, *Violence in Early Modern Europe 1500-1800* (Cambridge: Cambridge University Press, 2001), p. 110.

<sup>257</sup> Kehl edition editors' original note, *op. cit.*

*'Il ne serait ni dispendieux ni difficile d'employer les criminels d'une manière utile, pourvu qu'on ne les rassemblât point en grand nombre dans un même lieu. On pourrait les charger dans les grandes villes des travaux dégoûtants et dangereux, lorsqu'ils n'exigent ni adresse ni bonne volonté. On peut aussi les employer, dans les maisons où ils sont renfermés, à des opérations des arts qui sont très pénibles ou malsaines. Des privations pour la paresse, des châtimens pour la mutinerie et le refus du travail, des adoucissements pour ceux qui se conduiraient bien, suffiraient pour maintenir l'ordre ; et tous ceux qui sont valides gagneraient au-delà de ce qu'ils peuvent coûter, si leur travail était bien dirigé.'* (pp. 84-85).

(It would be neither expensive, nor difficult to employ criminals in a useful manner, provided that they were not gathered in great numbers in the same place. They could be made responsible in large towns for disgusting and dangerous works, when they do not require neither skill, nor goodwill. They can also be employed in the houses where they are imprisoned, to operations of the arts that are very difficult or unsanitary. Revocations for idleness, punishments for mutiny and refusal to work, reliefs for those who would behave well, would suffice to maintain order; and all those who are healthy would earn beyond what they can cost, if their work was well-managed.)

La polygamie ne serait un cas pendable que dans la comédie de *Pourceaugnac*. Et la loi trop rigoureuse de Charles-Quint et des Anglais, serait entièrement abolie pour faire place à une loi moins dure et plus convenable.

Le plagiat, c'est-à-dire la vente d'un enfant volé, serait aussi peu poursuivi qu'il est rare dans l'Europe chrétienne. A l'égard du plagiat des auteurs, il est si commun qu'on ne peut le poursuivre.

Voyons des délits qui ont été plus ordinaires, et soumis à des supplices plus effroyables.

Polygamy would only be a hanging offence in Pourceaugnac's comedy.<sup>258</sup> And the excessively rigorous law of Charles-Quint<sup>259</sup> and the English would be entirely abolished to make way for a less harsh and more appropriate law.

Plagiary,<sup>260</sup> that is to say, the sale of a stolen child, would also be seldom pursued as it is rare in Christian Europe. Regarding the theft of authors' work, it is so common that it cannot be pursued.

Let us see some crimes that have been more ordinary and subjected to more dreadful tortures.

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<sup>258</sup> Monsieur de Pourceaugnac was a comedy play produced on the occasion of the three-hundred-year anniversary of the death of Louis XIV. The play was produced in 1669 by Molière's company 'La Troupe de Moliere'. Gerry McCarthy, *The Theatres of Molière* (London: Routledge, 2002).

<sup>259</sup> Voltaire is referring to article 121 of the *Code criminel de l'Empereur Charles V*, *op. cit.*, which states that: *'Un homme marié qui contractera mariage avec une autre femme, ou une femme mariée, qui du vivant de son mari en fera la célébration avec un autre homme, commettra un crime aussi grand et même plus grand que l'adultère ; et quoique les Loix Impériales n'ayent point statué la peine de mort contre ce délit, nous voulons cependant que ceux qui en fraude, sciemment et volontairement l'auront occasionné et consommé, ne soient pas moins punis comme criminels que les adultères.'* (p. 160).

(A married man who will enter into marriage with another woman, or a married woman, who during her husband's lifetime, will wed another man, will commit a crime as great and even greater than adultery; and although the imperial laws have not decreed punishment by death for this crime, we want, however, that those who fraudulently, knowingly, and deliberately, will have it brought about and consummated, are no less punished as criminals than adulterers.)

<sup>260</sup> Kevin Young clarified in *Bunk: The Rise of Hoaxes, Humbug, Plagiarists, Phonies, Post-Facts, and Fake News* (Minneapolis: Graywolf Press, 2017) that 'the meaning of plagiary, as the act was first known, originally included theft not just of words but also bodies: taken from the Latin, *plagium* meant and still means in civil law 'the crime of kidnapping' especially children; plagiary added the idea of stealing a slave, and of seduction, as well as being a literary thief.' (p. 520).

## ~ ARTICLE VIII ~

### DE L'HÉRÉSIE

On peut définir l'hérésie, opinion différente du dogme reçu dans le pays. Quand commença-t-on à condamner en forme juridique des docteurs, des prêtres et des séculiers, à être étranglés ou décollés, ou brûlés en place publique, pour des opinions que personne n'entendait ? Ce fut, si je ne me trompe, sous Théodose, qui ne savait rien de ce qui se passait dans ses Etats, ainsi qu'il est arrivé depuis à plus d'un monarque.

L'Eglise, à la vérité, avait été toujours agitée par la discorde. Déjà Rome avait vu un de ces schismes scandaleux qui ont désolé depuis, et ensanglanté l'Europe en si grand nombre. Novatien avait disputé l'évêché secret de Rome à Corneille, sur la fin de l'empire de Décus. Cette guerre sourde entre des hommes obscurs, quoique riches, et maltraités par le gouvernement, ne fut signalée que par des injures. Bientôt après Constantin mit, comme on sait, la religion chrétienne sur le trône, et la vit déchirer ses entrailles par des disputes sur des problèmes qu'il est impossible à l'esprit humain de résoudre.



~ ARTICLE VIII ~

ON HERESY

Heresy can be defined as a different opinion from the received dogma in a given country.<sup>261</sup> When did we begin to condemn in legal form, doctors, priests, and secular clergy, to be strangled or beheaded, or burned in public for opinions that nobody heard? It was, if I am not mistaken, under Theodosius,<sup>262</sup> who knew nothing of what took place in his States, as has since been the case for more than one monarch.

The church, in truth, had always been agitated by discord. Rome had already seen one of these scandalous schisms,<sup>263</sup> which have since devastated and bloodied Europe in such great numbers. Novatian had contested the secret bishopric of Rome with Cornelius,<sup>264</sup> toward the end of the Empire of Decius.<sup>265</sup> This muted war between obscure men, although rich and mistreated by the government, was only signalized by insults. Soon after Constantine put, as is well known, the Christian religion on the throne, and lived through it tearing apart its entrails by disputes over problems that are impossible for the human mind to resolve.<sup>266</sup>

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<sup>261</sup> Voltaire defined heresy as an ‘*opinion différente du dogme reçu dans un pays.*’ (A different opinion from the received dogma in a given country.) Therefore, from this definition, it would mean that Lutheranism would have been heresy in Rome, and that the Catholic faith would have been heresy in London and Constantinople. Brissot de Warville, *Théorie des lois criminelles*, vol. 2 (Switzerland: University of Lausanne, 1781), p. 4.

<sup>262</sup> Emperor Theodosius I (345 A.D. - 395 A.D.) presided over both the western and eastern divisions of Rome from 379 to 395. He opposed the Edict of Milan, which called for religious tolerance, and he ardently worked to establish Orthodox Christianity. In line with his objective to establish Orthodox Christianity as the primary religion of the State, he oppressed Christian heretics and enacted legal action to eradicate paganism. John Bury, *History of the Later Roman Empire, from the death of Theodosius I to the death of Justinian*, vol. 1 (New York: Dover Publications, 2012).

<sup>263</sup> As illustrated by Aidan Nichols in *Rome and the Eastern Churches: A Study in Schism* (San Francisco: Ignatius Press, 2010), the east-west schism in 1054 incited the dissolution of the Eastern Christian churches (ruled by Michael Cerularius, the patriarch of Constantinople) and the Western church (ruled by Pope Leo IX).

<sup>264</sup> Novatian was ordained pope in the 3<sup>rd</sup> century A.D. Unlike the inaugurated Pope Cornelius, Novatian upheld a more severe stance and was excommunicated soon after his consecration. Subsequent to his excommunication, Novatian founded Novatianism, the religion of his schismatic church. Alexandre Faivre, *Naissance d'une hiérarchie : Les premières étapes du cursus clérical* (Paris: Editions Beauchesne, 1977).

<sup>265</sup> Decius was Roman Emperor from 249 A.D. to 251 A.D. Paula Fredriksen explains that in the mid-3<sup>rd</sup> Century, Decius ordered all his subjects to engage in a public cult. Decius ‘ordered that gentile Christians, whatever their peculiar practices, also observe those rites that ensured the gods’ goodwill. His goal was not religious uniformity but the preservation of the commonwealth.’ *A Companion to the Roman Empire*, David Potter ed. (Oxford: Blackwell Publishing, 2006), p. 602.

<sup>266</sup> Constantine presided as Emperor of Rome from 306 A.D. to 337 A.D. He was the first Roman Emperor who converted to the Christian religion. His conversion supposedly emanated when he observed a cross in the sky. Julian Morgan, *Constantine: Leader of Christian Rome* (New York: Rosen Publishing, 2003).

Il punit lui-même l'Eglise qu'il avait élevée. Il exila les combattants athanasiens et les combattants ariens. Il envenima la querelle en changeant plus d'une fois de parti. Le sang chrétien coula longtemps dans la Syrie, dans la Thrace, dans l'Asie Mineure, dans l'Egypte, dans l'Afrique, vastes pays dans lesquels il n'est aujourd'hui connu que par l'esclavage ou par le commerce. On ne s'avisa point alors de juger la foi dans les tribunaux comme un procès criminel, et d'envoyer un homme au supplice pour un argument.

Le schisme de Donat, du temps de saint Augustin, fut cruel ; les prêtres des deux partis armèrent leurs ouailles africaines de massues, attendu que l'Eglise abhorre le sang. On se massacra saintement dans le pays habité de nos jours par les corsaires de Tunis et d'Alger ; mais on ne se massacra pas judiciairement. Ce furent des évêques espagnols qui commencèrent à tuer en règle, comme ils commencèrent depuis les assassinats de l'Inquisition dans les formes du barreau.

Il serait difficile de dire bien précisément quelles étaient les thèses théologiques sur lesquelles on fit le procès aux Priscilianites. Les chimères s'oublient, mais les barbaries atroces restent gravées dans la mémoire des hommes à la dernière postérité.

He himself punished the Church that he had founded. He exiled the Athanasian combatants and the Arian combatants. He inflamed the quarrel by changing sides more than once. Christian blood flowed for a long time in Syria, Thrace, Asia minor, Egypt, Africa, vast countries, where today they are only known for slavery or for trade. At that time, nobody dreamed of examining a man's faith in the courthouses, as though it were a matter for criminal trial, nor of sending a man to be tortured over an argument.

The schism of Donat,<sup>267</sup> in the time of Saint Augustine, was cruel; the priests of the two parties armed their African flocks with clubs, given that the Church abhors blood. They massacred each other in a saintly manner in the country inhabited nowadays by the Corsairs of Tunisia and Algeria; but they did not massacre each other legally. It was Spanish bishops who began to kill according to the law, as they began to do since the assassinations of the Inquisition following the procedures of the Bar.

It would be difficult to say very precisely what were the theological theses used to put the Priscillians on trial. The chimeras<sup>268</sup> forget, but the atrocious barbarisms remain engraved in the memory of men to the last posterity.

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<sup>267</sup> The schism of Donat was a separation in the Church of Carthage from the 4<sup>th</sup> to the 6<sup>th</sup> Century. The schism occurred after the end of the Diocletian persecution and disunited the Church of Africa for over a century. Eusebius Pamphilius, *Church History, Life of Constantine, Oration in Praise of Constantine* (New York: Library of Alexandria, 1890).

<sup>268</sup> The chimera was a hybrid animal in Greek mythology. A chimera could, for example, take the form of a goat that had the head of a lion and the tail of a snake. In certain instances, the chimera could also be a combination of animal and human features or a fusion of human and god, or animal and god. *CHIMBRIDS - Chimeras and Hybrids in Comparative European and International Research*, Jochen Taupitz and Marion Weschka, eds. (Dordrecht: Springer, 2009).

Des évêques espagnols, l'un nommé Itace, l'autre Idace, et quelques évêques gascons, ayant fortement ergoté contre les évêques Priscilien, Instance et Salvien, et par conséquent possédés du démon de la haine, suivirent leurs antagonistes des Pirenées jusqu'à Trèves. Il y avait alors dans Trèves un tyran des Gaules, nommé Maxime, qui s'était mis en tête de détrôner l'empereur Théodose, mais qui n'y réussit pas. Ce Maxime était un barbare débauché, ivrogne, avare, et dissipateur ; un vrai soldat, ne sachant point de quoi il était question, s'en souciant encore moins ; d'ailleurs dévot et fait pour être gouverné par les prêtres, pourvu qu'il gagnât à les protéger.

Les évêques espagnols et gascons se cotisèrent pour lui donner de l'argent ; tant ils étaient acharnés à la bonne cause. Maxime ne manqua pas de faire pendre les trois hérétiques par son parlement. Saint Martin qui se trouva là par hasard ayant intercédé pour les trois condamnés, on le menaça de le pendre lui-même, et il s'enfuit au plus vite.

Some Spanish bishops, one named Itacius,<sup>269</sup> the other Idacius,<sup>270</sup> and some Gascon bishops,<sup>271</sup> having strongly quibbled with the bishops, Priscillian,<sup>272</sup> Instantius, and Salvianus,<sup>273</sup> and consequently possessed by the demon of hatred, followed their antagonists from the Pyrenees to Treves. At that time, there was in Treves a tyrant of the Gauls, named Maximus,<sup>274</sup> who had decided to dethrone Emperor Theodosius, but did not succeed at it. This Maximus was a debauched barbarian, drunkard, miser, and prodigal; a true soldier, not knowing what was going on, worrying himself about it even less so; incidentally, bigoted and made to be governed by the priests, provided that he benefited from protecting them.

The Spanish and Gascon bishops contributed to give him money; as they insisted upon the good cause. Maximus did not fail to have the three heretics hanged by his Parliament. Saint Martin,<sup>275</sup> who found himself there by chance, having interceded for the three convicts, was threatened to be hanged himself, and he fled as quickly as possible.

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<sup>269</sup> Itacius was bishop of Sosuba. John McClintock and James Strong, *Cyclopedia of Biblical, Theological, and Ecclesiastical Literature*, vol. 8. (New York: Harper and Brothers, 1889).

<sup>270</sup> Idacius, (400 A.D. - 469 A.D.) also known as Hydatius, was a bishop in northwest Spain during the mid-5<sup>th</sup> Century. He is remembered for his chronicle which 'is our most important historical source for late Roman Spain up to 468.' Raymond Van Dam, 'The "Chronicle" of Hydatius and the "Consularia Constantinopolitana": Two Contemporary Accounts of the Final Years of the Roman Empire (review)', *Journal of Early Christian Studies* (Baltimore: Johns Hopkins University Press), n°3, 1996.

<sup>271</sup> The bishops Ithacius and Idacius are also mentioned in the *Œuvres complètes de Voltaire*, vol. 4 (Paris: F. Didot frères, 1872):

*'La coutume horrible de juger et de condamner à mort pour des opinions religieuses fut introduite chez les chrétiens dès le quatrième siècle de l'ère vulgaire. Ce nouveau fléau, qui affligea la nature humaine fut apporté d'Espagne par deux Evêques nommés Itace et Idace, comme depuis un autre Espagnol introduisit l'horreur de l'inquisition.'* (p. 692).

(The horrible custom of judging and condemning to death for religious opinions was introduced among the Christians from the fourth Century B.C. This new scourge, which afflicted human nature, was brought from Spain by two bishops named Ithacius and Idacius, as another Spaniard has since introduced the horror of the Inquisition.)

<sup>272</sup> Priscillian of Avila (340 A.D. - 385 A.D.) *Violence in Late Antiquity: Perceptions and Practices*, Harold Allen Drake, ed. (Hampshire: Ashgate Publishing, 2006).

<sup>273</sup> Instantius and Salvianus were condemned for their heretic beliefs by the council of Saragossa. Alban Butler and Godescard Butler, *Vies des Pères, des Martyrs et des autres principaux Saints*, vol. 12 (Paris: Barbou, 1782).

<sup>274</sup> In 383 A.D., Maximus was proclaimed emperor among the soldiers. Gratian, Roman Emperor (367 A.D. - 383 A.D.), presented himself to fight Maximus and his soldiers. However, observing the strength of Maximus's army, Gratian fled to the Alps. Maximus was elected emperor by the army, he passed through Gaul and defeated the Emperor Gratian in Lyon. Dom Martin Bouquet and Léopold Delisle, *Recueil des historiens des Gaules et de la France*, vol. 14 (Paris: Palmé, 1877).

<sup>275</sup> Alban Butler details St. Martin's involvement at Triers (also known as Trier and Treves) in his work *The Lives of the Fathers, Martyrs, and Other Principal Saints* (New York: Sadlier, 1846). He explains that 'St. Martin happened to go to Triers to intercede with the tyrant in favor of certain persons who were condemned to death for adhering to their late master, Gratian. Many at the same time came from different parts to pay their court to Maximus with the most fawning adulation.' (p. 439).

Dès que les ergoteurs furent si loyalement en curée, ils ne discontinuèrent plus d'aller à la chasse des hérétiques et des impies. Ils crièrent *hallali* d'un bout de l'Europe à l'autre. Ils changèrent quelques princes en chiens de chasse, qui plongèrent leurs gueules dans le sang des bêtes relancées par eux. Dès que les princes résistèrent ils furent immolés eux-mêmes depuis Henri IV l'empereur, jusqu'à l'autre Henri IV de France, le meilleur des rois et des hommes.

C'est pendant ces siècles d'ignorance, de superstition, de fraude et de barbarie, que l'Eglise, qui savait lire et écrire, dicta des lois à toute l'Europe qui ne savait que boire, combattre, et se confesser à des moines. L'Eglise fit jurer aux princes qu'elle oignit, d'exterminer tous les hérétiques. C'est-à-dire qu'un souverain fit serment à son sacre, de tuer presque tous les habitants de l'univers. Car presque tous avaient une religion différente de la sienne.

L'hérésie fut le plus grand des crimes ; et aujourd'hui même encore chez une aimable nation notre voisine le code pénal de tous les parlements commence par l'hérésie ; cela s'appelle crime de lèse-majesté divine au premier chef. Autrefois on brûlait irrémisiblement ces ennemis de Dieu, parce qu'on ne doutait pas que Dieu ne les brûlât lui-même dès qu'ils étaient morts ; soit qu'il portât en enfer leurs corps restés en terre, soit qu'il y portât leur âme qu'on ne voyait point. Tous les juges étaient bien persuadés que c'était se conformer à Dieu que de brûler ces impies ; qu'on n'anticipait leur enfer que de quelques minutes, et qu'il n'y avait point de musique céleste plus agréable à Dieu l'auteur de notre vie, que les cris d'une famille entière d'hérétiques au milieu des flammes.

As soon as the pettifoggers were so loyally quarry,<sup>276</sup> they no longer ceased to go hunting heretics and non-believers. They cried out *kill* from one end of Europe to the other. They transformed some princes into hunting dogs who plunged their mouths into the blood of the beasts thrown by them. As soon as the princes resisted, they themselves were immolated, from the time of Emperor Henry IV,<sup>277</sup> to the other Henry IV of France,<sup>278</sup> the best of kings and men.

It is during these centuries of ignorance, superstition, fraud, and barbarity that the Church, which knew how to read and to write, dictated laws to all of Europe, which only knew how to drink, fight, and confess to monks. The Church made the princes who it anointed vow to exterminate all the heretics. That is to say, a sovereign swore an oath at his coronation, to kill nearly all the inhabitants of the universe<sup>279</sup> because nearly all of them had a different religion from his.

Heresy was the greatest of crimes; and today, even still among a pleasant nation, our neighbour, the penal code of all parliaments begins with heresy; it is called a crime of divine lese-majesty in the first degree. In the past, these enemies of God were burned irremissibly because there was little doubt that God did not burn them himself as soon as they had died; either he took their bodies, which remained in the ground, to hell, or he took their soul there, which was not seen. All the judges were well persuaded that to burn these non-believers was obeying God; that their hell was only anticipated for a few minutes, and that there was no celestial music more pleasurable for God, the author of our life, than the screams of an entire family of heretics in the middle of flames.

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<sup>276</sup> Curée is a medieval hunting term that originated in France. As David Dalby explains, curée refers to a stage of the hunt whereby the entrails of the stag would be thrown to the hounds as a reward. This French practice also became popular in England. The anglicised version of curée was known as 'quyrie', which later became known as 'quarry'. *Lexicon of the Mediaeval German Hunt: A Lexicon of Middle High German Terms (1050-1500), associated with the Chase, Hunting with Bows, Falconry, Trapping and Fowling* (Berlin: Walter de Gruyter, 2011), p. 128.

<sup>277</sup> Henry IV was elected as King of the Germans in 1054 and King of the Romans from 1084 to 1105 (Holy Roman Emperor). Henry Robinson, *Henry IV of Germany 1056-1106* (Cambridge: University of Cambridge, 2003).

<sup>278</sup> Henry IV of France (1553 - 1610) reigned from 1594 until his assassination in 1610. John Abbott, *History of Henry IV, King of France and Navarre* (New York: Cosimo, 2009).

<sup>279</sup> Kehl edition editors' original note, *op. cit.*

*'Louis XIII et Louis XIV firent ce serment à leur sacre, mais ils publièrent des déclarations pour avertir que leurs sujets de la religion réformée n'étaient compris dans le serment d'exterminer les hérétiques.'* (p. 91).

(Louis XIII and Louis XIV swore this oath at their coronation, but they published declarations to let it be known that their subjects of the reformed religion were not included in the oath to exterminate heretics.)

On a porté des lois bien terribles contre les hérétiques en France. On publia en 1699 un édit par lequel tout hérétique nouvellement converti était condamné aux galères perpétuelles, s'il était surpris sortant du royaume ; et ceux qui avaient favorisé sa sortie livrés à la mort. Ainsi, le réputé principal criminel était bien moins puni que le complice. Cette loi barbare et absurde n'est point abolie ; mais il faut avouer qu'elle est fort mitigée par les mœurs ; on s'est bien relâché depuis qu'en 1767, l'impératrice de toutes les Russies, souveraine de douze cent mille lieues carrées, a écrit de sa main à la tête de ses lois, en présence des députés de trente nations et de trente religions, *la faute la plus nuisible serait l'intolérance*.

La raison a fait pour le moins autant de progrès à Versailles depuis que Jésus ne permet plus que les jésuites ou jésuites gouvernent cet agréable royaume.

Vous comprenez donc bien, Messieurs, qu'un Picard fugitif de Noyon, réfugié dans une petite ville au pied des Alpes, et accrédité dans cet asile, ne fit pas une action charitable en traînant à un bûcher composé de fagots verts (pour prolonger la cérémonie) un pauvre Espagnol entiché d'une opinion différente de l'opinion de ce Picard. Il fit ardre réellement le corps et le sang de l'Espagnol, et non en figure, tandis qu'on cuisait dans plus d'une ville de France, le fugitif de Noyon en effigie, en attendant sa personne.



Terrible laws have been brought against the heretics in France. In 1699, an edict was published by which every newly converted heretic was condemned to the galleys for life if he was caught leaving the kingdom; and those who had supported his exit to be put to death. Therefore, the alleged principal criminal was punished much less than the accomplice.<sup>280</sup> This barbarous and absurd law is not abolished; but it must be said that it is strongly reduced by the customs; since in 1767 one has been less severe, the Empress of all Russians,<sup>281</sup> sovereign of twelve hundred thousand square leagues, wrote by her hand at the head of her laws, in the presence of the deputies of thirty nations and thirty religions, *the most harmful wrongdoing would be intolerance.*

Reason has made at least as much progress at Versailles, since Jesus no longer permits the Jesuites or Jesuits to govern this pleasant kingdom.

Therefore, you understand well, Sirs, that a Picardy fugitive of Noyon, a refugee in a small town at the foot of the Alps, and accredited in this asylum, did not do a charitable deed by dragging to a stake composed of a green bundle of sticks (to prolong the ceremony) a poor Spaniard, infatuated with a different opinion from the opinion of that man from Picardy. Indeed, he had the body and the blood of the Spaniard consumed, and not figuratively, when in more than one town of France, the fugitive of Noyon was being cooked in effigy, while awaiting his arrival.

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<sup>280</sup>As detailed in chapter one of the *Institutes au droit criminel*, Titre I, the 1699 Edict was published on 13 September 1699 and declared that:

*'Contre les nouveaux convertis qui se retirent dans les pays étrangers ou qui sont arrêtés sortant du royaume sans permission : ils sont condamnés, savoir, les hommes aux galères perpétuelles et les femmes à être renfermées dans tels lieux qui seront ordonnés par les juges, et tous leurs biens confisqués, même dans les pays où la confiscation n'a pas lieu 4°) contre ceux qui auront favorisé directement ou indirectement l'évasion des nouveaux convertis, ils doivent être punis de mort.'* *Œuvres complètes de Voltaire*, vol. 80., *op. cit.*, p. 434.

(Against the new converts who retreat in foreign countries, or who are arrested leaving the kingdom without permission: they are condemned, that is to say, men to the perpetual galleys and women to be locked away in such places that will be ordered by the judges, and all their possessions confiscated, even in the countries where the confiscation did not take place 4°) against those who will have favoured directly or indirectly the escape of the new converts, they must be punished by death.)

<sup>281</sup>Catherine reigned as Empress of Russia from 1762 to 1796. As recorded by W. Reddaway, *op. cit.*, Catherine II wrote the following in a letter to Voltaire, dated 29 June/10 July 1766, Petersberg:

*'Dans un grand empire, qui étend sa domination sur autant de peuples divers qu'il y a de différentes croyances parmi les hommes, la faute la plus nuisible au repos et à la tranquillité de ses citoyens serait l'intolérance de leurs différentes religions.'* (p. 12).

(In a great empire that extends its domination on as many diverse people, where there are different beliefs among men, the most harmful wrongdoing to the rest and to the calm of its citizens would be intolerance of their different religions.)

Les Guises furent plus injustes et non moins cruels, quand ils firent juger à mort par leurs commissaires le vertueux Anne du bourg, conseiller au parlement de Paris. Il fut pendu et brûlé, sous le règne de François II. Il aurait été chancelier de France, sous Henri IV.

Le monde commence un peu à se civiliser ; mais quelle épaisse rouille, quelle nuit de grossièreté, quelle barbarie domine encore dans certaines provinces, et surtout chez ces honnêtes cultivateurs, tant vantés dans des élégies et dans des églogues, chez ces laboureurs innocents, et chez quelques curés de campagne, qui traîneraient en prison leurs frères pour un écu, et qui vous lapideraient, si deux vieilles vous voyant passer, criaient, à *l'hérétique* ! Le monde s'améliore un peu ; oui, le monde pensant, mais le monde brute sera longtemps un composé d'ours et de singes ; et la canaille sera toujours cent contre un. C'est pour elle que tant d'hommes qui la dédaignent, composent leur maintien et se déguisent ; c'est à elle qu'on veut plaire, qu'on veut arracher des cris de *vivat* ; c'est pour elle qu'on étale des cérémonies pompeuses ; c'est pour elle seule enfin, qu'on fait du supplice d'un malheureux un grand et superbe spectacle.

The Guises<sup>282</sup> were more unjust and not less cruel, when they had the virtuous Anne du Bourg,<sup>283</sup> counsellor to the Parliament of Paris, put to death by their commissioners. He was hanged and burned, under the reign of Francis II.<sup>284</sup> He would have been chancellor of France under Henry IV.

The world is beginning to civilise itself a little; but what thick rust, what night of uncouthness, what barbarity still dominates in certain provinces, and especially among these honest cultivators, so much praised in the elegies and in the eclogues among these innocent laborers and among some country priests, who would drag their brothers to prison for a crown, and who would stone you, if two old ladies seeing you pass by, cried out, *heretic!* The world is improving itself a little; yes, the thinking world, but the brutal world will be composed of bears and monkeys for a long time; and the rabble will always be a hundred against one. It is for them that so many men, who distain them, arrange their support and disguise themselves; it is them who one wishes to please, who public outcry is provoked for; it is for them that pompous ceremonies are displayed; it is for them alone, in the end, that a poor person is tortured in a great and superb spectacle.

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<sup>282</sup> The Guises, from the House of Guise, were a French noble family that was implicated in the French Wars of Religion. Robert Knecht, *The French Wars of Religion 1559-1598* (New York: Routledge, 2014).

<sup>283</sup> In her work *Burning Zeal: The Rhetoric of Martyrdom and the Protestant Community in Reformation France 1520-1570* (New Jersey: Rosemont Publishing, 2007), Nikki Shepardson explains that little would be known about Anne Du Bourg if 'it [had] not been for his stand in the spring of 1558 in the Parlement of Paris. There, during an official visit by King Henri II, Du Bourg made his Calvinist sympathies known, and in so doing began a journey that led to his execution on December 23, 1559.' (p. 13).

<sup>284</sup> Francis II (1544 - 1560), son of Henry II, ascended to the French throne in 1559 at the age of fifteen after his father's death and was strongly controlled by the Guise royal family during his reign. Ivan Gobry, *François II : Fils d'Henri II 1559-1560* (Paris: Flammarion, 2012).

~ ARTICLE IX ~

**DES SORCIERS**

Est-il bien vrai que Locke ait écrit, qu'il ait donné des lois humaines à un pays sauvage, et que Penn ait encore mieux policé la Pensilvanie ? Blakstone nous a-t-il fait connaître ce que ce code criminel d'Angleterre a d'excellent et de défectueux ? Enfin, sommes-nous dans les siècles des Montesquieu et des Beccaria, dans ce siècle que l'auteur vertueux de *la Félicité publique*, démontre à plus d'un égard marcher à grands pas vers la sagesse et vers le bonheur ? Cependant on parle encore de magie !

~ ARTICLE IX ~

ON SORCERERS

Is it indeed true that Locke wrote that he had given humane laws to a savage country,<sup>285</sup> and that Penn<sup>286</sup> had even better civilised Pennsylvania? Has Blackstone<sup>287</sup> made us aware of what is excellent and defective about England's penal code? Finally, are we in the centuries of Montesquieu and Beccaria, in this century when the virtuous author of *Félicité Publique*,<sup>288</sup> demonstrates in more than one respect how to walk briskly towards wisdom and happiness? However, we still speak of magic!

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<sup>285</sup> Voltaire is referring to the Province of Carolina, a colony established by the British in the 17<sup>th</sup> Century. See Voltaire, 'Essai sur les mœurs et l'Esprit des Nations', in *Œuvres complètes de Voltaire*, vol. 2 (Oxford: Voltaire Foundation, 1968), in which Voltaire speaks about the Province of Carolina and John Locke's involvement in law-making:

*'Vous avez vu les Espagnols et les Portugais maîtres de presque tout le Nouveau-Monde, depuis le détroit de Magellan jusqu'à la Floride. Après la Floride est cette Caroline à laquelle les Anglais ont ajouté depuis peu la partie du sud appelée la Géorgie, du nom du roi George 1<sup>er</sup> : ils n'ont eu la Caroline que depuis 1664. Le plus grand lustre de cette colonie est d'avoir reçu ses lois du philosophe Locke. La liberté entière de conscience, la tolérance de toutes les religions fut le fondement de ces lois.'* (Chapter 153).

(You have seen the Spanish and the Portuguese masters of almost the entire new world, from the Strait of Magellan to Florida. After Florida is this Carolina to which the English have only recently added the southern part called Georgia, from the name of King George I: they have only had Carolina since 1664. The greatest lustre of this colony is having received its laws from the philosopher Locke. Entire liberty of conscience, tolerance of all religions was the foundation of these laws.)

<sup>286</sup> William Penn (1644 - 1718) was a leader of the Christian religious group known as the Quakers. Persecuted in England for his religious beliefs, Penn travelled to America. There he founded the Pennsylvania Colony towards the end of the 17<sup>th</sup> Century, so that those who practiced different religions could freely express their religious beliefs without fear of persecution. Bernadette Baczynski, *William Penn: Founder of the Pennsylvania Colony* (Minnesota: Capstone Press, 2003).

<sup>287</sup> Sir William Blackstone (1723 - 1780) was an English legal scholar, who is best known for his treatise *Commentaries on the Laws of England*. In the treatise, divided into four volumes, Blackstone examines English common law. Blackstone produced a text that could be read by both legal professionals and laymen. His commentary was the foundation of legal education in England and helped to define the content included in the American Declaration of Independence. Robert Stacey, *Sir William Blackstone and the Common Law: Blackstone's Legacy to America* (Arizona: AWC Press, 2003).

<sup>288</sup> Voltaire is citing François Jean marquis de Chastellux's work: *De la Félicité Publique ; ou, Considérations sur le sort des hommes dans les différentes époques de l'histoire* (Amsterdam: Marc-Michel Rey, 1772).

Les papiers publics nous ont appris que, vers la fin de l'an 1750, on avait brûlé à Vurtzbourg une fille de qualité religieuse et sorcière.

Je n'ai nulle relation avec ce pays de Vurtzbourg. Je respecte trop l'évêque, souverain de ce diocèse, pour croire qu'il ait souffert une barbarie si idiote.

Mais en 1730, la moitié du parlement de Provence, condamna au feu comme sorcier, l'imbécile et indiscret jésuite Girard, tandis que l'autre moitié lui donnait gain de cause avec dépens. La même sottise qui fit passer ce pauvre homme pour un grand prédicateur, lui donna la réputation d'un grand magicien.

The public documents have informed us that towards the end of the year 1750, a girl<sup>289</sup> of a religious and sorcerous profession had been burned in Würzburg.<sup>290</sup>

I have no connection with this country of Würzburg. I immensely respect the bishop,<sup>291</sup> sovereign of this diocese, to believe that he suffered such an idiotic brutality.

But in 1730, half of the parliament of Provence condemned to burning, as a sorcerer, the idiotic and indiscreet Jesuit Girard, while the other half found him in favour, with award of costs.<sup>292</sup> The same stupidity that passed this poor man off as a great preacher, gave him the reputation of a great magician.

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<sup>289</sup> Maria Renata Singer von Mossau. R. Grandroute, *op. cit.*, p. 97.

<sup>290</sup> Kehl edition editors' original note, *op. cit.*

*'Ce fait est très vrai. Cette malheureuse fille soutint opiniâtrement qu'elle était sorcière, et qu'elle avait tué, par ses sortilèges, des personnes qui n'étaient point mortes. Elle était folle, ses juges furent imbéciles et barbares.'* (p. 97).

(This fact is very true. This unfortunate girl obstinately maintained that she was a witch, and that she had killed, by her spells, people who were not dead. She was insane, her judges were idiotic and barbaric.)

<sup>291</sup> Voltaire is referring to Adam Friedrich von Seinsheim (1708 - 1779). Von Seinsheim held the title of Prince-Bishop of Würzburg from 1755 to 1779. *Music at German Courts, 1715-1760: Changing Artistic Priorities*, Samantha Owens, Barbara Reul, and Janice Stockigt, eds. (Suffolk: Boydell Press, 2011).

<sup>292</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777) (Paris: L'Arche, 1999).

*'Sur vingt-cinq juges, douze furent pour la condamnation au feu, et treize pour l'absolution.'* (p. 32). (Out of twenty-five judges, twelve were in favour of the punishment of burning, and thirteen in favour of exoneration.)

On soutint dans le sanctuaire des lois, qu'en soufflant dans la bouche de la fille nommée Cadière, il lui avait fait entrer un démon d'impureté dans le corps, et que cette fille possédée du diable et de frère Girard, était devenue amoureuse de l'un et de l'autre.

Les avocats qui plaidèrent contre le jésuite ne manquèrent pas de citer l'exemple du curé Gauffredi, qui non seulement fut accusé au même parlement d'avoir soufflé le diable dans la bouche de Magdeleine La Palu à Marseille mais qui l'avoua dans les horreurs de la torture (moyen sûr de découvrir la vérité). On cita la fameuse aventure des ursulines de Loudun, toutes ensorcelées par le curé Grandier. Ce curé Grandier avec ce curé Gauffredy avaient été brûlés vifs à la plus grande gloire de Dieu.



It is maintained in the sanctuary of the laws that by blowing into the mouth of the girl named Cadière, he had made a demon of impurity enter her body, and that this girl possessed by the devil and by Brother Girard had fallen in love with both of them.<sup>293</sup>

The lawyers who pleaded against the Jesuit did not fail to cite the example of the parish priest Gaufridi, who was not only accused at the same parliament of having blown the devil into the mouth of Magdelaine La Palud<sup>294</sup> in Marseille, but who admitted it in the horrors of torture (sure means to discover the truth). The famous adventure of the Ursulines of Loudon, all bewitched by the parish priest Grandier was cited.<sup>295</sup> This parish priest Grandier with that parish priest Gaufridi had been burned alive to the greatest glory of God.

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<sup>293</sup> In 1728, at the age of fifty, Girard was named rector of the Séminaire royal de la marine in the city of Toulon. He was known for the piety that he encouraged in his penitents, one of whom was Cadière. However, a year into Girard's appointment in Toulon, Cadière began to show 'signs of stigmata and visions appeared; the local population became convinced that she, like Girard's other penitents, was destined to be a saint. However, Cadière's intense relationship with Girard began to disintegrate after she entered the convent of Ollioules in 1730.' Consequently, the bishop of Toulon along with the anti-Jesuit Carmelite prior Nicolas Girieux took the place of Girard as Cadière's confessor. Girard's successors very quickly discovered 'the devotional bonds between the famous director and his penitent', which led Girieux to urge Cadière 'to bring charges against the Jesuit before the bishop in late 1730.' Mita Choudhury, 'Carnal Quietism: Embodying Anti-Jesuit Polemics in the Catherine Cadière Affair, 1731', *Eighteenth-Century Studies* (Baltimore: Johns Hopkins University Press), n° 2, 2006, p. 173.

<sup>294</sup> Along with Madeleine de Demandolx de la Palud (1593 - 1670), Gaufridi served as father confessor to several women in the city of Marseilles. La Palud and Gaufridi were deemed to have established a 'dangerous' relationship. As a result, la Palud's parents had her placed in a convent in Aix-in-Provence. At this convent a priest named Jean-Baptiste Romillon became her spiritual director who was troubled by the 'poor sexual morals of French clergy.' Romillon determined that the seizures la Palud was having were the result of demonic possession. Consequently, he persuaded her to condemn Gaufridi for her suffering. La Palud's accusation was strengthened by Louise Capeau, another nun at the convent, who 'claimed Gaufridi had seduced her and was now causing demons to torment her.' Romillon attempted to exorcise both la Palud and Capeau but did not succeed. Therefore, Romillon decided to send the nuns to the convent of Saint Maximin, where the renowned exorcist Sebastian Michaelis could exorcise la Palud and Capeau. William Burns, *Witch Hunts in Europe and America: An Encyclopedia* (London: Greenwood Press, 2003), p. 106.

<sup>295</sup> Patrick McNamara states that 'in 1617 Father Urbain Grandier was appointed parish priest of St-Pierre-du-Marche in Loudun, a town in Poitiers, France.' Grandier was described as 'handsome, well educated, and politically well connected'; however, 'he was also arrogant and indiscreet.' Grandier had many mistresses including 'Philippa Trincant, the daughter of the king's solicitor in Loudun' and 'Madeleine de Brou, daughter of the king's councillor in Loudun.' Grandier was requested by the Mother Superior (Jeanne des Anges) of a neighbouring convent to serve as spiritual advisor to the nuns at the convent; however, he rejected this offer. Not long after 'Sister Jeanne began to evidence signs of possession. She had convulsions and began speaking in tongues. Soon many of the other nuns at the convent began having dreams and nightmares. Sister Jeanne confessed to the father director of the convent, a Father Mignon, that she had been bewitched by Grandier. Then many of the other nuns began to make similar claims.' *Spirit Possession and Exorcism: History, Psychology, and Neurobiology*, vol. 1 (California: Praeger, 2011), p. 131.

Il est dit même dans la relation la plus authentique de ce procès et de la mort affreuse de ce curé Grandier, que le bourreau qui lui administra la question, ne le faisant pas assez souffrir pour le forcer à se confesser sorcier, un révérend père récollet, aussi robuste que zélé, prit la place du questionnaire, et enfonça les instruments de la vérité si profondément dans les jambes du patient, qu'il en fit sortir la moelle. De tout cela l'on conclut qu'il fallait donner la question à Girard et le brûler. Il aurait subi ces deux supplices, s'il y avait eu dans le parlement deux voix de plus contre lui, car il avait été charitablement statué il y a longtemps, que la majorité de deux voix suffisait pour livrer loyalement un citoyen ou un moine au plus épouvantable des supplices. Je vous ferai voir bientôt, Messieurs, que trois prétendus gradués, ou praticiens de province ont suffi pour faire expirer des enfants dans les flammes, avec des accessoires d'une atrocité iroquoise, cent fois plus aggravants. Mais continuons cet article du sortilège.

On sait assez que le procès des diables de Loudun et du curé Grandier, livre à une exécration éternelle, la mémoire des insensés scélérats qui l'accusèrent juridiquement d'avoir ensorcelé des ursulines, et ces misérables filles qui se dirent possédées du diable, et cet infâme juge commissaire Laubardémont, qui condamna le prétendu sorcier à être brûlé vif ; et le cardinal de Richelieu, qui après avoir fait tant de livres de théologie, tant de mauvais vers et tant d'actions cruelles, délégua son Laubardémont pour faire exorciser des religieuses, chasser des diables, et brûler un prêtre.

It is even alleged, in the most authentic account of this trial and of the terrible death of this parish priest Grandier, that the executioner who inflicted torture on him, not making him suffer enough to force him to confess as a sorcerer, a Recollet<sup>296</sup> reverent father, as robust as he was zealous, took the place of the torturer, and enforced instruments of truth so profoundly in the legs of the patient, that he made the marrow come out. From all this, it was concluded that Girard had to be tortured and burned. He would have suffered these two tortures, if there had been two voices or more against him in the parliament, as it had been charitably decreed a long time ago that the majority of two voices sufficed to loyally deliver a citizen or a monk to the most terrible of tortures. I will make you see soon, Sirs, that three supposed provincial graduates or practitioners sufficed to make children perish in the flames, with some accessories of a barbaric atrocity, a hundred times more aggravating. But let us continue with this article on enchantment.

It is well known that the trial of the devils of Loudun and the parish priest Grandier, submits to an eternal execration, the memory of the senseless criminals who legally accused him of having enchanted some Ursulines and these miserable girls who claimed to be possessed by the devil and this infamous bankruptcy judge Laubardemont,<sup>297</sup> who condemned the alleged sorcerer to be burned alive; and Cardinal Richelieu,<sup>298</sup> who after having composed so many theological books, so many bad verses, and so many cruel actions, delegated his Laubardemont to exorcise nuns, to hunt devils, and to burn a priest.

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<sup>296</sup> In French, Récollets were a branch of the Franciscan order of friars that was founded in 1210 by St. Francis of Assisi. Charles Garrad, *Petun to Wyandot: The Ontario Petun from the Sixteenth Century* (Ottawa: University of Ottawa Press, 2014).

<sup>297</sup> Jean Martin de Laubardemont (1590 - 1653). Michel de Certeau, *The Possession at Loudun* (Chicago: University of Chicago Press, 2000).

<sup>298</sup> William Robson details in his work *The life of cardinal Richelieu* (London: George Routledge, 1854) how ‘Richelieu caused Urban Grandier, the curé of Loudun, to be burnt alive for witchcraft; though many asserted that the witchcraft was only an invention of Richelieu and Father Joseph, to revenge a political satire attributed to the curé.’ (p. 485).

Ce qui peut encore être plus étrange, c'est que dans notre siècle où la raison semble avoir fait quelques progrès, on a imprimé en 1749 un *Examen des diables de Loudun*, par M. Menardaie prêtre. Et dans cet *Examen* on prouve par plusieurs passages des *Cas de Pontas*, que Grandier avait en effet mis quatorze diables dans le corps de ces quatorze nonnes, et qu'il mourut possédé du quinzième. M. de Menardaie prêtre n'était pas sorcier.

Quant au procès du curé Gaufredi ou Gaufridi, dans Marseille, et à son épouvantable supplice en 1611, il avait été encore plus absurde et plus inhumain ; car le parlement le condamna à être tenaillé dans toutes les parties de son corps avec des tenailles ardentes, avant d'être jeté vivant dans le bûcher, *pour réparation d'avoir fait pacte et convention avec le malin esprit, à l'effet de jouir de Magdeleine La Palu, religieuse ursuline, et d'attirer à son amour toutes autres femmes ou filles qu'il désirerait*. Voilà bien des ursulines ensorcelées

De pareilles horreurs couvraient alors la face de toutes les contrées de la communion romaine. Il ne faut pas s'en étonner, puisque chez nos voisins, chez nos frères, dans Genève même, en 1652, on persuada une pauvre femme nommée Michelle Chaudron qu'elle était sorcière, qu'elle avait un pacte avec le diable et les marques sataniques sur le corps. En conséquence, on eut la féroce imbécilité de la brûler, mais au moins ce fut après l'avoir étranglée.

Yet, what is perhaps stranger, is that in our century, where reason seems to have made some progress, an *Examen des diables de Loudun*,<sup>299</sup> by the priest Mr. Ménardaie, was printed in 1749. And in this *Examen* several passages from the *Cas de Pontas*<sup>300</sup> prove that Grandier had in fact put fourteen devils in the body of these fourteen nuns, and he died possessed by the fifteenth. The priest Mr. de Ménardaie was not a sorcerer.

Regarding the trial of the parish priest Gaufredi or Gaufridi, in Marseille, and his terrible torture in 1611, it had been even more absurd and more inhumane: as the parliament condemned him to have torture applied to all the parts of his body with burning pincers, before being thrown alive on the stake, *to atone for having made a pact and convention with the evil spirit, in order to be in full possession of Magdeleine La Palud, religious ursuline, and to lure to his devotion all other women or girls that he would desire.* Behold, bewitched Ursulines.

Similar horrors then covered the face of all the countries of the Roman communion. You should not be shocked by it, since among our neighbours, among our brothers, in Geneva itself, in 1652, a poor woman named Michelle Chaudron<sup>301</sup> was convinced that she was a sorceress, that she had a pact with the devil and the satanic marks on her body. Consequently, they had the fierce imbecility to burn her, but at least this was after having strangled her.

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<sup>299</sup> Voltaire is citing M. de la Menardaye's work: *Examen et discussion critique de l'Histoire des Diables de Loudun, de la possession des religieuses Ursulines et de la condamnation d'Urbain Grandier* (Liège: Kintz, 1747).

<sup>300</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.*

'Jean Pontas, né dans le diocèse d'Avranches en 1638, mort en 1718, est auteur d'un *Dictionnaire des cas de conscience.*' (p. 33).

(Jean Pontas, born in the diocese of Avranches in 1638, died in 1718, is the author of a *Dictionnaire des cas de conscience.*)

<sup>301</sup> Commenting on the Chaudron incident, Marvin Perry reports that, in 1652, Chaudron a resident of Geneva 'met the devil going out of the city. The devil gave her a kiss, received her homage and imprinted on upper lip and right breast the mark that he customarily bestows on all whom he recognizes as his favourites.' *Western Civilization: A Brief History*, vol. 1 (California: Wadsworth Publishing, 2015), p. 240.

Rappelons dans notre continent la mémoire des singulières fureurs qu'étala il y a un siècle, la démence de la superstition dans ces mêmes contrées septentrionales de l'Amérique, aujourd'hui ensanglantées par une guerre civile. Cette scène infernale commença dans le petit pays de Salem, comme celle de la capitale de France, par un prêtre nommé Pâris, et par des convulsions. Cet énergumène s'imagina que tous les habitants étaient possédés du diable, et le fit croire. La moitié de la peuplade fit charger l'autre de fers, l'exorcisa, lui donna la question, qu'on ne connaît point en Angleterre ; fit périr dans les supplices, vieillards, femmes et enfants ; et fut ensuite enchaînée, exorcisée, torturée et mise à mort à son tour. La province devint déserte ; il fallut y envoyer de nouvelles peuplades ; rien n'est plus incroyable, et rien n'est plus vrai. Quand on songe à tous les maux qu'a produits le fanatisme, on rougit d'être homme.

Vous n'ignorez pas quelle foule de sorciers on a brûlés dans toute l'Europe pendant près de mille années. Le pape Grégoire, honoré du nom de saint et de grand, ayant fait brûler tous les livres anciens qu'il put trouver, fut le premier qui livra judiciairement les sorciers aux flammes. Il eût été sage d'examiner d'abord s'il était possible que ce crime existât, avant de brûler les accusés. Il y eut deux sénateurs de Rome exécutés : et dès lors chaque siècle vit des bûchers élevés pour punir la magie, parce qu'elle fut regardée comme une hérésie.

Let us remember in our continent the memory of the singular rages that spread a century ago, the insanity of superstition in these same northern countries of America, today bloodied by a civil war. This infernal scene began in the small country of Salem,<sup>302</sup> like that of the capital of France, by a priest named Parris,<sup>303</sup> and by some convulsions. This possessed person imagined that all the inhabitants were possessed by the devil and managed to convince everyone. Half of the population loaded the other down with chains, exorcised it, inflicted torture on it, which is unheard of in England; had killed by torture, old men, women and children; and who was then enchained, exorcised, tortured, and put to death in turn. The province became deserted; new people had to be sent there. Nothing is more incredible, and nothing is truer. When all the evils that fanaticism has produced are considered, one is ashamed to be a man.

You are not unaware of the crowd of sorcerers that was burned throughout Europe for almost a thousand years. Pope Gregory,<sup>304</sup> honoured with the name of saint and great, having all the ancient books burned that he could find, was the first who judicially delivered the sorcerers to flames. He had been wise to firstly examine if it was possible that this crime existed, before burning the accused. There were two senators of Rome executed: and from then on, each century experienced raised stakes to punish magic because it was regarded as a heresy.

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<sup>302</sup> The Salem witch trials occurred between the year 1692 and 1693. The trials took place in Salem village, Massachusetts. During the trials, several women who were strongly suspected of being witches were persecuted. Nineteen witches were hanged, and many others were sent to prison. Marc Aronson, *Witch-Hunt: Mysteries of the Salem Witch Trials* (New York: Atheneum Books, 2003).

<sup>303</sup> Samuel Parris became Salem's new preacher in July 1689. In 1692, the trials began when his daughter Betty Parris and niece Abigail Williams alleged that their father's slave Tibuta was practising witchcraft. K. David Goss. *The Salem Witch Trials: A Reference Guide* (Connecticut: Greenwood Press, 2008).

<sup>304</sup> Edward Spearing and Evelyn Simpson describe in *The Patrimony of the Roman Church in the time of Gregory the Great* (Cambridge: Cambridge University Press, 1918) that 'in Sicily there still remained not only pagans, but Manichees and other heretics; in their case Gregory seems to have sanctioned persecution. Sorcerers and magicians, he was determined to suppress, these he ordered to be sought out and punished.' (p. 92).

On a compté que depuis ce Grégoire le Grand, on a brûlé en Europe plus de cent mille sorciers, ou possédés, soit exorcisés, soit non exorcisés. Plus les tribunaux en condamnaient, plus il s'en reproduisait. Cette propagation est naturelle ; les malheureux qui avaient entendu parler toute leur vie du pouvoir immense de Satan, de ses dévots et de ses dévotes, voyageant dans les airs, et commandant à la nature entière, devaient penser que rien n'était plus vrai, puisque des juges qui passaient pour les esprits les plus sensés et les plus éclairés, ne doutaient pas du pouvoir de ce Satan, et des grâces qu'il répandait sur ses favoris. C'était donc parmi les peuples à qui obtiendrait la faveur du diable. Il n'en coûtait qu'un pot de graisse et un manche à balai pour aller au sabbat. On s'endormait dans ces heureuses idées ; on croyait en effet traverser les airs pendant la nuit à cheval sur un bâton, en croupe derrière une sorcière. On arrivait en un clin d'œil à l'assemblée des fidèles. Vous étiez reçus en cérémonie, le bouc vous donnait son cul à baiser, et vous aviez droit à tous les trésors, et à toutes les beautés de la terre. Il n'y avait point de gueux qui résistât à des séductions si flatteuses. Ce que ces misérables se figuraient les juges se le figuraient aussi. Au lieu de discuter l'affaire à l'hôpital des Petites-Maisons, ou de Bedlam, on l'examinait dans les cachots ou dans la chambre de la question, on la finissait au milieu des flammes.



It has been counted that since Gregory the Great, in Europe more than one hundred thousand sorcerers or possessed people, either exorcised, or not exorcised have been burned. The more the courthouses were condemning them, the more they were reproducing them. This propagation is natural; the poor persons who had heard all their life of the immense power of the devil, of his devout male and female followers, travelling through the air and commanding all of Nature, must have thought that nothing was truer, since judges who passed for the most sensible and the most enlightened spirits, did not doubt the power of this Satan and of the graces that he spread over his favourites. It was therefore among the people who would obtain the devil's favour. It only cost a pot of grease and a broomstick to go to the Sabbath. One could fall asleep dreaming such fanciful ideas; come to believe that one had indeed flown through the air during the night on horseback on a stick, doubled up behind a sorcerer. One arrived in the blink of an eye to the followers' gathering. You were received in ceremony, the billy goat gave you its bottom to kiss, and you had the right to all the treasures, and to all the beauties of the earth. There were no paupers who resisted such flattering seductions. What these paupers imagined; the judges imagined also. Instead of discussing the affair at the hospital of the Petites-Maisons,<sup>305</sup> or Bedlam, it was examined in the dungeons or in the torture chamber; it finished in the middle of flames.

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<sup>305</sup> The Petites-Maisons were asylums. As reported by Forbes Winslow in the article 'Pathology of Insanity', *The Journal of Psychological Medicine and Mental Pathology* (London: England), n°1, 1854, 'the incurables were placed at Bicêtre, La Salpêtrière, and the Petites-Maisons (At present Hospice des Ménages). The cells in which they were confined were only six feet square; light and air were admitted by the door; truckle beds, covered with straw and fastened to the walls, were all they had to sleep on; and water fell from the walls.' (p. 290).

Il y eut des jurisconsultes démoniaques, et en grand nombre, qui nous donnèrent le code du diable, dès que l'imprimerie fut inventée. Bientôt après les Bodins, les Delrio, les Boguet, procureurs généraux de Belzébuth, spécifièrent tous les cas où le diable daignait agir par lui-même, et ceux où il employait ses ministres. On sut comment les diables masculins couchaient avec nos filles en incubes, et comment les diables féminins couchaient en succubes avec les garçons.

There were some demonic juriconsults, and in great numbers, who gave us the code of the devil, as soon as the printing shop was invented. Soon after, the Bodins,<sup>306</sup> the Delrios,<sup>307</sup> the Boguets,<sup>308</sup> general prosecutors of Beelzebub,<sup>309</sup> specified all cases where the devil deigned to act by himself and those where he employed his ministers. It was known how the male devils slept with our girls in incubus,<sup>310</sup> and how the female devils slept in succubus with the boys.<sup>311</sup>

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<sup>306</sup> Jean Bodin (1530 - 1596) was a prominent political philosopher and jurist during the 16<sup>th</sup> Century. He wrote on legal matters, but also on witchcraft. In 1581, he published *On the Demon-mania of Witches (Démonomanie)*. Emma Claussen, 'Jean Bodin, de la démonomanie des sorciers', Critical edition prepared by Virginia Krause, Christian Martin, and Eric Macphail, *French Studies* (Oxford: England), n° 4, 2017.

<sup>307</sup> Jesuit priest Martin Antonio Delrio (1551 - 1608) wrote *Disquisitionum magicarum libri sex*, in three volumes (Lovanii: Gerardus Rivius, 1599). R. Grandroute, *op. cit.*, p. 107.

<sup>308</sup> Henri Bouget was a judge and was well-known for being a cruel torturer. In 1603, he wrote *un Discours des Sorcières*. Brad Steiger, *The Werewolf Book: The Encyclopedia of Shape-Shifting Beings* (Detroit: Visible Ink Press, 2012).

<sup>309</sup> Phillip Botha explains that 'Belzebuth [...] whose name means 'lord of the flies' is the prince of demons according to the Scriptures. Milton calls him foremost in power and crime after Satan, and most demonographers call him supreme chief of hell.' *Demonology: demons and devils: Spiritual Warfare* (Carolina: Lulu, 2012), p. 23.

<sup>310</sup> Ellen Guiley notes that 'in Hebrew mythology, the incubus and his female counterpart, the succubus, visit women and men in their sleep, lie and press heavily upon them, and seduce them. They can be conjured by witches, sorcerers, and shamans. During the witch hysteria in Europe, incubi were believed to be instruments of the devil, tormenting people for the sole purpose of degrading their souls and perverting them to more vices.' *The Encyclopedia of Demons and Demonology* (New York: Visionary Living, 2009), p. 119.

<sup>311</sup> Kehl edition editors' original note, *op. cit.*

*'On trouve dans un livre de Pierre de Lancre, dédié à Sillery, chancelier sous Henri IV, des détails très curieux sur les sorciers. Ce Pierre de Lancre avait eu l'imbécillité et la barbarie d'en faire brûler un grand nombre. La plupart avouaient, dès les premiers interrogatoires. Quoique interrogés à part, ils s'accordaient sur les circonstances des soupers qu'ils avaient faits avec le diable. Les ragoûts étaient noirs. Les femmes qui avaient eu ses faveurs convenaient [que le membre du diable était noir, raide, pour ainsi dire en acier, recouvert de dures écailles ; que le sperme du diable était froid, glacé]. Voilà de singulières propriétés pour le diable, et de tristes jouissances. Ces gens, à force de causer entre eux, étaient-ils parvenus à rêver les mêmes extravagances ? Allaient-ils réellement à une assemblée où quelques fripons avaient disposé cet appareil magique, et jouaient le rôle de diables ? C'est ce que Pierre de Lancre aurait pu savoir s'il avait été moins imbécile. Songeons que, du temps de Henri IV, la vie, l'honneur, les biens des citoyens dépendaient de magistrats qui croyaient que le diable avait du sperme, que ce sperme était froid ; et félicitons-nous de vivre dans un autre siècle.'* (pp. 107-108).

(In a book by Pierre de Lancre, dedicated to Sillery, chancellor under Henry IV, very curious details about sorcerers are found. This Pierre de Lancre had had the imbecility and brutality to have some of them burned in great numbers. The majority admitted it from the first interrogations. Although interrogated separately, they agreed on the circumstances of the suppers that they had made with the devil. The stews were black. The women who had had his favours admitted *quod diaboli membrum esset nigrum, rigidum, quasi ferreum, squamis duris involutum; quod diaboli sperma esset frigidum, glaciale* [that the member of the devil was black, straight, so to speak made of steel, covered in hard scales; that the sperm of the devil was cold, freezing]. Behold singular properties for the devil and some sad pleasures. These people, by way of speaking among themselves, were they able to dream of the same extravagances? Did they really go to an assembly where a few scoundrels had placed this magical apparatus and played the role of devils? It is what Pierre de Lancre could have known, if he had been less idiotic. Let us consider that in the days of Henry IV, the life, the honour, the possessions of the citizens depended on magistrates who believed that the devil had sperm, that this sperm was cold; and let us congratulate ourselves for living in another century.)

Tous les mystères impudiques de ces procès criminels infernaux furent dévoilés. Le roi de la Grande-Bretagne Jacques I<sup>er</sup>, fameux théologien, écrivit sa *Démonologie*. Le monde fut donc rempli de sorciers, et d'ensorcelés, de possédants et de possédés.

Les savants barbares qui gagnaient de l'argent et des honneurs à instruire les procès de ces barbares imbéciles, justifiaient leur métier et leur conduite, en disant : « Le sortilège est un article de foi. Joseph le patriarche avait une coupe avec laquelle il faisait ses conjurations. Les prophètes du pharaon d'Egypte firent les mêmes miracles que Moïse. Balaam prédit l'avenir, après avoir conversé avec son ânesse. Saül fut possédé, et David chassa son diable en jouant de la harpe. La pythonisse d'Endor évoqua des enfers l'ombre de Samuël. Le démon Asmodée, amoureux de Sara fille de Raguel, étrangla ses sept maris l'un après l'autre : et l'ange Raphaël non seulement le chassa en grillant le foie d'un poisson, mais il l'alla enchaîner auprès du grand Caire, où il est encore. Enfin, qu'est-il besoin de tant d'exemples ? Jésus-Christ lui-même ne fut-il pas emporté par le diable dans un désert et sur une montagne, et sur le pinacle du temple ? Delrio, chap. 30. »

Les sages répondaient en vain, que les temps étaient changés ; que ce qui était bon autrefois ne l'était plus de nos jours. Le monde restait toujours partagé entre les gens croyant à la magie, et les gens faisant brûler ces croyants.

All the indecent mysteries of these diabolical criminal trials were revealed. The King of Great Britain James I, famous theologian, wrote his *Daemonologie*.<sup>312</sup> The world was therefore full of sorcerers, and of bewitched persons, of possessors and of possessed individuals.

The barbaric scholars, who earned money and honours to carry out the trials of these idiotic barbarians, justified their profession and their behaviour, by saying: ‘Enchantment is an article of faith. Joseph the patriarch had a goblet with which he used to make his incantations. The prophets of the pharaoh of Egypt made the same miracles as Moses. Balaam predicted the future, after having conversed with his jenny. Saül was possessed, and David dispelled his devil by playing the harp. The Pythia of Endor summoned the ghost of Samuël from hell. The demon Asmodeus, in love with Sara, daughter of Raguel, strangled her seven husbands one after the other; and the angel Raphael not only dispelled him by roasting the liver of a fish, but he went to enchain him near the great Caire, where he still is. Finally, what is the need of so many examples? Jesus Christ himself, was he not taken by the devil to a desert and to a mountain, and to the pinnacle of the temple? Delrio, chap. 30.’

The wise men responded in vain that times were changed; that what was good in the past was no longer nowadays. The world always remained divided between the people believing in magic, and the people who had these believers burned.

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<sup>312</sup> Voltaire is citing the work *Daemonologie, In Forme of a Dialogue, Divided into three Books: By the High and Mighty Prince* (Edinburgh: James I, 1597), by James I.

Enfin, on a cessé de brûler les sorciers, et ils ont disparu de la terre.

Finally, we have stopped burning sorcerers has stopped, and they have disappeared from the earth.<sup>313</sup>

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<sup>313</sup> Voltaire original note, *op. cit.*

*'On a dit, on imprime et on répète qu'en France Louis XIV défendit que le parlement de Paris connût des accusations de magie et de sorcellerie : cela n'est pas vrai. Son édit de 1682 renouvelle les anciennes lois 'contre les devins, les devineresses ... coupables d'impiété, sortilèges, sous prétexte de magie, qui doivent être punis de mort.' Il paraît que le rédacteur de la loi s'est mal expliqué. On n'entend point ce que c'est qu'un sortilège sous prétexte de magie. C'est comme si l'on disait sortilège sous prétexte de sortilège. Le fait est que le parlement de Paris, composé d'hommes instruits et judicieux, n'a point l'ancienne bêtise de croire aux sorciers, aux magiciens. Mais il punit, et punira toujours les scélérats imbéciles, qui joignent aux empoisonnements des opérations qu'on appelle magiques. Ainsi il condamna en 1689, les fameux bergers de Brie qui avaient fait périr par leurs drogues plusieurs bestiaux de leurs voisins. Ils avaient joint de l'arsenic à de l'eau bénite et à des conjurations. Ils avaient dit des paroles, mais ces paroles et cette eau bénite n'avaient tué personne. Les uns furent pendus, les autres envoyés aux galères, non comme des magiciens qui donnaient la mort par leur science secrète, mais comme des empoisonneurs. Le mot de magie signifie sagesse dans son origine. Quelle sagesse aujourd'hui !'* (pp. 109-110).

(It has been alleged that in France, it is printed, and it is repeated that Louis XIV upheld that the parliament of Paris knew about the accusations of magic and sorcery: that is not true. His 1682 edict renews the former laws 'against the prophets, the prophetesses ... guilty of impiety, enchantments, under pretext of magic, who must be punished by death.' It appears that the author of the law poorly explained himself. One does not understand what an enchantment is under pretext of magic. It is as if one was saying enchantment under pretext of enchantment. The fact is that the parliament of Paris, consists of educated and judicious men, do not have the former stupidity to believe in sorcerers, in magicians. But it punishes and will always punish the idiotic criminals, who combine with poisonings acts that are called magic. Thus, it condemned in 1689, the famous shepherds of Brie who had killed several of their neighbours' livestock with their drugs. They had combined arsenic with holy water and with incantations. They had said some words, but these words and this holy water had not killed anybody. Most were hanged, the others sent to the gallows, not as magicians who committed murder by their secret science, but as poisoners. The word magic signifies wisdom in its origin. What wisdom today!)

**~ ARTICLE X ~**

**DU SACRILÈGE**

En tout pays détruire ou insulter les choses sacrées du pays, il est clair par le seul mot que c'est un sacrilège. Le Romain qui ayant tué un chat consacré en Egypte fut massacré par le peuple dévot en fureur, avait commis un sacrilège envers les Egyptiens, parce qu'étant seul contre une nation entière, il avait offensé la religion dominante du pays.



~ ARTICLE X ~

ON SACRILEGE

In every country, to destroy or to insult the country's sacred things, it is clear by the single word that it is a sacrilege.<sup>314</sup> The Roman, who having killed a sanctified cat in Egypt was massacred in anger by the bigoted people,<sup>315</sup> had committed a sacrilege toward the Egyptians because being alone against an entire nation, he had offended the dominant religion of the country.<sup>316</sup>

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<sup>314</sup> Sacrilege as defined by Jean-François Féraud in the *Dictionnaire critique de la langue française*, vol. 3 (Marseille: Mossy, 1788), p. 511, is: '[Une] action impie, par laquelle on profane les choses sacrées.' (An impious action, by which one desecrates sacred things.)

<sup>315</sup> From 4000 B.C., the cat secured its sanctimonious status in Egypt. As Georgie Geyer explains that 'the ancient Egyptians enthusiastically began the domestication of the cat because the inventive Egyptians had built silos to preserve their grains and these silos attracted rats. But rat-catching cats soon so endeared themselves to the Egyptians that they were made sacred within the Egyptian pharaonic religion and were worshiped across Egypt. The cat was worshiped for its agility, virility, and strength and, while other animals were also considered sacred in Egypt, only the cat was worshiped in every region of the reign.' *When Cats Reigned Like Kings: On the Trail of the Sacred Cats* (New Brunswick: Transaction, 2012), p. 239.

<sup>316</sup> In Egypt, anyone who killed a sacred animal, either accidentally or purposefully was put to death. If an individual came across a dead animal, they were to retreat from it in horror, lamenting its death and asserting their own innocence. In 60 B.C., Diodorus Siculus, a Greek historian witnessed the extreme devotion that the Egyptians had for their sacred animal. Although 'the Roman Empire was the most powerful empire ever [and] the Egyptians had every reason to be afraid of the Romans', when a Roman soldier killed a cat accidentally, an Egyptian mob gathered at the soldier's dwelling. Pharaoh Ptolemy XII ordered officials to restore order. However, the mob's fanatical devotion to the sacred cat was overpowering and they killed the Roman soldier. Kelly Trumble, *Cat Mummies* (New York: Scholastic, 1998), p. 6.

Mais quand le roi de Perse Cambise, vainqueur de ces superstitieux et lâches Egyptiens, tua leur dieu Apis, et qu'il l'immola probablement à son dieu Mithra, peut-on dire qu'il commit un sacrilège ? Non sans doute ; il punissait en maître un peuple méprisable, qui faisait d'une étable un sanctuaire, et qui révérait le fumier d'un bœuf.

Je suppose qu'en effet le grand lama donne à baiser, et si l'on veut à sucer le résidu de sa garde-robe enchâssé dans une feuille d'or, qu'on présente cette relique à l'empereur de la Chine, et que l'empereur justement indigné, la fasse jeter dans les réservoirs dédiés par les anciens Romains à la déesse Cloacina, seul séjour digne d'un tel joyau,

But when the King of Persia Cambyses,<sup>317</sup> victor of these superstitious and cowardly Egyptians, killed their god Apis,<sup>318</sup> and when he probably immolated him to his God Mithra,<sup>319</sup> can it be said that he committed a sacrilege?<sup>320</sup> No, without doubt; he was punishing, as a master, a despicable people who made a barn a sanctuary and who revered the manure<sup>321</sup> of a bullock.

Indeed, I imagine that the Grand Lama<sup>322</sup> gives to kiss, and if one wishes to suck the residue of his garde-robe<sup>323</sup> encased in a gold leaf, if this relic is presented to the Emperor of China,<sup>324</sup> and if the Emperor, justly offended, has it thrown in the reservoirs consecrated by the ancient Romans to the goddess Cloacina,<sup>325</sup> the only destination worthy of such a jewel,

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<sup>317</sup> Cambyses II ruled as King of Persia from 529 B.C. to 522 B.C. In 525 B.C., Cambyses II conquered Egypt under the direction of his father King Cyrus II. Mehrdad Kia, *The Persian Empire: A Historical Encyclopaedia*, vol. 1 (California: ABC-CLIO, 2016).

<sup>318</sup> Apis, son of Phoroneus, was worshipped as a god under the name of Serapis after his death. He has been recorded as one of the earliest lawmakers among the Greeks. *A Dictionary of Greek and Roman Biography and Mythology*, vol. 1, William Smith, ed. (London: Spottiswoode, 1873).

<sup>319</sup> In Roman mythology, Mithra was a Persian sun god and known as the god of light. Dorothy Murdock, *Suns of Gods* (Illinois: Adventures Unlimited Press, 2004).

<sup>320</sup> As Lucia Gahlin explains in his work *Egypt: Gods, Myths and Religion* (New Zealand: Lorenz Books, 2001) that 'Camyses acquired a bad reputation for his disrespect towards Egyptian religion. According to Herodotus, he was responsible for mortally wounding the Apis-bull at Memphis, a crime so heinous that there was no punishment available for it.' (p. 75).

<sup>321</sup> In volume 34 of *Mummies, Tombs, and Treasure: Secrets of Ancient Egypt* (New York: Clarion Books, 1990), Lila Perl points out that a stone in the shape of a scarab beetle was put in the place of the heart during mummification. This beetle 'laid its eggs in a ball of dung, or manure, which it then rolled underground. The young scarabs hatched and fed on the dung. The Egyptians felt that new life rising from a ball of dung was a miracle, so the scarab became a symbol of immortality for them.' (p. 32).

<sup>322</sup> The Grand Lama was a high priest that ruled in Tibet. In the Buddhist religion, the Grand Lama was also considered as a king and divinity. Thomas Allies, *Journal in France in 1845 and 1848, with Letters from Italy in 1847, of things and persons concerning the church and education* (Brussels: Mortier, 1850).

<sup>323</sup> As recorded in the *Perthensis; Or Universal Dictionary of the Arts, Sciences, Literature*, vol. 23 (Edinburgh: Brown, 1816), the garde-robe is a 'wardrobe, n. f. [garderobe, Fr. Garderoba, low Latin] A room where clothes are kept [...] A wardrobe in a prince's court, is an apartment wherein his robes, wearing apparel, and other necessities are preserved under the care and direction of the proper officers.' (p. 79).

<sup>324</sup> The Qing dynasty ruled in China from 1644 to 1911. Ase Berit and Rolf Strandskogen, *Lifelines in World History: The Ancient World, The Medieval World, The Early Modern World, The Modern World* (New York: Routledge, 2015).

<sup>325</sup> Cloacina was the Roman goddess of the Cloaca Maxima, which included the city's main drain and its sewer system. Laura Brown, *Fables of Modernity: Literature and Culture in the English Eighteenth Century* (New York: Cornell University, 2001).

certainement on n'osera pas dire même chez les lamas, que l'empereur chinois soit un sacrilège. Mais qu'un citoyen du royaume de Boutan sujet du grand lama, fasse le même usage de ce qui vient des entrailles de son maître, il est coupable de lèse-majesté divine et humaine sans difficulté. Et il ne faut pas croire que cette énorme différence ne se trouve que dans des cas pareils ; elle est dans toutes les lois faites par les hommes. *Vérité et justice en deçà de ce ruisseau, erreur et injustice au-delà* ; comme l'a dit Pascal après tant d'autres.

Vous avez sans doute entendu parler de la catastrophe arrivée l'an 1766, à quelques enfants d'une petite ville d'un royaume voisin. Ce royaume possède une espèce de gens inconnus chez nous. Ils sont vêtus autrement que les autres hommes. Leurs cuisses, leurs jambes et leurs pieds sont nus, leur barbe descend à la ceinture, une corde les ceint ; ils mettent dans leurs manches ce que nous mettons dans nos poches ; nous parlons par la bouche, et ils parlent par le nez. Les anciens Bretons qui demeurent à l'occident de la mer d'Allemagne, ne croient pas que ces animaux soient des hommes. Il y a même une loi de leur courir sus s'ils abordent dans l'île. Mais dans les petites villes du continent dont je vous parle, ils sont si révéérés certains jours de l'année quand ils font certaines fonctions interdites dans notre pays, qu'il faut se mettre à genoux quand ils passent deux à deux dans la rue.

one will certainly not dare to say, even among the lamas, that the Chinese Emperor is sacrilegious. But if a citizen of the kingdom of Bhutan,<sup>326</sup> subject of the Grand Lama, makes the same use of what comes from the entrails of his master, he is easily guilty of divine and human lese-majesty. And it should not be assumed that this enormous difference is only found in similar cases; it is in all the laws made by men. *Truth and justice on this side of this stream, error and injustice on the other side*; as Pascal<sup>327</sup> said after so many others.<sup>328</sup>

You have without doubt heard of the catastrophe that happened to a few children, in the year 1766, from a little town of a neighbouring kingdom. This kingdom possesses a species of people unknown among us. They are dressed differently than other men. Their thighs, their legs, and their feet are bare, their beards go down to their waists, a rope girds them; they put in their sleeves what we put in our pockets; we speak through the mouth, and they speak through the nose. The ancient Bretons, who reside to the west of the German sea, do not believe that these animals are men. There is even a law to arrest them if they reach the island. But in the continent's little towns that I am speaking to you about, they are so revered certain days of the year, when they perform certain acts, forbidden in our country, that one must kneel when they pass by in twos in the street.

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<sup>326</sup> Bhutan is an isolated Buddhist kingdom located in south-central Asia, situated on the eastern ridges of the Himalayan mountain range. United Nations Centre for Human Settlements, *Human Settlements Sector Review: Kingdom of Bhutan* (Kenya: UN-Habitat, 1990).

<sup>327</sup> Blaise Pascal (1623 - 1662) was a French physicist, mathematician, and religious philosopher. Graeme Hunter, *Pascal the Philosopher: An Introduction* (Toronto: University of Toronto Press, 2013).

<sup>328</sup> Voltaire original note, *op. cit.*

'Voyez ses *Pensées*, édition de Desprez, page 157.' (p. 113).  
(See his *Pensées*, Desprez edition, page 157.)

Or, un jour qu'ils passaient, quelques enfants qui en savaient peut-être trop pour leur âge, négligèrent de s'agenouiller. On prétend même qu'ils montrèrent peu de respect pour une figure de bois que nous ne souffrons point dans notre république, et qui en effet par elle-même (si on la distingue de l'objet adorable qu'elle représente mal) ne mérite pas beaucoup de considération. L'irrévérence de ces enfants envers ce bois ne fut même jamais constatée ; les délateurs n'insistèrent que sur une vieille chanson de corps de garde chantée à table. Et cette chanson que personne ne connaît, fut qualifiée de crime de lèse-majesté divine au premier chef.

Ce crime fut jugé par trois magistrats, dont l'un était l'ennemi reconnu des familles de ces enfants ; l'autre un praticien marchand de cochons. J'ignore le troisième.

On ne peut guère concevoir comment ce procès de sacrilège ne fut abandonné qu'à ces trois prétendus magistrats. Ce n'est que dans l'enfer des Grecs, imité de l'enfer égyptien, qu'autrefois selon la fable, trois personnes formaient un tribunal assez complet pour juger l'univers.

However, one day when they were passing by, a few children, who perhaps knew too much for their age, neglected to kneel down.<sup>329</sup> It is even alleged that they showed little respect for a wooden figure<sup>330</sup> that we do not tolerate in our republic, and which indeed in itself (if one distinguishes it from the adorable object that it represents badly) does not merit much consideration. The irreverence of these children toward this wooden figure was never even recorded; the informers only concentrated on an old guard's song sung around the table. And this song that nobody knows, was considered to be a crime of divine lese-majesty in the first degree.

This crime was judged by three magistrates, of whom one was the known enemy of the families of these children, the other, a practising pig merchant.<sup>331</sup> I do not know the third.

It can hardly be understood how this trial on sacrilege was left purely to these three alleged magistrates. It is only in the hell of the Greeks,<sup>332</sup> based on the Egyptian hell, that in the past according to the fable, three people formed a sufficiently complete court to judge the universe.

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<sup>329</sup> Duval de Saucourt made it his duty to seek revenge on Étallonde de Morival and François-Jean Lefebvre de la Barre, '*ayant su qu'[ils ne s'étaient point détournés] de [leur] chemin pour aller [les] mettre à genoux devant cette procession [de capucins].*' Voltaire, 'Le Cri du Sang Innocent', in *Œuvres complètes de Voltaire*, vol. 22 (Paris: Hachette, 1860), p. 390.

([...] having known that they had not redirected their route in order to kneel before this possession of capuchin monks.)

<sup>330</sup> See *Ibid.*

*'Un crucifix de bois, élevé sur le Pont Neuf de la ville, avait été mutilé depuis quelque temps soit par vétusté, soit par quelque charrette, il résolut de [les] en accuser, et de joindre ces deux griefs ensemble.'* (p. 391).

(A wooden crucifix, raised on the Pont Neuf of the town, had been desecrated for some time, either by dilapidation, or by some cart, he (Saucourt) resolved to accuse them of it, and to combine these two accusations together.)

<sup>330</sup> See *Ibid.*

*'Saucourt venait encore de perdre deux procès contre des familles d'Abbeville. On savait qu'il avait juré de s'en venger.'* (p. 5).

(Saucourt had yet again lost two cases against relations of d'Abbeville. It was known that he had vowed to take revenge on them.)

<sup>331</sup> Voltaire is referring to Broutel. See *Ibid.*

*'Un marchand de vin, de bœufs, et de cochons ; un nommé Broutel, qui avait acheté dans la juridiction de procureur.'* (p. 13).

(A merchant of wine, bullocks, and pigs; a named Broutel, who had bought in the jurisdiction of prosecutor.)

<sup>332</sup> Thomas Wilson states in *An Archaeological Dictionary, Or, Classical Antiquities of the Jews, Greeks, and Romans* (London: Ogilvy, 1793) that 'the idea of hell, amongst the Greeks and Romans, varied according to the fancy and imagination of each individual: The hell of the vulgar was an assemblage of whatever they conceived frightful and tormenting; and the philosophers were more ingenious, indeed, but full as wild in their conjectures.' (p. 101).

Quoiqu'il en soit, les trois Rhadamantes de village condamnèrent ces pauvres enfants à la torture ordinaire et extraordinaire, à l'amputation du poing, à l'amputation de la langue arrachée avec des tenailles, et enfin à être brûlés vifs.

L'usage est dans ce pays que les sentences criminelles rendues dans un village, soient revues dans une grande ville. Le tribunal de la grande ville revit donc le procès, et confirma le jugement à la pluralité de quinze voix contre dix. L'arrêt fut exécuté autant qu'il fut possible par cinq bourreaux que le grand tribunal délégua exprès sur les lieux. L'Europe entière frémit d'horreur.

C'est sur quoi, Messieurs, je pourrais vous faire deux questions. La première, comment des hommes qui n'étaient pas des bêtes carnassières, ont jamais pu imaginer qu'il suffisait de quelques voix de plus pour être en droit de déchirer dans des tourments affreux des créatures humaines ? ne faudrait-il pas au moins la prépondérance de trois quarts des voix ? En Angleterre tous les jurés doivent être d'accord ; et cela est bien juste. Quelle horreur absurde qu'on joue la vie et la mort d'un citoyen au jeu de six contre quatre, ou de cinq contre trois, ou de quatre contre deux, ou de trois contre un ! L'on nous dit que les Athéniens à qui l'on proposa des spectacles trop sanguinaires, répondirent, renversez donc notre autel de la Miséricorde. Ceux qui dévouèrent à la mort ces pauvres enfants n'avaient donc pas de semblables autels !



Be that as it may, the three village Rhadamanthuses<sup>333</sup> condemned these poor children to ordinary and extraordinary torture, to the amputation of the fist, to the amputation of the tongue torn out with pliers, and finally to be burned alive.

The custom is in this country that the criminal sentences pronounced in a village be reviewed in a large town. The court of the large town, therefore, reviewed the trial and confirmed the judgement by the majority of fifteen voices to ten. The arrest was executed, as soon as possible, by five executioners who the great court deliberately appointed to be on the premises. The entirety of Europe shuddered in horror.<sup>334</sup>

Sirs, I could ask you two questions about this. The first, how men who were not carnivorous beasts could have ever imagined that a few voices more sufficed in order to have the right to make human creatures suffer in terrible torments? Shouldn't there at least be a majority of three quarters of the voices? In England, all the jurors must agree; and that is very fair.<sup>335</sup> What absurd horror that one plays with the life and death of a citizen in a game of six to four, of five to three, or of four to two, or of three to one! We are told that the Athenians, to whom one proposed truly bloody spectacles, responded, *thus, knock over our alter of mercy*.<sup>336</sup> Those who sacrificed these poor children, therefore, did not have similar altars!

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<sup>333</sup> Michael Grant and John Hazel state that 'Rhadamanthys ruled Crete before Minos and gave the island an excellent code of laws [...] Minos drove out Rhadamanthys and Sarpedon and Rhadamanthys now went to rule the southern Aegean Islands, of which the inhabitants had already made him their king out of respect for his laws.' *Who's Who in Classical Mythology* (New York: Routledge, 2001), p. 459.

<sup>334</sup> Kehl edition editors' original note, *op. cit.*

*'Le chevalier de La Barre eut la tête tranchée. Comme il est juste de proportionner la peine au délit, nous demanderons, si le crime de ses juges a été assez puni par l'horreur et le mépris de l'Europe.'* (p. 115).

(The knight de La Barre was decapitated. As it is fair to equate the punishment to the crime, we will ask if the crime of his judges was sufficiently punished by the horror and contempt of Europe.)

<sup>335</sup> As pointed out by John H. Lagbein, in England 'the twelve jurors had to agree upon their verdict in order to convict. In theory, if they disagreed a so-called mistrial resulted, and a new trial would be held before another jury at another session.' 'The English Criminal Trial Jury on the Eve of the French Revolution', in Antonio Schioppa ed., *The Trial Jury in England, France, Germany 1700-1900* (Berlin: Duncker & Humblot, 1987), p. 38.

<sup>336</sup> Lucius Apuleius Madaurensis stated that: *'Il y avoit à Athènes un Autel consacré par les Heraclides, c'est-à-dire les descendans d'Hercule, pour conserver la mémoire du secours que les Athéniens leur avoient donné contre Euristée Roi d'Argos. Cet Autel se nommoit l'Autel de la miséricorde, et servoit d'asyle aux malheureux.'* *Les métamorphoses, ou l'âne d'or d'Apulée, philosophe platonicien*, vol. 2 (Frankfurt: Compagnie des libraires, 1769), p. 279.

(In Athens, there was an alter consecrated by the Heraclids, that is to say, the descendants of Hercules, to preserve the memory of the aid that the Athenians had given them against Eurystheus, King of Argos. This alter was called the 'autel de la miséricorde' (alter of mercy) and served as an asylum for persons in need.)

La seconde question est sur l'objet même de l'arrêt. Sait-on bien ce que c'est qu'un crime de lèse-majesté divine ? Est-ce de vouloir assassiner Dieu comme Lycaon se proposa d'assassiner Jupiter qui était venu souper chez lui ? Est-ce de lui faire la guerre comme autrefois les Titans, et ensuite les géants la lui firent, et comme précédemment il en avait essuyé une très funeste de la part des anges, selon ce qu'ont écrit les premiers brahmanes, pères des anciennes fables et des anciennes sciences ? Est-ce enfin de nier l'existence de Dieu comme ont fait des philosophes impies de l'Antiquité ? Certes, de malheureux enfants livrés à cinq bourreaux par trois ignorants, n'avaient rien fait de tout cela.

L'un d'eux échappé aux cinq bourreaux est un officier très sage, un homme vertueux. Il sert un très grand roi qui en le favorisant apprend aux nations qu'il ne faut pas offenser Dieu jusqu'à prétendre le venger par des assassinats horribles, et qu'il ne faut pas se presser de brûler de jeunes inconsidérés qui peuvent devenir des hommes utiles et respectables.

Quand on se représente que des citoyens, d'ailleurs judicieux, ont signé le matin une abominable boucherie, et qu'ils vont le soir passer le temps chez des dames, entendre et dire des plaisanteries et mêler des cartes de leurs mains ensanglantées, peut-on concevoir de tels contrastes ? et n'est-on pas fortement tenté de renoncer à la société des hommes !

The second question is on the very subject of the arrest. Do we really know what a crime of divine lese-majesty is? Is it to want to assassinate God, like Lycaon intended to assassinate Jupiter<sup>337</sup> who had come to dine with him? Is it to wage war against him, like the Titans in the past, and then the giants waged it against him, and as he had formerly suffered a very gruesome one on behalf of the angels, according to what the first brahmans wrote, priests of the ancient fables and ancient sciences? Finally, is it to deny the existence of God, as the impious philosophers of the Antiquity did? Of course, some unfortunate children, delivered to five executioners by three ignorant men, had nothing to do with all that.

One of them who escaped from the five executioners is a very wise officer,<sup>338</sup> a virtuous man. He serves a very great king who by favouring him, teaches nations that you do not have to offend God, in order to claim that you are avenging him by horrible assassinations, and you should not hurry to burn inconsiderate young people who can become useful and respectable men.

When one imagines that citizens, incidentally judicious, have signed in the morning an abominable butchery, and that in the evening they are going to spend their time among women, listening to and making jokes, and shuffling cards with their bloodied hands, can one apprehend such contrasts? And are we not strongly tempted to dispel some men from society!

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<sup>337</sup> There are conflicting accounts regarding Lycaon's attempted assassination of Jupiter. Jupiter firstly stated that Lycaon attempted to kill him during his sleep: *'nocte gravem somno necopina perdere morte, me parat: haec illi placet experientia veri.'* (at night as I lay heavy with sleep he prepared to surprise and kill me; he had decided on this as a test of the truth.) The second account is that Lycaon brought on Jupiter's wrath, and he used his lightning after he served him cooked human flesh to eat. James O' Hara, *Inconsistency in Roman Epic: Studies in Catullus, Lucretius, Vergil, Ovid and Lucan* (Cambridge: Cambridge University Press, 2006), p. 116.

<sup>338</sup> Étallonde de Morival was a cadet in the Prussian army and served the King of Prussia, Frederick II. When the king became aware of his military excellence, he was awarded the position of his 'aide de camp'. *Les Œuvres complètes de Voltaire*, vol. 29, *op. cit.*, p. 4

~ ARTICLE XI ~

**DES PROCÈS CRIMINELS POUR DES DISPUTES DE L'ÉCOLE**

L'Antiquité n'avait jamais imaginé de regarder une dispute entre Zénon et Diogène comme l'objet d'un procès criminel. Celui de Socrate fut, après tout, la plus douce des barbaries. Il n'y eut point de question ordinaire ou extraordinaire, point de roue de charrette, sur laquelle on pliât les membres d'un citoyen brisés méthodiquement à coups de barre de fer ; point de bûcher enflammé dans lequel on jetât le corps disloqué encore en vie, rien qui ressemble aux inventions des cannibales lettrés du douzième siècle. Ce fut un vieillard de soixante et dix ans, qui opprimé par la cabale de deux hypocrites, mourut doucement entre les bras de ses amis, en bénissant Dieu, et en prouvant l'immortalité de l'âme. Et à peine cette belle âme fut-elle envolée vers ce Dieu qui l'avait formée, que les Athéniens honteux de leur crime juridiquement commis, condamnèrent plus juridiquement les accusateurs de Socrate, et lui élevèrent un temple. Ainsi la mort de ce martyr fut en effet l'apothéose de la philosophie.

Mais comment de la crasse de nos écoles, et de la crasse même du froc, s'est-il élevé des querelles qui n'étaient pas dignes du théâtre d'Arlequin, et qui ont sollicité la peine de mort dans tant de tribunaux de l'Europe ?

~ ARTICLE XI ~

ON CRIMINAL TRIALS FOR SCHOOL QUARRELS

Antiquity had never imagined regarding a dispute between Zeno and Diogenes<sup>339</sup> as the object of a criminal trial. Socrates's one was, after all, the most lenient of savageries.<sup>340</sup> There was no ordinary or extraordinary torture, no chariot's wheel, on which a citizen's limbs were bent, broken methodically by strikes of an iron bar; no burning stake, on which the dislocated body was thrown while still alive, nothing that resembles the inventions of the well-read cannibals of the 12<sup>th</sup> Century. He was an old seventy-year-old man, who oppressed by the conspiracy of two hypocrites, died slowly in his friends' arms, while blessing God and while demonstrating the immortality of the soul. And hardly was this beautiful soul gone towards this God who had formed it, that the Athenians, ashamed of their legally committed crime, more legally condemned Socrates's accusers and built a temple for him. Thus, this martyr's death was in fact the apotheosis of philosophy.

But how, from the crass of our schools, and even from the crass of the flock, arose quarrels that were not worthy of the Harlequin theatre,<sup>341</sup> and which solicited the death penalty in so many European courts?

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<sup>339</sup> Zeno (490 B.C. - 430 B.C.) and Diogenes (404 B.C. - 323 B.C.) were both Greek philosophers. However, Diogenes, known as 'the cynic', was one of the pioneers of the Greek philosophical school of Cynicism during the classical period. On the other hand, during the pre-Socratic period, Zeno of Elea was an affiliate of the Eleatic School of ancient Greek philosophy, which emphasised logic and reasoning. Katja Vogt, *Law, Reason, and the Cosmic City: Political Philosophy in the Early Stoa* (Oxford: Oxford University Press, 2008).

<sup>340</sup> In 399 B.C., at seventy years old, Socrates was put on trial for not acknowledging the Gods that were recognised by the State. Socrates experienced the Periclean age, the twenty-five-year war with Sparta, Athens's defeat in 404 B.C, the oligarchic revolution, and the restoration of democracy. Throughout this time Socrates was 'a well-known character, expounding his philosophy of life in the streets of Athens to anyone who cared to listen. His 'mission', which he explains in the *Apology*, was to expose the ignorance of those who thought themselves wise and to try to convince his fellow citizens that every man is responsible for his own moral attitudes.' *The Trial and Death of Socrates*, Plato, George Grube, and John Cooper, eds. (Indianapolis: Hackett Publishing, 2000), p. 4.

<sup>341</sup> Harlequin, in French 'Arlequin', was a theatrical character from the Italian Popular Comedy, *commedia dell'arte*. The Harlequin theatre originated in Italy and from the 16<sup>th</sup> Century it assimilated into French culture. Nicoll Allardyce, *The World of Harlequin: A Critical Study of the Commedia Dell'Arte* (Cambridge: Cambridge University Press, 1963).

A peine les frères mineurs, nommés cordeliers furent-ils au monde, qu'ils firent naître un schisme sur la forme de leur capuchon, et sur d'autres objets aussi importants. Il s'agissait de savoir si étant au réfectoire, leur potage leur appartenait en propre, ou s'ils n'en avaient que l'usufruit. Il en coûta du sang. Leur général Michel de Césène fut condamné à une prison perpétuelle, et lorsque l'empereur Louis de Bavière déposa dans Rome le pape Jean XXII, et le condamna à être brûlé vif ; lorsque Jean déposa l'empereur dans Avignon, cette querelle des cordeliers fut alléguée de part et d'autre comme un des grands motifs de la guerre. Depuis ce temps les disputes scholastiques ont souvent occupé la magistrature dans plus d'un pays.

Hardly had the friars minor, called Cordeliers appeared in the world when they brought about a schism<sup>342</sup> on the basis of their hood, and on the basis of other equally important objects. It was a question of knowing if, being at the refectory, their soup belonged to them, or if they only had usufructuary propriety of it. It cost them some blood. Their general Michael of Cesena<sup>343</sup> was condemned to a lifelong prison, and while Emperor Louis of Bavaria deposed Pope John XXII in Rome and condemned him to be burned alive;<sup>344</sup> while John deposed the Emperor in Avignon, this quarrel of the Cordeliers was professed on both sides as one of the great causes of the war. Since then, scholastic disputes have often occupied the magistracy in more than one country.

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<sup>342</sup> As detailed by Thomas Curtis (ed.), in *The London encyclopaedia, or, Universal dictionary of science, art, literature, and practical mechanics* (London: Tegg & Son, 1839), ‘in the beginning of the Eighteenth Century, the whole Franciscan order was divided into two parties; the one called Spirituals, who embraced the severe discipline and absolute poverty of St. Francis; and the other, Brethren of the Community, who insisted on mitigating the austere injunctions of their founder. [...] Neither the moderation of Clement V nor the violence of John XXII could appease the tumult occasioned by these two parties.’ (p. 589).

<sup>343</sup> Michael Cesena was the head of the Franciscans. As pointed out in *The Blackwell Companion to the Theologians*, vol. 1, Ian Markham ed. (Oxford: John Wiley & Sons, 2009), Cesena ‘advocated strongly the purist view, a position which called for not only the rejection of personal ownership of property, but even communal ownership of property.’ (p. 139).

<sup>344</sup> Michael Robson states in his work *The Franciscans in the Middle Ages* (Suffolk: Boydell Press, 2006) that John XXII was deposed by Louis of Bavaria in 1328 ‘on account of the erroneous teaching in his encyclicals concerning evangelical poverty; the friars were not slow to follow the lead given by the emperor.’ (p. 139).

On sait que le prince Noir, encore plus grand que son père Edouard III, laissa en mourant la couronne d'Angleterre, dont il n'avait jamais joui, à son fils Richard II. Cet enfant fut si obsédé dans sa minorité par son confesseur et par des prêtres, si importuné de toutes leurs disputes, que le Conseil privé du Roi fut obligé de leur défendre à tous, et principalement au confesseur, de paraître à la Cour plus de quatre fois par an.



It is known that the Black Prince, even greater than his father Edward III, left in death the crown of England, which he had never enjoyed, to his son Richard II.<sup>345</sup> This child was so obsessed in his minority by his confessor and by some priests, so bothered by all their disputes, that the Privy Council of the King was obliged to forbid them all,<sup>346</sup> and mainly the confessor, from appearing at Court more than four times per year.<sup>347</sup>

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<sup>345</sup> Edward of Woodstock (1330 - 1376), also known as the Black Prince, son of King Edward III of England, was first in line to the throne after his father's death in 1377. However, having passed away before his father in 1376 from dysentery, his eldest son Richard II (1367 - 1400), at the age of ten, was put on the throne. David Green, *Edward the Black Prince: Power in Medieval Europe* (Edinburgh: Pearson Education, 2007).

<sup>346</sup> William Scroggins explains that at the age of twenty, Richard II 'decided to assume the power of the Crown and to divest himself from the control of his uncles and the Regents. The circle of associates, that he gathered around him at Court were not acceptable to the nobility and parliament was led to form a Commission, headed by the former Regents, to investigate and purge the king's retinue of undesirable persons. Led principally by the Lords Appellant, Thomas of Woodstock, Duke of Gloucester; Richard FitzAlan, Duke of Arundel; and Thomas Beauchamp, Earl of Warwick; the power of the Lords overwhelmed the king and his friends were eliminated from the offices of influence [...] Richard II left London in deep distress to be with his deposed favourites. Before long, they raised an army and marched toward London to reassert themselves, but the nobles had a superior force waiting and, without combat, the barons bullied the king into submission [...] Later the Lords Appellant and Parliament sentenced the king's closest advisors to death, but they did not harm Richard, whom they recognized as their monarch. On 3 May 1389, King Richard II, now twenty-three years old, finally asserted himself and his royal prerogatives over the Regents and convinced them that he was no longer going to submit to their control. The Council acquiesced and, without opposition, let Richard bring some of his sympathizers in to aid him in governing.' *Leaves of a Stunted Shrub*, vol. 2 (Maryland: Nativa, 2009), p. 439.

<sup>347</sup> Voltaire original note, *op. cit.*

'Voyez l'Histoire de la maison des Plantagenets, par Hume, règne de Richard II.' (p. 121).  
(See *l'Histoire de la maison des Plantagenets*, by Hume, reign of Richard II.)

En France, il fallut souvent que le parlement contînt la Sorbonne par des arrêts. Le savant Ramus, bon géomètre pour son temps, et qui avait déjà de la réputation sous le roi François I<sup>er</sup> ne se doutait pas alors qu'il se préparait une mort affreuse, en soutenant une thèse contre la logique d'Aristote. Il fut longtemps persécuté, traduit même devant les tribunaux séculiers par un nommé Galantius Torticolis. On le menaça de le faire condamner aux galères. De quoi s'agissait-il ? Le principal objet de la dispute était la manière dont il fallait prononcer *Quisquis*, et *quamquam*.

In France, the parliament often had to contain the Sorbonne by means of judgements. The learned Ramus, a good geometrician for his time, and who already had some reputation under King Francis I, did not suspect, in that case, that he was preparing a terrible death for himself, by supporting a theory against Aristotle's logic.<sup>348</sup> He was persecuted for a long time, even brought before the secular courts by a man named Gallandius Torticolis. He was threatened to be condemned to the galleys. What was it about? The principal object of the dispute was how *Quisquis* and *quamquam* should be pronounced.<sup>349</sup>

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<sup>348</sup> David Deming observes how Ramus led a fierce attack on Aristotle and this resulted in the faculty lashing out on Ramus: 'The university rector took Ramus' books to the theology faculty who promptly denounced them. Having obtained an academic condemnation of Ramus, the university brought the matter before the civil authorities in Paris. Ramus was charged with being an enemy to religion, a disrupter of the public peace, and a corrupter of youth. The charges were essentially identical to those levelled against Socrates in 399 B.C. Ramus was brought before the Parliament of Paris for trial, but his case was subsequently removed to the direct jurisdiction of King Francis I (1494 - 1547) [...] He appointed a commission to investigate the charges against Ramus. Two of the commission members were chosen by Ramus, two by his critics. The fifth mediator was appointed by the King. Unfortunately for Ramus, the arbiter appointed by the King was one of Ramus' most bitter enemies. Thus, the outcome of the farcical trial was predetermined from the beginning. Halfway through the proceeding, Ramus' advocates withdrew in disgust. The judges announced their verdict. Ramus was wrong. Why? Because he had contradicted consensus.' *Science and Technology in World History, Vol 3: The Black Death, the Renaissance, the Reformation and the Scientific Revolution* (North Carolina: Mcfarland, 2012), p. 118.

<sup>349</sup> See Voltaire, *Œuvres complètes de Voltaire*, vol. 14 (Paris: Hachette, 1860), in which Voltaire speaks of this incident in more detail:

*'Il vous importe fort peu, mon cher lecteur, qu'une des plus violentes persécutions excitées au seizième siècle contre Ramus, ait eu pour objet la manière dont on devait prononcer quisquis et quanquam. Cette grande dispute partagea long-tems tous les régens de collège et tous les maitres de pension du seizième siècle ; mais elle est assoupie aujourd'hui, et probablement ne se réveillera pas. Voulez-vous apprendre si M. Gallandius Torticolis passait M. Ramus son ennemi en l'art oratoire, ou si M. Ramus passait M. Gallandius Torticolis, vous pourrez vous satisfaire en consultant Thomas Freigius, in vita Rami ; car Thomas Freigius est un auteur qui peut être utile aux curieux, quoi qu'en dise Banosius. Mais que ce Ramus ou La Ramée, fondateur d'une chaire de mathématiques au collège royal de Paris, bon philosophe dans un tems où l'on ne pouvait guère en compter que trois, Montaigne, Charron, et De Thou l'historien; que ce Ramus, homme vertueux dans un siècle de crimes, homme aimable dans la société, et même, si on veut, bel esprit ; qu'un tel homme, dis-je , ait été persécuté toute sa vie, qu'il ait été assassiné par des professeurs et des écoliers de l'université; qu'on ait traîné les lambeaux de son corps sanglant aux portes de tous les collèges , comme une juste réparation faite à la gloire d'Aristote ; que cette horreur, dis-je encore, ait été commise l'édification des ames catholiques et pieuses ! ô Français ! avouez que cela est un peu welche.'* (pp. 382-383).

(It is of very little consequence to you, my dear reader, that one of the most violent persecutions exerted in the Sixteenth Century against Ramus, had for its object the manner in which we ought to pronounce the words 'quisquis' and 'quanquam'. This grand dispute divided for a long time all the college governors and schoolmasters of the Sixteenth Century, but it is now quite extinguished, and will never probably revive again. Would you learn whether M. Gallandius Torticolis exceeded M. Ramus, his enemy, in the art of oratory? You may satisfy yourself by consulting Thomas Freigius, in Vita Rami; for Thomas Freigius is an author who may be acceptable to the curious, whatever Banosius may say to the contrary. But as this Ramus, founder of the mathematical chair in the Royal College of Paris, was a good philosopher, at a time when we could count only two or three, Montaigne, Charron, and de Thou, the historian as this Ramus was virtuous in an age of crime, amiable in society, and, would they have allowed of it, even a man of wit, that such a man should have been persecuted all his life, and finally assassinated, by professors and scholars of the university; that these miscreants should have drawn the relics of his bloody corpse to the gates of all the colleges, as a reparation justly due to the glory of Aristotle, that so many horrors should be committed for the edification of pious catholic souls, I must repeat, O Frenchmen! is not a little barbarous.) Voltaire, *A Philosophical Dictionary from the French of M. de Voltaire* (London: Reynell, 1824), p. 379.

Enfin, Ramus vécut assez pour être une des victimes de la Saint Barthelémi. Ses ennemis attendirent ce grand jour pour se venger de sa réputation et du bien qu'il avait fait à la ville de Paris, en fondant une chaire de géométrie. Ils traînèrent son corps sanglant à la porte de tous les collèges, pour faire amende honorable à la philosophie d'Aristote.

Les disciples zélés du Stagirite grec furent si encouragés chez les descendants des Gaulois, que longtemps après que l'ivresse et la rage de la Saint Barthelémi furent passées, ils obtinrent en 1624 un arrêt qui défendait sous peine de mort, d'être d'un avis contraire à celui d'Aristote.

In the end, Ramus lived long enough to be one of the victims of the Saint-Bartholomew's Day massacre. His enemies waited for this great day to avenge themselves for his reputation and the good that he had done for the town of Paris, by founding a geometry chair. They dragged his bloody body to the door of all the colleges, to make amends to Aristotle's philosophy.

The zealous disciples of the Greek Stagirite were so encouraged among the descendants of the Gauls, that long after the exhilaration and the rage of Saint Bartholomew passed, in 1624, they obtained a judgement that forbade, on penalty of death, to be of a contrary opinion to that of Aristotle.

Les inimitiés personnelles n'ont que trop souvent imploré le bras de la justice, et tâché d'épaissir son bandeau. On sait que les jésuites Coton et Garasse, voulurent attaquer au Conseil du Roi, le sage et savant Pasquier, qui avait plaidé contre eux devant le parlement ; mais enfin ne trouvant pas jour à tenter une entreprise si hardie, Garasse se réduisit à plaider devant le public, et voici le morceau le plus éloquent de son plaidoyer.

« Pasquier est un porte panier, un maraud de Paris, petit galant bouffon, plaisanteur, petit compagnon, vendeur de sornettes, simple regage, qui ne mérite pas d'être le valetton des laquais ; bélître, coquin, qui rote, pète et rend sa gorge ; fort suspect d'hérésie, ou bien hérétique, ou bien pire, un sale et vilain satyre, un archimaître sot par nature, par bécarre, par bémol, sot à la plus haute gamme, sot à triple semelle, sot à double teinture, et teint en cramoisi, sot en toutes sortes de sottises. »

Personal hostilities have only too often implored the arm of justice and attempted to thicken its blindfold. It is known that the Jesuites Coton and Garasse wanted to attack the wise and knowing Pasquier<sup>350</sup> at the King's Council, who had pleaded against them in front of the parliament;<sup>351</sup> but ultimately, not finding the moment to attempt such a bold undertaking, Garasse is reduced to pleading in front of the public, and this is the most eloquent piece of his plea.

‘Pasquier is a porter, a scoundrel of Paris, little gallant jester, joker, little comrade, seller of twaddle, mere hireling, who does not deserve to be the valet of the servants; good for nothing, rascal, who belches, passes wind, and vomits; strongly suspected of heresy, or else an outright heretic, or even worse; a nasty and dreadful lecher, an arch-master stupid by nature, by natural sign, by flat sign, simple to the highest scale, fool wearing three soles, double-dyed fool, and tinted with crimson, foolish in all types of nonsense.’<sup>352</sup>

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<sup>350</sup> Étienne Pasquier (1529 - 1615) was a Parisian lawyer known for his work *Les Recherches de la France* (1560). James H. Dahlinger, *Etienne Pasquier on Ethics and History* (New York: Peter Lang, 2007).

<sup>351</sup> See Moreau, Banque de donnés AGON, *Querelle du Jésuite Garasse* (2014). Retrieved from: <http://base-agon.paris-sorbonne.fr/querelles/querelle-du-jesuite-garasse> (Accessed: 14 January 2019)

‘Garasse a d’abord publié plusieurs écrits de polémique et de controverse, sans véritablement susciter de réactions [...] Avec la parution des *Recherches des Recherches et autres œuvres de Me Estienne Pasquier* (1622), Garasse s’inscrit pleinement dans une logique de querelle puisque l’ouvrage est publié en réponse aux attaques portées contre les jésuites par Pasquier père, notamment dans *Le Catéchisme des jésuites* (1602) et *les Recherches de la France*. L’ouvrage de Garasse suscite une réponse de Nicolas Pasquier en 1623, *Réponse aux Recherches de recherches* ; *L’Anti-Garasse*, 1624 dû à Antoine Rémy, avec la collaboration de Nicolas et Guy Pasquier appartient aussi à cette première configuration, en même temps qu’à la floraison d’écrits polémiques provoquée par la parution de *La Doctrine curieuse* [...] Le principal déclencheur des querelles semble être *La Doctrine curieuse des beaux esprits de ce temps*. Publiée en août 1623, au lendemain de la condamnation de Théophile de Viau, *La Doctrine curieuse* est ainsi à l’origine d’une querelle d’imprimés dont les principaux acteurs sont, outre Garasse, Guez de Balzac, le prieur mondain François Ogier, ami du précédent, et Antoine Rémy, « porte-plume » des fils Pasquier. Cette querelle se termine fin 1624 sur la réconciliation forcée de Garasse avec Ogier et Balzac.’

(Firstly, Garasse published several polemic and controversial writings, without truly inciting any reactions [...] With the publication of *Les Recherches des Recherches et autres œuvres* by Mr. Estienne Pasquier (1622), Garasse completely enters into a logic of quarrel since the work is published in response to the attacks on the Jesuites by Mr. Pasquier, notably in *Le Catéchisme des jésuites* (1602) and *les Recherches de la France*. Garasse’s work incites a response from Nicolas Pasquier in 1623, *Réponse aux Recherches de recherches* ; *L’Anti-Garasse*, 1624, owing to Antoine Rémy, with the collaboration of Nicolas and Guy Pasquier, also being part of this first configuration, at the same time as the barrage of polemic writings provoked by the publication of *La Doctrine curieuse* [...] The main trigger of the quarrels seems to be *La Doctrine curieuse des beaux esprits de ce temps*. Published in August 1623, in the aftermath of the conviction of Theophilus of Viau, *La Doctrine curieuse* is thus at the origin of a quarrel of prints, of which the main actors are, in addition to Garasse, Guez de Balzac, the worldly prior, François Ogier, friend of the former, and Antoine Rémy, ‘pencil-pusher’ of Pasquier’s sons. This quarrel finishes at the end of 1624, on the forced reconciliation of Garasse with Ogier and Balzac.)

<sup>352</sup> See Voltaire, *Prix de la Justice et de l’Humanité* (1777), *op. cit.*

‘Voltaire a aussi rapporté ce passage dans son article *Jésuites* du *Dictionnaire Philosophique*.’ (p. 46). (Voltaire also reported this passage in his article ‘Jesuites’ of the *Dictionnaire Philosophique*.)

S'il ne put prévaloir contre un homme aussi respectable que Pasquier, il réussit mieux à perdre le malheureux Théophile, qui dans je ne sais quelle pièce de poésie, avait glissé ces trois vers assez peu mordants sur les jésuites.

Cette énorme et noire machine,  
Dont le souple et le vaste corps,  
Etend ses bras jusqu'à la Chine, etc.

Une si légère injure, si c'en est une, ne méritait pas l'accusation d'athéisme que Garasse lui intenta. Ce jésuite, et un de ses confrères nommé Voisin, profitant du crédit de la Compagnie, furent à la fois les accusateurs et les sergents qui firent enfermer Théophile dans le cachot de Ravillac. Ils sollicitèrent violemment son supplice pendant une année entière ; mais le crédit de la maison de Montmorency, qui le protégeait, l'emporta sur le crédit de Garasse.

Si la sage loi qui ordonne que l'accusateur risque la même peine que l'accusé, et subisse la même prison, avait été reçue en France, Garasse et son confrère auraient été plus retenus.



If he was not able to prevail against a man as respectable as Pasquier, he succeeds better in condemning the unfortunate Theophilus, who I do not know in which piece of poetry<sup>353</sup> had slipped these three mildly cutting verses about the Jesuites.

This enormous and black machine,  
Of which the supple and vast body,  
Stretches its arms as far as China, etc.

A such slight insult, if it is one, did not deserve the accusation of atheism that Garasse filed against him. This Jesuit, and one of his brothers named Voisin,<sup>354</sup> benefiting from the credit of the company, were both the accusers and the bailiffs that had Theophilus locked away in Ravaillic's dungeon.<sup>355</sup> They vehemently solicited his torture for an entire year; but the credit from the house of Montmorency, which protected him, outweighed the credit of Garasse.

If the wise law had been received in France, which orders that the accuser risks the same punishment as the accused and suffers the same imprisonment, Garasse and his brother would have been more reserved.

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<sup>353</sup> Voltaire is referring to the poem, *Requête de Théophile au Roi*, (Theophilus's summons to the King) by Théophile de Viau, found in *Œuvres poétiques de Guillaume Alexis, prieur de Bucy*, vol. 38, Part III (Paris: F. Didot frères, 1908).

<sup>354</sup> See Voltaire, *Letters Addressed to His Highness the Prince of \*\*\*\*\*: Containing, Comments on the writings of the most eminent authors, who have been accused of attacking the Christian religion* (Glasgow: R. Urie, 1769). See the following section in particular: 'A Jesuit more dangerous, Voisin, by name, who neither wrote nor preached, but who had a great interest with the Cardinal Rochefoucault, commenced a criminal prosecution against him, and suborned, for that purpose, a young debauchee, Sajeot by name, who had been his scholar, and who passed for having been subservient to his infamous pleasures, which the party accused reproached him with, at confrontation. In short, the Jesuit Voisin obtained, by means of the favor of the Jesuit Caussin, Confessor to the King, an order for taking him into custody on a charge of impiety and atheism.' (p. 72).

<sup>355</sup> Francois Ravaillic was one of three assassins involved in the regicide of King Henry IV of France in 1610. Joesph Alexis Roussel, *Annales du crime et de l'innocence, ou Choix de causes célèbres anciennes et modernes, réduites aux faits historiques*, vol. 19 (Paris: Faubourg, 1813).

D'autres jésuites n'eurent pas la même hardiesse avec le célèbre Fontenelle, qui avait embelli par les grâces de son esprit et de son style l'érudition profonde, mais peut-être un peu rebutante de Van-Dal, dans son *Histoire des oracles*. Il n'était pas possible de déférer à une cour de judicature un livre si bon et si sagement écrit. Ils se contentèrent de solliciter contre l'auteur une lettre de cachet qu'ils n'obtinrent pas ; et par cette conduite même, ils prouvèrent combien il est odieux de ne combattre des raisons que par l'autorité.

Ne vous semble-t-il pas, Messieurs, qu'en fait de livres, il ne faut s'adresser aux tribunaux et aux souverains de l'Etat, que lorsque l'Etat est compromis dans ces livres ? La loi d'Angleterre sur cette question ne mérite-t-elle pas de servir d'exemple à tous les législateurs qui voudront faire jouir l'homme des droits de l'homme ? Voulez-vous parler à tous vos compatriotes, vous ne pouvez parler que par vos livres ; imprimez donc, mais répondez de votre ouvrage. S'il est mauvais, on le méprisera ; s'il est dangereux on y répondra ; s'il est criminel, on vous punira ; s'il est bon, on en profitera tôt ou tard.

Other Jesuits did not have the same bravery with the famous Fontenelle, who had embellished by the graces of his mind and style Van Dale's profound, but perhaps somewhat unpleasant erudition in his *Histoire des oracles*.<sup>356</sup> It was not possible to refer such a good and wisely written book to a Court of Judicature. They settled for soliciting a lettre de cachet<sup>357</sup> against the author, which they did not obtain; and even through this behaviour, they demonstrated how despicable it is to only fight reasons through authority.

Does it not seem to you, Sirs, that concerning books, the courts and the sovereigns of the State should only be addressed, when the State is compromised in these books? Does the English law on this matter not deserve to serve as an example to all the legislators who will want to have man benefit from the rights of man? Do you want to speak to all your compatriots, you can only speak through your books; therefore, print but answer for your work. If it is bad, it will be held in contempt; if it is dangerous, it will be responded to; if it is criminal, you will be punished; if it is good, it will be taken advantage of sooner or later.

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<sup>356</sup> Voltaire is referring to Bernard Le Bovier de Fontenelle's *Histoire des oracles* (Amsterdam: Mortier, 1687).

<sup>357</sup> As defined in Duhaime's Law Dictionary, a lettre de cachet was 'a discretionary, arbitrary and often secret order issued by the King of France for the execution of some act.' Retrieved from: <http://www.duhaime.org/LegalDictionary/L/LettredeCachet.aspx> (Accessed: 14 March 2019).

Quand on imprima les pensées du duc de la Rochefoucault, ou plutôt la pensée, qui présentée sous cent faces différentes, prouve que l'amour-propre est le grand ressort du genre humain, chacun trouva qu'il avait raison. Ce qu'on dit de plus fort contre lui, c'est que son livre était le portrait du peintre. Mais aucun de ceux qui avaient été ses ennemis du temps de la Fronde, ne fut assez effronté pour s'exposer au ridicule de déférer son livre à un tribunal.

Un homme recommandable par ses mœurs et par son esprit, vient cent ans après ; il étend la pensée du duc de la Rochefoucault dans un livre systématique. On se déchaîne contre ce nouveau venu, on lui fait un procès criminel au parlement de Paris. C'est un vacarme terrible. Au bout de deux ans on ne s'en souvient plus ; c'est une preuve qu'il ne fallait pas fatiguer ce tribunal de cet inutile procès.

Un homme de lettres éloquent compose un roman moral de *Bélisaire*. Cette morale démontre qu'il faut regarder Dieu comme un père, et non comme un tyran capricieux ; que nous devons notre haine au crime, et notre indulgence aux erreurs.

Il y a un chapitre 15 qui est applaudi surtout par plus d'une tête couronnée. Des théologiens inconnus s'élèvent contre ce chapitre 15 ; ils soulèvent des corps entiers ; ils aigrissent des hommes en place ; ils cabalent, ils essaient de faire condamner le livre et l'auteur par le premier parlement du royaume. Le parlement laisse sagement le public juge d'un livre écrit dans la vue de perfectionner les mœurs publiques.

When the *Reflections of the Duke de la Rochefoucauld*<sup>358</sup> were printed, or rather the reflection, which presented under one hundred different facets, proves that pride is the great motive of humankind, each person found that he was right. The strongest thing said against him, it is that his book was the portrait of the painter. But none of those who had been his enemies in the days of the Fronde, were insolent enough to expose themselves to the ridicule of referring his book to a court.

A commendable man by his mores and by mind comes one hundred years later; he extends the Duke de la Rochefoucauld's reflection in a systematic book.<sup>359</sup> One rages against this newcomer; a criminal trial was brought against him at the parliament of Paris. It is a terrible racket. After two years, it is no longer remembered; it is evidence that this court should not be wearied by this useless trial.

An eloquent man of letters composes a moral novel about Belisarius.<sup>360</sup> This moral demonstrates that God must be regarded as a father, and not like a fickle tyrant; that we owe our hate to the crime, and our indulgence to the errors.

There is a chapter 15 that is applauded in particular by more than one crowned head. Some unknown theologians<sup>361</sup> revolt against this chapter 15; they provoke entire bodies; they embitter some men in established positions; they conspire, they try to have the book and the author condemned by the first parliament of the kingdom. The parliament wisely leaves the public judge a book written in view of perfecting the public mores.

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<sup>358</sup> Voltaire is making reference to François VI, duc de la Rochefoucauld's *Réflexions ou sentences et Maximes morales* (Paris: Barbin, 1665).

<sup>359</sup> Voltaire referencing Claude Adrien Helvétius's *De l'esprit* (Paris: Durand, 1758).

<sup>360</sup> Jean François Marmontel, *Belisarius* (London: Vaillant, 1767).

<sup>361</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.* 'Riballier et Coger.' (p. 48). (Riballier and Coger.)

Ce n'était pas sans doute une chose frivole, une vaine dispute, que le livre intitulé *Système de la nature*. C'est un ouvrage de ténèbres mis en lumière ; une déclamation perpétuelle sur le mal physique et le mal moral, qui de tout temps assiégea la nature. Ce livre trop répandu l'est pourtant moins que le poème de Lucrèce, dont les éditions sont innombrables, qui est traduit dans toutes les langues, et dont tant de vers sont dans toutes les bouches. Lucrèce même fut imprimé à l'usage du Dauphin fils unique de Louis XIV, comme un livre classique, par les soins du vertueux duc de Montausier, et des savants illustres qui présidèrent sous lui à l'éducation de ce prince. Les éditeurs n'eurent pour objet que la poésie de l'auteur et la latinité. Ils méprisèrent trop son ignorance et ridicule physique, et ses raisonnements peut-être plus mauvais encore, pour croire que cette lecture fût dangereuse. Si des esprits faibles peuvent en être séduits, s'ils avalent ce poison, l'antidote est tout prêt dans les démonstrations de Clarke, dans d'Erham, dans Nieuwentit même, dans cent auteurs qui ont opposé la force irrésistible d'une raison supérieure à la séduction des vers de Lucrèce, lesquels après tout ne sont que des vers. C'est ainsi qu'il faut combattre. Brûlez en cérémonie un exemplaire de Lucrèce, vous n'y gagnerez rien ; le bourreau ne convertira jamais personne.

Il était donc nécessaire de réfuter le *Système de la nature*, si ce mot de réfuter peut s'appliquer à une déclamation si vague et si verbeuse.

Undoubtedly, the book entitled *Système de la nature*<sup>362</sup> was not a vain thing, a pointless dispute. It is a work of darkness brought to light; a never-ending declamation about physical evil and moral evil, that since the dawn of time laid siege to nature. This most circulated book is, however, less so than the poem of Lucrece,<sup>363</sup> whose editions are countless, which is translated in all languages, and so many of its verses are on everyone's lips. Lucrece was even printed for the use of the Dauphin, only child of Louis XIV, as a classical book by the care of the virtuous Duke of Montausier<sup>364</sup> and the illustrious scholars who presided under him over the education of this prince. The editors' purpose was only the poetry of the author and the Latinity. They despised its ignorant and ridiculous physique too much, and its reasonings perhaps even worse, to believe that this reading be dangerous. If weak minds can be seduced by it, if they swallow this poison, the antidote is available in Clarke's demonstrations,<sup>365</sup> in Derham, in Nieuwentyt even, among one hundred authors who have opposed the irresistible force of a superior reason to the seduction of Lucrece's verses, which after all are only verses. Thus, we must fight. Burn in ceremony a reproduction of Lucrece, you will gain nothing from it; the executioner will never convert anyone.

It was therefore necessary to refute *Système de la nature*, if this word 'to refute' can apply to such a vague and verbose declamation.

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<sup>362</sup> Baron d'Holbach, *Système de la nature, ou Des loix du monde physique et du monde moral* (London: 1770).

<sup>363</sup> Lucrece, published in 1594, was a narrative poem composed by William Shakespeare. Gale, Cengage Learning, *A Study Guide for William Shakespeare's 'Lucrece'* (Boston: Cengage, 2017).

<sup>364</sup> Charles de Sainte-Maure, Duke de Montausier, (1610 - 1690) was a French army officer, man of letters and chief tutor of King Louis XIV's eldest son, the Dauphin Louis. *The General Biographical Dictionary*, vol. 11 (London: Nichols, 1813).

<sup>365</sup> Samuel Clarke, *A Demonstration of the Being and Attributes of God: More particularly in Answer to Mr. Hobbs, Spinoza and Their Followers* (London: W. Botham, 1705).

Un jeune homme élevé longtemps dans la sage congrégation de l'Oratoire, entreprit de faire oublier le livre du *Système de la nature*, par la *Philosophie de la nature*. Il écrivit non seulement pour prouver un Dieu, mais pour le faire aimer, pour s'encourager lui-même à remercier ce Dieu de la vie qu'il nous a donnée, et de tous les dons qui l'accompagnent, comme pour se résigner dans les malheurs innombrables qui la traversent. On découvrait évidemment dans cet écrit une âme honnête et sensible. On l'aurait bien mieux aperçue encore si le public n'avait pas été fatigué dans ce temps-là de tant de livres sur la nature ; Examen de la nature, Histoire de la nature, Tableau de la nature, Exposition de la nature. On était dégoûté de cette nature qui avait fourni tant d'insipides lieux communs.

Quelques esprits moins sensibles, et trop endurcis peut-être par un long usage d'une magistrature sévère, virent dans la naïveté des expressions de ce jeune homme, et dans ce mot seul de nature, une philosophie trop douce, qui offensait leur dureté. Ils l'accusèrent de combattre la cause qu'il voulait défendre ; ils lui suscitèrent un procès criminel dans une justice subalterne, et le firent condamner au bannissement perpétuel. Le parlement de Paris plus équitable, a cassé cette sentence.



A young man,<sup>366</sup> raised for a long time in the wise congregation of the Oratory, set about making the book *Système de la nature* obsolete through *Philosophie de la nature*.<sup>367</sup> He not only wrote to demonstrate a God, but to make him liked, to encourage himself to thank this God for the life that he gave to us, and for all the gifts that accompany it, as to resign himself to the countless misfortunes that span it. Needless to say, an honest and sensitive soul would be discovered in this publication. Yet, we would have caught a better glimpse of it, if the public had not been wearied in those days by so many books about nature; *Examen de la nature*, *Histoire de la nature*, *Tableau de la nature*,<sup>368</sup> *Exposition de la nature*. We were disgusted by this nature that had produced so many insipid popular beliefs.<sup>369</sup>

Some less sensitive minds, and perhaps exceedingly hardened by a lengthy use of a severe magistracy, saw through the naivety of this young man's expressions, and in this single word nature, a truly lenient philosophy that offended their severity. They accused him of fighting for the cause that he wished to defend; they brought a criminal trial against him in a subordinate justice system and condemned him to lifelong banishment. The more equitable *parlement* of Paris quashed this sentence.

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<sup>366</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.*

'*Delisle de Sales, mort le 22 septembre 1816.*' (p. 49).

(Delisle de Sales, died 22 September 1816.)

<sup>367</sup> Jean-Baptiste-Claude Delisle de Sales, *De la philosophie de la nature ou traité de morale pour le genre humain tiré de la philosophie et fondé sur la nature*, vol. 6 (London: 1789).

<sup>368</sup> Chateaubriand's *Tableau de la Nature* was a collection of poems. Its volumes spanned from 1784 to 1789.

<sup>369</sup> Voltaire original note, *op. cit.*

'*On devrait penser que ce mot nature est une expression vague qui ne signifie rien. Il n'y a point de nature ; tout est art, depuis la formation et les propriétés du soleil jusqu'à la moindre racine, jusqu'à un grain de sable ; et cet art est si grand que cent mille millions d'Archimède ne pourraient l'imiter.*' (p. 132).

(It should be thought that this word nature is a vague expression which means nothing. There is no nature; everything is art, from creation and the properties of the sun, to the least important root, to a grain of sand; and this art is so great that one hundred thousand million Archimedes could not mimic it.)

Il a senti qu'il était aussi facile qu'injuste, de donner un sens coupable à des discours innocents ; et il s'est souvenu des paroles que prononça autrefois dans Paris même le César Julien protecteur et vengeur des Gaules. Un légiste délateur s'échauffant devant lui dans son plaidoyer contre un citoyen qu'il voulait perdre, lui dit, César, *suffira-t-il donc de nier ?* L'équitable Julien répondit *suffira-t-il d'accuser ?*

Dans le moment, Messieurs, que je vous propose mes faibles réflexions, je lis dans la gazette de la république du 26 Juillet que l'on va rétablir en Espagne le pouvoir d'un tribunal qui a toujours plus écouté les délateurs que les déférés ; tribunal érigé autrefois par la superstition et par l'injustice ; tribunal que tous les parlements de France ont toujours écarté, que l'Allemagne ne reçoit point, qui est en horreur dans de grands Etats d'Italie, et encore plus dans tout le Nord ; c'est l'Inquisition puisqu'il faut la nommer. C'est elle qui admet la délation d'un fils contre son père, d'un père contre son fils. C'est elle qui jette dans des cachots les accusés, sans leur dire jamais de quoi on les accuse. C'est elle qui condamne sans confrontation. C'est elle enfin qui alluma tant de bûchers du détroit de Cadix aux rivages de l'Inde. Je ne vous répéterai qu'une seule anecdote sur ce tribunal trop connu. Cromwell ayant préparé la flotte qui prit la Jamaïque au roi d'Espagne, l'ambassadeur espagnol lui demanda s'il avait à se plaindre du roi son maître, et quelle réparation il voulait ? Cromwell lui répondit, *Je veux que les mers soient libres, et que l'Inquisition soit abolie sur la terre.*

Il manquait à cette réponse d'être faite par un homme vertueux. Cromwell eût ressemblé aux anciens Romains qui défendirent aux Carthaginois d'immoler des hommes.

He felt that it was just as easy as it was unjust to give a guilty meaning to innocent speeches; and he remembered words that in the past, protector and avenger of the Gauls, Caesar Julian said in Paris itself. A legist informer getting worked up in front of him during his plea against a citizen whom he wanted to perish, said to him, Caesar, *will it therefore suffice to deny [one's own guilt]?* The fair Julian responded *will it suffice to accuse?*<sup>370</sup>

At the moment, Sirs, that I propose my weak thoughts to you, I am reading in the *Gazette de la république*, dated 26 July, that in Spain the power of a court, which has always listened more to the informers than the accused, is going to be re-established; formerly, a court established by superstition and injustice; a court that all the parliaments of France have always rejected, that Germany does not receive, that is loathed in the great States of Italy, and even more in all the north ; it is the Inquisition,<sup>371</sup> since it needs to be named. It is the Inquisition that permits the denunciation of a son against his father, of a father against his son. It is the Inquisition that throws the accused in dungeons, without ever telling them what they are accused of. It is the Inquisition that condemns without confrontation. Finally, it is the Inquisition that lit so many stakes, from the strait of Cadix to the shores of India. I will only tell you a single anecdote about this court that is known all too well. Cromwell having prepared the fleet that took Jamaica for the King of Spain, the Spanish ambassador asked him if he had cause to complain about the king, his master, and what reparation he wanted? Cromwell replied *I want the seas to be free, and that the Inquisition be abolished on earth.*<sup>372</sup>

Absent from the response made was a virtuous man. Cromwell would have resembled the ancient Romans who forbade the Carthaginians to immolate men.

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<sup>370</sup> Elizabeth Joh clarifies this anecdote about Caesar Julian in her article 'If it suffices to accuse: United States v. Watts and the reassessment of acquittals', *New York University Law Review* (New York: New York University School of Law), n°3, 1999, by explaining that 'Numerius, the governor of Narbonensis, was on trial before the Emperor, and, contrary to the usage in criminal cases, the trial was public. Numerius contented himself with denying his guilt, and there was not sufficient proof against him. His adversary, Delphidius, 'a passionate man', seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, 'Oh, illustrious Caesar! If it is sufficient to deny, what hereafter will become of the guilty?' to which Julian replied, 'If it suffices to accuse, what will become of the innocent?'' (p. 887).

<sup>371</sup> The Spanish Inquisition was established by Ferdinand II of Aragon and Isabella I of Castile during the 15<sup>th</sup> Century. Its main purpose was to eradicate Jews, who they believed were the cause of corruption within the Catholic Church. It is remembered for the horrendous tortures that were implemented during its execution. Joseph Pérez, *The Spanish Inquisition: A History* (Connecticut: Yale University Press, 2005).

<sup>372</sup> Voltaire original note, *op. cit.*

'*Mémoires de Ludlow, tome II, page 63, édition d'Amsterdam.*' (p. 135).

(*Mémoires de Ludlow*, volume II, page 63, Amsterdam edition.)

~ ARTICLE XII ~

**DE LA BIGAMIE ET DE L'ADULTÈRE**

La loi Caroline punit ces délits par la mort. La peine n'est-elle pas trop au-dessus de la faute ?

A commencer par la bigamie, ce qui est autorisé de tout temps dans la plus ancienne et la plus vaste partie du monde, ne peut être dans la plus nouvelle et la plus petite, que la violation d'un usage nouveau, et n'est pas un crime par soi-même. Le même juif qui peut épouser plusieurs femmes en Perse par la loi, et en Turquie par connivence, est coupable en Italie, en Allemagne, en Espagne, en France, s'il use de cet ancien privilège. Ne pourrait-on pas distinguer entre les devoirs universels, et les devoirs locaux ? Respecter son père sa mère, les nourrir dans l'indigence, payer ses dettes, n'outrager personne, secourir les souffrants autant qu'on le peut ; ce sont là des devoirs à Siam comme à Rome. N'épouser qu'une femme, est un devoir local.

~ ARTICLE XII ~

ON BIGAMY AND ADULTERY

The Carolina law<sup>373</sup> punishes these crimes by death. Does the punishment not immensely exceed the transgression?

Starting with bigamy, which since the dawn of time has been permitted in the most ancient and vastest part of the world,<sup>374</sup> can only be in the newest and the smallest, the violation of a new custom, and is not a crime in itself. The same Jew who can marry several women in Persia by law, and in Turkey through complicity, is guilty in Italy, Germany, Spain, France, if he practises this ancient privilege.<sup>375</sup> Could we not distinguish between universal duties and local duties? To respect one's father, one's mother, to feed them in poverty, to pay one's debts, to insult no one, to help the poorly as much as possible; these are duties in Siam as in Rome. To only marry one woman is a local duty.<sup>376</sup>

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<sup>373</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.*

*'Rédigée par Schwarzenberg, proposée à la diète par Charles-Quint, elle fut adoptée à Regensbourg, en 1532 ; mais son application dans les différents États germaniques se fit attendre longtemps.'* (p. 52).

(Drafted by Schwarzenberg, proposed at the diet by Charles-Quint, it was adopted in Regensburg, in 1532; but its application in the different Germanic States took a rather long time.)

<sup>374</sup> In his work *Women Shall Not Rule: Imperial Wives and Concubines in China from Han to Liao* (Maryland: Rowman & Littlefield, 2013), Keith McMahon explains that polygamy was a norm in Chinese history 'of the institution of imperial rulership [...] The institution and values of royal polygamy were established in ancient times, beginning with foundational principles in three key areas: love and favouritism, women and state politics, and the strict division between main wife and concubines. These emerged in mythical models of early polygamy and the first historical records of its rules and practices.' (p. 9).

<sup>375</sup> Reforms introduced by Pope Gregory VII and the Catholic Church in the 11<sup>th</sup> Century led to polygamy dying out and increased popularity of the nuclear family, even among the wealthy. Mary Fay, *Unveiling the Harem: Elite Women and the Paradox of Seclusion in Eighteenth-Century Cairo* (New York: Syracuse University Press, 2012).

<sup>376</sup> Kehl edition editors' original note, *op. cit.*

*'Dans tout pays où la polygamie n'est point permise, la bigamie est un véritable délit, puisque le bigame commet un faux dans un acte public. Il trompe la femme qu'il épouse la seconde. C'est une action très-réfléchie : cette action doit donc être punie ; mais c'est la superstition, c'est l'idée d'un sacrilège, de la profanation d'un sacrement, idée étrangère à l'ordre civil, qui a fait établir la peine de mort. C'est encore là une des barbaries qui tirent leur origine de la théologie. Il n'y a pas longtemps qu'un grave magistrat proposa de faire brûler vive une hermaphrodite qui s'était mariée comme garçon, et que les médecins déclarèrent être une femme. Elle avait, disait-il, profané le sacrement de mariage.'* (pp. 136-137).

(In every country where polygamy is not permitted, bigamy is a real crime, since the bigamist commits a falsehood in a public act. He deceives the women who he marries second. It is a very well-thought-out action: therefore, this action must be punished; but it is superstition, it is the idea of a sacrilege, of the desecration of a sacrament, a foreign idea to civil order, which has the death penalty established. It is still there, one of the savageries that draws its origin from theology. It was not too long ago, when a serious magistrate proposed to have a hermaphrodite who had married as a boy burned alive, and who the doctors declared to be a woman. She had, it was said, desecrated the sacrament of marriage.)

L'adultère est un crime chez tous les peuples de la terre ; l'adultère des femmes s'entend ; attendu que les hommes ont fait les lois. Ils se sont regardés comme les propriétaires de leurs épouses ; elles sont leur bien ; l'adultère les leur vole ; il introduit dans les familles des héritiers étrangers. Joignez à ces raisons la cruauté de la jalousie, et ne soyez pas étonné que chez tant de nations sortant à peine de l'état de sauvage, l'esprit de propriété ait décerné la peine de mort contre les séducteurs et les séduites. Aujourd'hui les mœurs adoucies, ne punissent plus avec cette rigueur, un crime que tout le monde est tenté de commettre, que tout le monde favorise quand il est commis, qu'il est si difficile de prouver, et dont on ne peut guère se plaindre en justice, sans se couvrir de ridicule. La société a fait une convention secrète de ne point poursuivre des délits dont elle s'est accoutumée à rire.

Adultery is a crime among all the people of the earth; adultery of women is practised; given that men have made the laws. They considered themselves to be the owners of their spouses; they are their property; adultery steals them from them; it introduces foreign heirs into families. Join the cruelty of jealousy to these reasons, and do not be surprised that among so many nations, hardly leaving behind the natural state, the spirit of possession meted out the death penalty against the seducers<sup>377</sup> and the seduced.<sup>378</sup> Today the mitigated customs, no longer punish with this rigour, a crime that everyone is tempted to commit, that everyone favours when it is committed, that it is so difficult to prove, and which one can hardly complain about in the judicial process, without bringing ridicule on oneself. Society has made a secret convention, not to pursue crimes that it has become accustomed to laughing at.<sup>379</sup>

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<sup>377</sup> The death penalty was in practice in Geneva for those found guilty of adultery. Support for this punishment came from ‘ministers such as John Calvin, who kept reminding the local population of the biblical condemnation of adultery and of the Old Testament prescription of death by stoning for anyone found guilty of this crime.’ Robert Kingdon, *Adultery and Divorce in Calvin’s Geneva* (Massachusetts: Harvard University Press, 1995), p. 116.

<sup>378</sup> As detailed by Richard Bulliet, Pamela Crossley, Daniel Headrick, Steven Hirsch, and Lyman Johnson in *The Earth and Its Peoples: A Global History*, vol. 1 (Boston: Houghton Mifflin, 2008), in old Saxony severe punishment was in place for women who committed adultery. For example, ‘if a virgin [disgraced] her father’s house by adultery or if a married woman [broke] the bond of wedlock and [committed] adultery, they sometimes [compelled] her to hang herself with her own hand and then hang the seducer above the pyre on which she [had] been burned. Sometimes a troop of women [got] together and [flogged] her through the towns, beating her with rods and stripping her to the waist, cutting her whole body with knives until finally they [left] her for dead or almost dead.’ (p. 291).

<sup>379</sup> Kehl edition editors’ original note, *op. cit.*

*‘L’adultère est un crime en morale, mais il ne peut être un délit punissable par les lois : 1°) parce que, si vous avez égard à la violation du serment, la punition de la femme ne peut être juste, à moins que la loi ne condamne le mari convaincu d’adultère à la même peine ; 2°) si vous avez égard au crime de donner à une famille des héritiers étrangers, il faudrait donc prouver alors que le délit a été consommé ; or c’est ce qui est impossible, sinon par l’aveu de la coupable. Au reste, en laissant au mari, comme à la femme, la liberté de faire divorce, toute peine contre l’adultère devient inutile. Il est d’ailleurs dangereux de laisser subsister une loi pénale contre l’adultère dans un pays où ce crime est commun, et toléré par les mœurs, parce qu’alors cette loi ne peut être que l’instrument de vengeances personnelles ou d’intérêts particuliers.’* (p. 138).

(Adultery is a moral crime, but it cannot be a crime punishable by the laws: 1°) because if you consider the violation of the oath, punishment of the woman cannot be fair, unless the law condemns the husband, convicted of adultery to the same punishment; 2°) if you consider the crime of giving a family foreign heirs, it would therefore be necessary to demonstrate that the crime was consummated; yet, it is what is impossible, otherwise by the confession of the guilty party. Furthermore, by giving to the husband, as to the wife, the freedom to divorce, every punishment against adultery becomes useless. Incidentally, it is dangerous to leave a penal law persist against adultery in a country where this crime is common and tolerated by the customs, because in this way, this law can only be the instrument of personal revenge, or personal interests.)

Mais lorsqu'à la honte des familles de tels procès éclatent, quand la justice sépare les deux conjoints, il y a un autre inconvénient dans la moitié de l'Europe. Cette moitié se gouverne encore par ce qu'on appelle le droit canon. Cette étrange jurisprudence qui fut longtemps l'unique loi, ne considère dans le mariage, *qu'un signe visible d'une chose invisible* ; de sorte que deux époux étant séparés par les lois de l'Etat, la chose invisible subsiste encore quand le signe visible est détruit. Les deux époux sont réellement divorcés, et cependant, ils ne peuvent par la loi se pourvoir ailleurs. Des paroles inintelligibles empêchent un homme séparé légalement de sa femme d'en avoir légalement une autre, quoiqu'elle lui soit nécessaire. Il reste à la fois marié et célibataire ; cette contradiction extravagante n'est pas la seule qui subsiste dans ces pays où l'ancienne jurisprudence ecclésiastique est mêlée avec la loi de l'Etat. Les princes, les rois y sont liés eux-mêmes par ces chaînes ridicules et funestes. Ils sont obligés de mentir hautement devant Dieu, pour obtenir par grâce un divorce sous un autre nom, de la part d'un prêtre étranger. Ce prêtre déclare quand il veut le mariage nul, au lieu de le déclarer rompu.



But when to the shame of families such trials emerge, when justice separates the two spouses, there is another disadvantage in half of Europe. This half still governs itself by what is called canon law.<sup>380</sup> This foreign jurisprudence, which was for a long time the only law, only considers in marriage, *a visible sign of an invisible thing*; so two spouses being separated by the laws of the State, the invisible thing still persists when the visible sign is destroyed. Indeed, the two spouses are divorced, and yet, by the law they cannot appeal elsewhere. Some unintelligible words prevent a man, legally separated from his wife, to legally take another, although he needs her. He remains both married and single; this extravagant contradiction is not the only one that persists in these countries, where the former ecclesiastical jurisprudence is implicated with the law of the State. The princes, the kings are themselves bound to it by these ridiculous and gruesome chains. They are obliged to lie frankly before God, to obtain by grace a divorce under another name, on behalf of a foreign priest. This priest declares, when he wishes, the marriage null, instead of declaring it terminated.

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<sup>380</sup> As clarified by Sara Butler, ‘following biblical directive, early Christian legislation put forward by Constantine permitted divorce for adultery but restricted it to the wife as perpetrator. Although a wife could sue for divorce if her husband was engaged in murder, poisoning or grave robbery, the early Roman church did not see a man’s adultery as a failing sufficient to grant divorce. Under Emperors Theodosius and Valentinian, this position changed: adultery by the husband also became a legitimate basis for divorce.’ *Divorce in Medieval England: From One to Two Persons in Law* (New York: Routledge, 2013), p. 15.

Ainsi le bon et faible Louis XII roi de France, se vit forcé de faire un faux serment, et de jurer qu'il n'avait jamais consommé l'acte du mariage avec la fille de Louis XI, quoiqu'ils eussent couché ensemble pendant dix-huit ans. Ainsi Henri VIII d'Angleterre mentit inutilement devant les légats de Clément VII, et l'on sait assez comment la nation fut amenée à secouer un joug odieux qui forçait les hommes au parjure ; tant il est vrai que les poisons les plus mortels peuvent se tourner quelquefois en nourriture bienfaisante.

Ainsi le grand Henri IV en France, et Marguerite sa femme, furent obligés de mentir tous deux, pour mettre sur le trône l'infortunée Marie de Médicis. Ainsi Isabelle de Némours, reine de Portugal, mentit plus impudemment encore, pour quitter son mari, et pour épouser son beau-frère.

Thus, the good and weak Louis XII, King of France, saw himself forced to make a false oath, and to swear that he had never consummated the act of marriage with the daughter of Louis XI, although they had slept together for eighteen years.<sup>381</sup> Thus, Henry VIII of England lied vainly before the legates of Clement VII,<sup>382</sup> and it is well known how the nation was brought to shock an unbearable yoke who forced men into perjury; for it is true that the most mortal poisons can sometimes transform into nurturing food.

Thus, the great Henry IV in France, and Margaret his wife, were both obliged to lie, in order to put the unfortunate Marie de Medici on the throne.<sup>383</sup> In this way, Isabelle de Nemours, Queen of Portugal, lied even more insolently, to leave her husband and to marry her brother-in-law.<sup>384</sup>

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<sup>381</sup> Louis XII was already married when he was put on the throne. In order to marry Anne de Bretagne Louis had to secure a divorce from Jeanne de France. Cynthia Brown (ed.) explains that during the divorce trial 'Louis XII produced a letter written by Louis XI claiming that he had decided to marry his daughter to the duke of Orléans *'pource qu'il me semble que les enfants qu'ils auront ensemble ne leur cousteront guère à nourrir.'* (because it seems to me that it will hardly cost them anything to feed the children that they will have together.) [...] Although Jeanne was in a strong position to win, the divorce was granted by the pope, Alexander VI.' *The Cultural and Political Legacy of Anne de Bretagne: Negotiating Convention in Books and Documents*, Cynthia Brown, ed. (Cambridge: Brewer, 2012), p. 87.

<sup>382</sup> Henry VIII's grounds for divorce came from 'from his own assiduous study and learning, and from his discussions with many theologians. [...] The king some years past had noticed while reading in the Bible the severe penalty inflicted by God on those who married the widows of their brothers. He began to be troubled in his conscience and came to think that the sudden deaths of his male children had been a divine judgment upon his marriage.' George Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church* (New Haven: Yale University Press, 2005), p. 3.

<sup>383</sup> Margaret agreed to divorce King Henry IV of France, as she was authorised to keep the title of queen as well as some grand estates. Furthermore, her debts were paid off and she actually 'became the most faithful partisan of her former husband; she revealed to him several plots that were formed for his destruction, bitterly bewailed his death, and manifested an eager desire to take vengeance on his assassins.' William Taylor, *Romantic Biography of the Age of Elizabeth* (London: Bentley, 1842), p. 45.

<sup>384</sup> See Société Bibliographique, *Polybiblion : revue bibliographique universelle*, vol. 5 (Paris: Polybiblion, 1877). Look specifically at the following section:

*'Un enfant idiot, méchant, cruel, fantasque et plein de vices, Alphonse VI, tient le sceptre de la maison de Bragançe. Alphonse a épousé Isabelle de Nemours-Savoie. Mariée sans l'être, Isabelle est la reine, mais elle n'est pas la femme du roi. Les souffrances de cette princesse, les folies et les cruautés d'Alphonse font ouvrir les yeux à la noblesse portugaise. Le roi a un frère, Dom Pedro, gentilhomme accompli : c'est à lui qu'on offre le trône ; Alphonse abdique ; le Pape prononce le divorce d'Isabelle de Nemours, laquelle épouse Dom Pedro, et le peuple crie avec plus d'enthousiasme que jamais : « Vive Bragançe ! »'* (p. 17).

(An idiotic, nasty, cruel, fickle child and full of vices, Alfonso VI, holds the sceptre of the house of Bragançe. Alfonso married Isabelle de Nemours-Savoie. Married without being the case, Isabelle is the queen, but she is not the wife of the king. The sufferings of this princess, the follies and the cruelties of Alfonso made the Portuguese nobility open their eyes. The king has a brother, Dom Pedro, accomplished noble by birth: it is him who the throne was offered to; Alfonso abdicates; the Pope pronounces the divorce of Isabelle de Nemours, who marries Dom Pedro, and the people shout with more enthusiasm than ever: 'Long live Bragançe!')

Voilà à quoi des royaumes sont exposés, quand on n'a pas assez de bon sens et de courage, pour anéantir à jamais un code réputé sacré, qui est en effet la honte des lois et la subversion des Etats. Mais les nations judicieuses qui prononcent le divorce des conjoints adultères, doivent-elles y ajouter la peine de mort ? n'y a-t-il pas là une contradiction funeste ? Le mari et la femme peuvent donner chacun de leur côté des citoyens à l'Etat : et il est clair qu'ils ne lui en donneront pas si vous les faites mourir.

Si nous osions un moment élever notre faible intelligence jusqu'à la sphère d'une lumière inaccessible, nous dirions que le Dieu des vengeances qui punissait autrefois quatre générations pour la transgression d'un seul homme, et qui punit aujourd'hui pendant l'éternité, a pourtant pardonné à la femme adultère.

On n'a point encore retranché expressément de nos lois consistoriales, cette ordonnance qui prescrit le divorce entre deux personnes, dont l'une est atteinte de la lèpre, *d'autant que par la loi divine, il est expressément dit, que les lépreux doivent être séparés des personnes saines.*

Nous ne connaissons point la lèpre. C'était une gale virulente, commune dans un climat brûlant, chez un peuple errant alors dans des déserts, et privé de toutes les commodités de la vie qui servent à guérir cette maladie dégoûtante. Il ne semble pas convenable de conserver une loi qui n'est pas plus faite pour nous que cette autre loi juive, qui condamnait à mort deux époux, ayant rempli les devoirs du mariage dans le temps que la femme avait ses règles ?

Behold what the kingdoms are exposed to, when one does not have enough common sense and courage, to annihilate a celebrated sacred code forever, which in fact is the shame of laws and the corruption of States. But the judicious nations that pronounce the divorce of adulterous spouses, must they add the death penalty on to it? Is there not a horrible contradiction there? The husband and wife can each give their citizen's side to the State: and it goes without saying that they will not give it to the State if you kill them.

If we dare for a moment to increase our weak intelligence to the sphere of an inaccessible light, we would say that the God of revenge, who in the past punished four generations for the transgression of a single man, and who today punishes for eternity, has yet pardoned the adulterous woman.

We still have not expressly abolished our consistorial laws, this ruling that annuls divorce between two people, of whom one is attacked by leprosy, *especially as by Divine law, it is expressly said, that lepers must be separated from healthy people.*<sup>385</sup>

We are not familiar with leprosy. It was an aggressive scabies, common in a scorching climate, among a nomadic people in deserts in the past, and deprived of all the conveniences of life that are used to cure this disgusting sickness. Does it not seem inappropriate to preserve a law which is no more made for us than that other Jewish law, which condemned two spouses to death, having fulfilled the duties of marriage while the woman was menstruating?

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<sup>385</sup> As stated by R. Grandroute, *op. cit.*, pp. 9-10., Voltaire is referring to one of the laws about marriage in the *Lois consistoriales de la ville et république de Berne* (1745), entitled '*Que les lépreux ne pourront point se marier avec des personnes saines.*' (Let it be that lepers will not be able to marry healthy people.) This law asserted: '*Ordonnons et voulons que les lépreux, tant jeunes que vieux, ne se marient point avec des personnes saines. Enjoignons et commandons à nos juges du Consistoire Suprême de ne point consentir à de tels mariages, mais d'en défendre l'accomplissement ; et même de les dissoudre, s'ils étaient actuellement consommés. D'autant que par la loi divine il est expressément dit que les lépreux doivent être séparés des personnes saines et que, suivant nos lois, la lèpre est une raison suffisante pour obtenir le divorce.*'

(Let us command and want that lepers, young as well as old, do not marry healthy people. Let us order and command our judges of the Supreme Consistory not to consent to these marriages, but to forbid their completion; and even to dissolve them, if they were at present consummated. Particularly as by Divine law, it is expressly said that lepers must be separated from healthy people, and that following our laws, leprosy is a sufficient reason to obtain divorce.)

**~ ARTICLE XIII ~**

**DES MARIAGES ENTRE PERSONNES DE DIFFÉRENTES SECTES**

Plus d'une nation a proscrit sous des peines très rigoureuses les mariages avec des personnes qui ne professeraient pas la religion du pays. La politique a pu faire cette loi, mais la politique change, et l'intérêt du genre humain ne change point. Le bien public n'exige-t-il pas à la longue, que les deux sexes de religions opposées se réunissent ? Y a-t-il une manière plus douce et plus sûre d'établir enfin cette tolérance que l'Europe désire, tolérance si nécessaire, que c'est la première loi, comme nous l'avons dit de tout l'empire de Russie, conçue par le génie de l'impératrice, écrite de sa main, et bénie de son peuple ? Qu'on regarde la Prusse, l'Angleterre, la Hollande, Venise ; et que les nations intolérantes rougissent.

~ ARTICLE XIII ~

ON MARRIAGES BETWEEN PEOPLE OF DIFFERENT SECTS

More than one nation has forbidden, under very strict punishments, marriages with people who would not practise the country's religion.<sup>386</sup> Politics was able to make this law, but politics changes, and the interest of humankind does not change. The public good, does it not demand overtime, that the two sexes of opposite religions come together? Is there a more lenient and more sure way to finally establish this tolerance that Europe desires, such necessary tolerance, that it is the first law, as we have said of all the Russian empire, conceived by the genius of the Empress, written of her hand and blessed by her people?<sup>387</sup> Let us look at Prussia, England, Holland, Venice; and let the intolerant nations blush.

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<sup>386</sup> As highlighted in the *Chambers's Encyclopædia: A Dictionary of Universal Knowledge for the People*, vol. 6 (Edinburgh: Chambers, 1870), 'in various countries of Europe, marriages between persons of different religious belief [had] either been prohibited or put under restrictions. The canon law forbade marriages between Christians and non-Christians; at one time, it merely discouraged, at another altogether prohibited the marriage of orthodox Christians with heretics. Subsequently to the Reformation, papal dispensations were in use to be granted for marriages between Catholics and Protestants, with the condition annexed, that the children should be brought up in the Catholic faith. During the latter part of 17<sup>th</sup> Century parents seem to have been left at liberty to make what agreement they pleased on this head; and in default of their making any, it was presumed that the children would follow the religion of their father.' (p. 495).

<sup>387</sup> As asserted in Inna Gorbátov's work, *Catherine the Great and the French Philosophers of the Enlightenment* (Maryland: Academia Press, 2006), Voltaire 'interpreted Russia's participation in the Polish struggle as an expression of Catherine's genuine belief in religious tolerance. He applauded her seemingly 'enlightened' and humanistic policy: 'The example given by the Empress of Russia is unique in this world. She has sent forty thousand Russians to preach tolerance, with bayonets at the end of their muskets....' He continued: 'She has set armies on the march ... in order to force [people] to tolerate each other.' (p. 86).

~ ARTICLE XIV ~

DE L'INCESTE

Pour l'inceste il est démontré que c'est une loi de bienséance. Le grand *Dictionnaire* encyclopédique, imprimé à Paris, avoue qu'*entre parents, les conjonctions ont été permises en certains cas un peu rares, comme au commencement du monde, et immédiatement après le déluge, etc.*

On peut ajouter que l'inceste était alors un devoir. Si un frère et une sœur, ou un père et sa fille, restés seuls sur la terre, négligeaient la propagation, ils trahiraient le genre humain.

Les Romains, toujours ennemis des Perses dès qu'ils furent leurs voisins, les accusèrent de légitimer l'inceste. Le bruit courut longtemps dans Rome, que chez le Grand Roi, les mères couchaient d'ordinaire avec leurs fils, et que pour parvenir au rang des mages, il fallait être né de cet accouplement. Catulle le dit, en termes exprès.



~ ARTICLE XIV ~

ON INCEST

With respect to incest, it is shown that it is a law of propriety. The *Grand dictionnaire encyclopédique*, printed in Paris, says that *the unions have been permitted between parents in certain rare cases, such as the beginning of the world, and immediately after the Flood, etc.*<sup>388</sup>

It can be added that incest was then a duty. If a brother and a sister, or a father and his daughter, remained alone on earth, neglecting propagation, they would betray humankind.

The Romans, eternal enemies of the Persians since they were their neighbours, accused them of legitimising incest. In Rome, the rumour circulated for a long time that at the Great king's palace, mothers regularly slept with their sons, and that to reach the rank of magus,<sup>389</sup> one had to be born of this coupling. Catullus<sup>390</sup> said it, in express terms.

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<sup>388</sup> See Diderot, *Encyclopédie*, vol. 10 (Geneva: Neuchâtel, 1765). Incest is described as an act that: *'[...] dans certains temps et dans certains cas, n'a pas été considérée comme criminelle : car au commencement du monde, et encore assez longtemps depuis le déluge, les mariages entre frères et sœurs, entre tante et neveu, et entre cousins-germains, ont été permis. Les fils d'Adam et d'Eve n'ont pu se marier autrement, non plus que les fils et filles de Noé, jusqu'à un certain temps. Du temps d'Abraham et d'Isaac, ces mariages se permettoient encore ; et les Perses se les sont permis bien plus tard, puisqu'on dit que ces alliances se pratiquent encore à présent chez les restes des anciens Perses.'* (p. 645).

([...] at certain times and in certain cases, was not considered to be criminal: because at the start of the world, and yet for a long time since the flood, marriages between brothers and sisters, between aunt and nephew, and between whole-blood cousins have been permitted. The sons of Adam and Eve could not marry by other means, neither could the sons and daughters of Noah, up to a certain time. From the time of Abraham and Isaac, these marriages were still permitted; and the Persians allowed them later on, since it is said that these alliances are still practised presently among the ancient Persians who remained.)

<sup>389</sup> Elizabeth Archibald explained in her work *Incest and the Medieval Imagination* (Oxford: Oxford University Press, 2001) that 'the Persian King Cambyses insisted on marrying his sister; the royal judges could find no precedent for such a marriage, and so declared diplomatically that legally the King of Persia could do whatever he liked. Strabo reported that the Persian magi slept with their own mothers.' (p. 17).

<sup>390</sup> Catullus (84 B.C. - 54 B.C.) was a Roman lyrical poet. Catullus, *The Poems of Catullus: An Annotated Translation*, Trans., Jeannine Uzzi and Jeffery Thomson (Cambridge: Cambridge University Press, 2015).

*Nam magus ex matre, et gnato nascatur oportet.*

On imputait plus d'une turpitude à cette brave nation, depuis qu'elle avait vaincu et tué Crassus : de même que les moines grecs chargèrent Mahomet second des accusations les plus atroces et les plus ridicules, depuis qu'il eut pris Constantinople. C'était une vengeance de moines ; ils criaient à l'hérétique.

On prétend aujourd'hui parmi quelques nations de l'Europe, qu'il n'est pas permis à un homme veuf d'épouser une parente de sa femme au quatrième degré, et qu'une veuve serait coupable de la même transgression, si l'un et l'autre n'achetaient pas une dispense du pape.

Il y a chez ces mêmes nations un autre inceste qu'on appelle spirituel. C'est une espèce de sacrilège dans un homme d'Eglise, de coucher avec une fille qu'il a baptisée, ou confirmée, ou confessée. Voyez les *Cas de Pontas*, au mot Inceste.

*Nam magus ex matre, et gnato nascatur oportet.*<sup>391</sup>

We have blamed more than one depraved act on this brave nation, since it had vanquished and killed Crassus:<sup>392</sup> in the same way that the Greek monks charged Mehmed II<sup>393</sup> with the most atrocious and the most ridiculous accusations, since he seized Constantinople. It was the revenge of the monks; they shouted heretic.

Today, it is alleged by some European nations, that it is not permitted for a widowed man to marry a fourth degree female relative of his wife, and that a widow would be guilty of the same transgression if both of them did not buy a dispensation from the Pope.<sup>394</sup>

Among these same nations, there is another incest that is called spiritual. It is a type of sacrilege in a man of God, to sleep with a girl that he baptised, or confirmed, or confessed. See the *Cases of Pontas*, to the word incest.<sup>395</sup>

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<sup>391</sup> 'A marge should be born of a mother married to her son.' Constantin-François Volney, *New Researches on Ancient History*, vol. 2 (London: W. Lewis, 1819), p. 236.

<sup>392</sup> Marcus Licinius Crassus (115 B.C. - 53 B.C.) was a Roman military commander. Crassus was conquered and murdered at the Battle of Carrhae. Lee Brice, *Warfare in the Roman Republic: From the Etruscan Wars to the Battle of Actium* (California: ABC-CLIO, 2014).

<sup>393</sup> Mehmed II (1451 - 1481) ruled from 1444 to 1446 and from 1451 to 1481 as an Ottoman Sultan. He defeated Constantinople and put an end to the Byzantine Empire. Bruce Thatcher, *Adamant Aggressors: How to Recognize and Deal with Them* (Indiana: Xlibris, 2011).

<sup>394</sup> See Diderot, *Encyclopédie*, vol. 18 (Paris: Diderot, 1782), in which an incestuous marriage is defined as: '[...] celui qui est contracté entre des personnes parentes dans un degré prohibé, comme les père et mère avec leurs enfans ou petits-enfans, à quelque degré que ce soit, les frères et sœurs, oncles, tantes, neveux et nièces, et les cousins et cousines jusques et compris le quatrième degré.' (p. 506).

([...] one that is formed between related individuals to a prohibited degree, like fathers and mothers with their children or grandchildren, to any degree whatsoever, be it brothers and sisters, uncles, aunts, nephews and nieces, and male and female cousins up to and including the fourth degree.)

<sup>395</sup> In his *Dictionnaire des cas de conscience ou décisions* (Dictionary of Cases of Conscience) (Paris: Brandmuller, 1736), Jean Pontas, priest and Doctor of Canon law explained that:

'[...] il y a encore un troisième genre d'inceste, qu'on appelle spirituel, à cause qu'il regarde des personnes avec lesquelles on a contracté une parenté ou alliance spirituelle par le sacrement du Baptême, ou par celui de la Confirmation, auxquels quelques Théologiens ajoûtent celui de la Penitence.' (p. 794).

([...] there is yet a third type of incest that is called spiritual, because it considers people with whom we have formed a union or spiritual relationship by the sacrament of baptism, or by that of confirmation, to which some theologians add penance.)

La France n'a point de loi expresse contre ces espèces de délits ; mais quelques tribunaux les ont quelquefois punis de mort de leur propre autorité ; sur quoi on peut observer la supériorité de la jurisprudence anglaise. Elle punirait tout juge qui aurait infligé une peine que la loi n'aurait pas décernée.

C'est à la prudence de ceux qui gouvernent, de dicter des lois ; de proportionner chaque peine à chaque délit, et de contenir les accusés et les juges.

Serait-il temps de ne plus regarder les mariages entre cousins germains comme incestueux ? Nos seigneurs pourront les permettre, pour le bien des familles. Le pape les permet, moyennant finance.

France does not have a specific law against these types of crimes; but some courts, on their own authority, have sometimes punished them by death; thereby the superiority of English case law can be observed. It would punish every judge who would have imposed a punishment that the law would not have assigned.

It rests with the prudence of those who govern to dictate laws; to equate each punishment to each crime, and to include the accused and the judges in it.

Would it now be the time to no longer regard marriages between first cousins as incestuous? Our lords could permit them for the good of families. The Pope permits them, for a fee.

~ ARTICLE XV ~

**DU VIOL**

Pour les filles ou femmes qui se plaindraient d'avoir été violées, il n'y aurait, ce me semble, qu'à leur conter comment une reine éluda autrefois l'accusation d'une complaignante. Elle prit un fourreau d'épée, et le remuant toujours, elle fit voir à la dame qu'il n'était pas possible alors, de mettre l'épée dans le fourreau.

Il en est du viol comme de l'impuissance ; il est certains cas dont les tribunaux ne doivent jamais connaître.

~ ARTICLE XV ~

ON RAPE

With respect to the girls or women who would complain about having been raped,<sup>396</sup> it seems to me that it would suffice to tell them how in the past, a queen eluded the accusation of a female complainant. She took a sword's sheath, and moving it continuously, she demonstrated to the woman that it was therefore impossible to put the sword in the sheath.<sup>397</sup>

With rape,<sup>398</sup> as with impotence, there are certain cases which should never reach the court.

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<sup>396</sup> See Diderot, *Encyclopédie*, vol. 17 (Geneva: Neuchâtel, 1765). Look specifically at the following section about evidence in sexual assault cases:

*'La déclaration d'une femme qui se plaint d'avoir été violée, ne fait pas une preuve suffisante, il faut qu'elle soit accompagnée d'autres indices, comme si cette femme a fait de grands cris, qu'elle ait appelé des voisins à son secours, ou qu'il soit resté quelque trace de la violence sur sa personne, comme des contusions ou blessures faites avec armes offensives ; mais si elle s'est tuée à l'instant, ou qu'elle ait tardé quelque tems à rendre plainte, elle n'y est plus recevable.'* (p. 31).

(The testimony of a woman who complains about having been raped, is not sufficient evidence, other symptoms must be present, as though this woman made great cries, that she called neighbours to her aid, or that some trace of violence remained on her body, such as contusions or injuries inflicted by offensive weapons; but if she killed herself this instant, or if she took some time to lodge a complaint, she is no longer admissible.)

<sup>397</sup> Julie Peakman describes in her work *Sexual Perversions, 1670-1890* (New York: Palgrave Macmillan, 2009) how 'Voltaire's evocation of female authority indicates a truth born of female experience, and although women may not be aware of their tacit consent, accusations of rape can never be accounts of rape. An incomprehension of the possibility of rape existed which deemed that any modest and decent woman worth her reputation resisted and could not be raped. Thus, the physical implausibility of rape was a strong defence.' (p. 140).

<sup>398</sup> See Diderot, vol. 17, *op. cit.*, in which rape is defined as:

*'[...] le crime que commet celui qui use de force et de violence sur la personne d'une fille, femme ou veuve, pour la connoître charnellement, malgré la résistance forte et persévérante que celle-ci fait pour s'en défendre. Pour caractériser le viol, il faut que la violence soit employée contre la personne même, et non pas seulement contre les obstacles intermédiaires, tels qu'une porte que l'on auroit brisée pour arriver jusqu'à elle. Il faut aussi que la résistance ait été persévérante jusqu'à la fin ; car s'il n'y avoit eu que de premiers efforts, ce ne seroit pas le cas du viol, ni de la peine attachée à ce crime. Cette peine est plus ou moins rigoureuse selon les circonstances. Lorsque le crime est commis envers une vierge, il est puni de mort, et même du supplice de la roue, si cette vierge n'étoit pas nubile [...] Quand le viol est joint à l'inceste, c'est-à-dire qu'il se trouve commis envers une parente ou une religieuse professe, il est puni du feu. Si le viol est commis envers une femme mariée, il est puni de mort.'* (p. 31).

([...] the crime committed by he who uses force and violence on the body of a girl, wife, or widow, to know her carnally, despite the strong and persistent resistance that she makes to defend herself. To characterise rape, violence must be inflicted on the body itself, and not only on the intermediary obstacles, such as a door that would have been broken to get to her. It is also necessary that resistance was persistent until the end; because if there had only been initial efforts, it would not be the case of rape, nor punishment attached to this crime. This punishment is more or less rigorous according to the circumstances. When the crime is committed against a virgin, it is punished by death, and even by the torture of the wheel, if this virgin was not nubile [...] When rape is combined with incest, that is to say, it is committed against a kinswoman or a professed nun, it is punished by burning. If rape is committed against a married woman, it is punished by death.)

La France est le seul pays où l'on ait admis le congrès. Les juges en ont enfin rougi.



France is the only country where congress has been accepted. At last the judges have blushed about it.<sup>399</sup>

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<sup>399</sup> Kehl edition editors' original note, *op. cit.*

*'Le viol est un véritable crime, même indépendamment de toutes les idées d'honneur, de vertu, attachées à la chasteté. C'est une violation de la propriété que chacun doit avoir de sa personne ; c'est un outrage fait à la faiblesse par la force. Il doit être puni comme les autres attentats à la sûreté personnelle, qui sont distincts du meurtre. L'expédient de cette reine est une plaisanterie ; il suppose un sang-froid qu'il est difficile de conserver. Si un homme, ayant une arme, s'est laissé assommer parce que la peur l'a empêché de s'en servir, l'assassin n'est pas moins coupable. Les preuves du viol ne sont pas impossibles ; il peut y en avoir de telles qu'elles ne laissent aucun doute, et c'est d'après celles-là seules qu'on peut condamner. D'ailleurs ce crime peut s'exécuter par le concours de plusieurs personnes, et en employant les menaces ; ainsi quoiqu'il soit très rare qu'il ait été commis par un homme seul, on ne peut le placer au rang des crimes imaginaires, ou de ceux dont la loi ne doit point connaître.'* (pp. 148-149).

(Rape is a real crime, even aside from all the ideas of honour, of virtue, associated with chastity. It is a violation of the property that each person must have of oneself; it is an insult offered by force to weakness. It must be punished like other attacks on personal safety, which are distinct from murder. The expedient of this queen is a pleasantry; it assumes a composure that is difficult to keep. If a man, having a weapon, allowed himself to be knocked unconscious because fear prevented him from using it, the assassin is no less guilty. Evidence of rape is not impossible; there may be such evidence, that it leaves no doubt, and it is according to this evidence alone that one can condemn. Incidentally, this crime can be committed by the cooperation of several people, and by using threats; thus, while it is very rare that it was committed by a man alone, it cannot be ranked alongside imaginary crimes, or those that the law must not know about.)

~ ARTICLE XVI ~

**PÈRES ET MÈRES QUI PROSTITUENT LEURS ENFANTS**

Ce ne peut être que dans la dernière classe des misérables, que cette infamie soit pratiquée. Elle est plutôt du ressort d'un juge subalterne de police que d'une compagnie supérieure de magistrats ; elle ne peut s'être introduite que dans ces villes immenses où l'on voit un si grand nombre de riches voluptueux, qui achètent chèrement des plaisirs criminels, et un plus grand nombre d'indigents qui les vendent.

Je m'étonne, que nos commentateurs de la loi Caroline parlent d'un tel commerce. Il doit être inconnu dans un pays tel que le nôtre, où de grandes fortunes n'insultent jamais à la misère publique, et où le luxe est ignoré.

~ ARTICLE XVI ~

**FATHERS AND MOTHERS WHO PROSTITUTE THEIR CHILDREN**

It can only be among the last class of wretches that this infamy is practised. It is rather within the remit of a subordinate police judge than a superior bench of magistrates; it can only enter these immense cities, where one sees such a great number of rich Epicureans, who buy criminal pleasures at a high price, and an even greater number of paupers who sell them.<sup>400</sup>

I am surprised that our commentators on the Carolina law speak of such a trade.<sup>401</sup> It must be unknown in a country such as ours, where great fortunes are never an insult to public misery, and where luxury is ignored.

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<sup>400</sup> Anthony McEnery and Helen Baker asserted that children from the 16<sup>th</sup> Century up to the 19<sup>th</sup> Century ‘between the ages of seven and fourteen were sold into prostitution by poverty-stricken parents [...] Other children, abandoned by their parents or orphaned without an inheritance, had little choice but sell their bodies in order to survive. Former peasants, who had migrated to cities in order to find work, had little use for children who would previously have been able to provide a useful service as a farmhand.’ *Corpus Linguistics and 17<sup>th</sup>-Century Prostitution: Computational Linguistics and History* (New York: Bloomsbury Publishing, 2017), p. 62.

<sup>401</sup> Voltaire is referring to the *Code criminelle de l’Empereur Charles V*, *op. cit.*, Article 122.

*‘De la punition de ceux qui prostituent leurs Femmes ou leurs Enfants. Celui qui sera convaincu d’avoir livré et prostitué sa femme ou enfant au libertinage, et des actions déshonorantes, pour en tirer du profit, de quelque nature qu’il puisse être, sera déclaré infâme, et puni en vertu de nos Loix.’* (p. 163).

(On the punishment of those who prostitute their wives or their children. He who will be convicted of having handed over and prostituted his wife or child to libertinism, and degrading actions, to get profit from it, of whatever nature that it may be, will be declared infamous and punished in virtue of our laws.)

~ ARTICLE XVII ~

**DES FEMMES QUI SE PROSTITUENT À LEURS DOMESTIQUES**

Comment se peut-il que Constantin, le plus débauché des empereurs, ait condamné ces domestiques à être brûlés, et leurs maîtresses à être décollées (Code, liv. 9. tit. 9) ? Les plus méchants princes se sont piqués souvent de faire les lois les plus rigides. Le cardinal de Fleuri appelait les femmes qui avaient cette faiblesse pour leurs *valets* de chambre, des femmes *valétudinaires*.

~ ARTICLE XVII ~

ON WOMEN WHO PROSTITUTE THEMSELVES TO THEIR SERVANTS

How can it be that Constantine, the most debauched of emperors, condemned these servants to be burned, and their mistresses to be beheaded? (Code, book. 9, title. 9.) The cruellest princes often prided themselves on making the most rigid laws.<sup>402</sup> The Cardinal Fleury<sup>403</sup> called the women who had this weakness for their manservants, valetudinarian women.<sup>404</sup>

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<sup>402</sup> Kehl edition editors' original note, *op. cit.*

*'Une loi de France condamne, dans ce cas, le domestique à la mort, quand la femme est mariée, ou que c'est une fille sous la puissance de parents. C'est ainsi qu'autrefois la vanité foulait aux pieds l'humanité et la justice ; c'est ainsi que ceux qui avaient des aïeux ou des richesses osaient avouer leur insolent mépris pour les hommes ; et ce sont les siècles qui ont produit ces lois qu'on a l'imbécilité ou la turpitude de regretter. Cette loi est du nombre de celles qu'il est à désirer, pour l'honneur de la nation, de voir effacer de notre code.'* (p. 151).

(A French law condemns, in this case, the servant to death, when the woman is married, or when it is a girl under the power of her parents. In the past, this is how vanity trampled humanity and justice underfoot; it is how those who had ancestors or riches dared to admit their insolent contempt for men; and these are the centuries that have produced these laws, which we have the imbecility or the depravity to regret. This law is among a number of those that are to be desired, for the honour of the nation, to see our code erased.)

<sup>403</sup> Cardinal André-Hercule de Fleury (1653 - 1743) was in the service of Louis XV and reigned for seventeen years. Guy Chaussinand-Nogaret, *Le Cardinal Fleury : Le Richelieu de Louis XV* (Paris: Payot, 2002).

<sup>404</sup> See Diderot, *Encyclopédie*, vol. 16 (Geneva: Neuchâtel, 1765).

*'Il a rapport à la Médecine, et est employé pour signifier une personne dont la santé est ou chancelante, ou délicate, ou souvent altérée par différentes maladies qui lui arrivent par intervalles. En général les femmes, les enfans, les vieillards, et parmi les adultes les pléthoriques, les mélancoliques, les hypocondriaques, et enfin les phthisiques sont généralement valétudinaires ; de sorte que valétudinaire peut s'appliquer à tous ceux qui ont quelque maladie chronique, ou qui sont fort sujets aux maladies chroniques.'* (p. 818).

(It is associated with medicine and is used to signify a person whose health is either faltering, or delicate, or often impaired by different illnesses which occur at intervals. In general, women, children, old people, and among adults, the obese, the depressed, hypochondriacs, and finally those suffering from phthisic are generally valetudinarians; so valetudinarian can be applied to all those who have some chronic illness, or who are strongly subject to chronic illnesses.)

**~ ARTICLE XVIII ~**

**DU RAPT**

La loi Caroline, les ordonnances en France établissent la peine de mort contre un ravisseur. La loi anglaise n'ordonne la mort qu'en cas que la fille se plaigne d'avoir été ravie.

~ ARTICLE XVIII ~

ON RAPT

The Carolina law, the rulings in France establish the death penalty against a ravisher.<sup>405</sup> The English law only orders the death penalty<sup>406</sup> in the event that the girl complains about having been ravished.<sup>407</sup>

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<sup>405</sup> See the *Code criminel* l'Empereur Charles V, *op. cit.*, Article 118, about those who kidnap married women or girls.

*'De la punition de ceux qui enlèvent des femmes mariées ou des filles. Lorsque quelqu'un enlèvera, d'une manière déshonorante, une femme mariée ou une honnête fille, contre le gré du mari ou du père, quoique la femme ou la fille y ait consenti, le mari ou le père seront en droit de former leur accusation criminelle ; et le délinquant sera puni conformément nos Loix Impériales et celles de nos Prédécesseurs, après en avoir consulté avec les Gens de Loi.'* (p. 155).

(On the punishment of those who kidnap married women or girls. If someone will kidnap, a married woman or an honest girl in a dishonourable manner, against the will of her husband or father, even if the married woman or girl consented to it, the husband or the father will have the right to make their criminal accusation ; and the delinquent will be punished in compliance with our imperial laws and those of our predecessors, after having consulted with people of the legal profession.)

<sup>406</sup> See Charles-Joseph Sarreste, *Examen de la législation romaine, anglaise et française en matière criminelle* (Paris: Garnery, 1842).

*'En Angleterre, le rapt par violence, suivi du mariage ou du viol, est puni de mort, même dans le cas où la femme gagnée par les caresses aurait consenti à épouser le ravisseur, ou à s'abandonner à lui. Chez nous on distinguait le viol commis sur les filles non nubiles, et celui commis sur des filles nubiles, ou sur des femmes. Dans le premier cas, il y avait peine de mort ; dans le second, elle n'avait lieu que par rapport à l'atrocité des circonstances, ou à la qualité des personnes [...].'* (p. 149).

(In England, rapt by violence, followed by marriage or rape, is punished by death, even in the case where the woman overcome by caresses would have consented to marry the ravisher, or to give in to him. Where we are, rape committed against non-nubile girls is differentiated from that committed against nubile girls, or against married women. In the former case, it was the death penalty; in the latter, it only took place in relation to the atrocity of the circumstances, or the quality of the persons [...].)

<sup>407</sup> Kehl edition editors' original note, *op. cit.*

*'Et ce n'est pas assez. Il faudrait qu'elle prouvât de plus que l'on a employé contre elle la violence ou la menace ; qu'elle prouvât qu'elle n'a point vécu volontairement avec le ravisseur. Il ne faut pas que la vie d'un homme dépende du dégoût ou de la vanité d'une fille qui s'est fait enlever.'* (p. 152).

(And it is not enough. Furthermore, she would have to prove that violence or threatening behaviour was used against her; that she did not live with the ravisher of her own free will. The life of a man must not depend on the disgust or vanity of a girl who had herself abducted.)

**~ ARTICLE XIX ~**

**DE LA SODOMIE**

Les empereurs Constantin II et Constance son frère, sont les premiers qui aient porté peine de mort contre cette turpitude qui déshonore la nature humaine (Code, liv. 9, tit. 9). La nouvelle 141 de Justinien est le premier rescrit impérial dans lequel on ait employé le mot sodomie. Cette expression ne fut connue que longtemps après les traductions grecques, et latines des livres juifs. La turpitude qu'elle désigne était auparavant spécifiée par le terme *pedicatio* tiré du grec.

L'empereur Justinien dans sa nouvelle ne décerne aucune peine. Il se borne à inspirer l'horreur que mérite une telle infamie. Il ne faut pas croire que ce vice devenu trop commun dans la ville des Fabricius, des Catons, et des Scipions, n'eût pas été réprimé par les lois.



~ ARTICLE XIX ~

ON SODOMY

The Emperors Constantine II and Constance his brother are the first who administered the death penalty for this depraved act, which dishonours human nature (Code, book. 9, title. 9.) Novella 141 by Justinian I is the first imperial ruling in which the word sodomy was used.<sup>408</sup> This expression was only known long after the Greek and Latin translations of Jewish books. The depraved act that it designates was, in the past, specified by the term *paedicatio*, taken from the Greek.

In his novella Emperor Justinian I does not assign any punishment. He contents himself with inspiring the horror that such an infamy deserves. It should not be believed that this vice, which has become exceedingly common in the town of the Fabricius', the Catons', and the Scipions', was not repressed by the laws.

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<sup>408</sup> George Henderson and Wesley Long detail in an *Introduction to human relations studies: Academic Foundations and Selected Social Justice Issues* (Illinois: Thomas Publisher, 2016) that it was in the 4<sup>th</sup> Century, under Constantine, who officially made Christianity the state religion, that homosexuals began to be persecuted throughout the world. Justinian who 'codified the Roman law and prescribed torture, mutilation and castration for male homosexuals. Justinian's policies had great impact on the whole of the Christian world. In Novella 77, Justinian blamed homosexuals for famines, earthquakes and pestilences. Thus, sodomites were put to death lest the entire population perish. Justinian's Novella 141 described homosexuality as the state of individuals undergoing decay through abominable and impious conduct abhorred by God.' (p. 229).

Il le fut par la loi Scantinia qui chassait les coupables de Rome, et leur faisait payer une amende. Mais cette loi fut bientôt oubliée, surtout quand César vainqueur de Rome corrompue plaça la débauche sur la chaire du dictateur, et quand Adrien la divinisa.

Constantin second et Constance étant consuls ensemble, furent donc les premiers qui s'armèrent contre le vice trop honoré par César. Leur loi *Si vir nubit*, ne spécifie pas la peine ; mais elle dit, que la justice doit s'armer de glaive ; *Jubemus armari jure gladio ultore* ; et qu'il faut des supplices recherchés : *exquisitis pœnis*. Il paraît qu'on fut toujours plus sévère contre les corrupteurs des enfants, que contre les enfants mêmes ; et on devait l'être.

Lorsque ces délits aussi secrets que l'adultère, et aussi difficiles à prouver, sont portés aux tribunaux qu'ils scandalisent, lorsque ces tribunaux sont obligés d'en connaître, ne doivent-ils pas soigneusement distinguer entre l'homme fait, et l'âge innocent qui est entre l'enfance et la jeunesse ?

It was repressed by the Scantinian law,<sup>409</sup> which banished the guilty parties from Rome and made them pay a fine. But this law was soon forgotten, especially when Caesar,<sup>410</sup> victor of corrupt Rome, put debauchery on the pulpit of the dictator and when Adrian I<sup>411</sup> deified it.

Therefore, Constantine II and Constance, being consuls together, were the first who armed themselves against the vice, immensely honoured by Caesar. Their law, *Si vir nubit*,<sup>412</sup> does not specify the punishment; but it says that justice must arm itself with the Gladius sword; *Jubemus armari jura gladio ultore*<sup>413</sup>; and that refined tortures are needed: *exquisitis poenis*. It appears that they were always more severe against the corrupters of children, than against the children themselves; and they had to be.

When these crimes, as secret as adultery, and as difficult to prove, are brought to the courts that they offend, when these courts are obliged to recognise them, must they not carefully distinguish between the grown man and the innocent age that is between childhood and adolescence?

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<sup>409</sup> Michelle Gibson, Jonathan Alexander, and Deborah Meem explain that Scantinian Law controlled sexual practices in the course of the first centuries of the Roman Empire. Furthermore, they clarify that ‘most forms of same-sex sexual activity were illegal and punishable by a fine [...] In the Middle Ages, such behavior, particularly sodomy, was reclassified as heresy, and during the 15<sup>th</sup> Century, a number of men were beheaded or burned at the stake for having committed the ‘crime of Sodom’. This period also saw sodomy referred to as the *peccatum mutum* or silent sin, that is, a transgression that could not be spoken of.’ *Finding Out: An Introduction to LGBT Studies* (California: Sage, 2014), p. 8.

<sup>410</sup> Bill Burgwinkle clarified that ‘Julius Caesar is another figure who was used as a metonym in the Middle Ages for men who [engaged] in homoerotic relations. John of Salisbury, in his *Policraticus*, states: ‘Nichomede, King of Bythinia, was said to have made Caesar submit to his desires, Caesar being considerably younger and having been admitted by the King to unusual intimacy. He would later appear in Dante’s *Purgatorio* with the same connotation.’ *Sodomy, Masculinity and Law in Medieval Literature: France and England, 1050-1230* (Cambridge: Cambridge University Press, 2004), p. 25.

<sup>411</sup> Adrian I was Pope from 772 A.D. to 795 A.D. *The Acts and Monuments of John Foxe*, vol. 1, George Townsend, ed. (London: Seely & Burnside, 1841).

<sup>412</sup> See *Studies and Texts*, vol. 176 (Ontario: Pontifical Institute of Mediaeval Studies, 1955), p. 401.

<sup>413</sup> ‘*Ubi scelus est id, quod non prosicit scire, jubemus (insurgere) leges, armari jura gladio ultore, ut exquisitis poenis subdantur infames, qui sunt, vel qui futuri sunt rei.*’

(Where that infamy exists, which ought not to be known, we commend the laws to be enforced and the authorities be armed with the avenging sword, that those infamous wretches may be overwhelmed with the severest punishment, who are, or shall be guilty of this crime.) As affirmed in *Duhaime’s Law Dictionary*, ‘the unstated crime in this Latin maxim is both homosexual acts and sexual acts with animals (bestiality). William Blackstone relies on and credits the law codes of the holy Roman Emperors Constantius and Constans, referring to “Cod. 9.9.31”, as authority for this maxim.’ *Duhaime’s Law Dictionary*. Retrieved from: <http://www.duhaime.org/LegalDictionary/U/Ubiscelusetidquodnonprosicitscirejubemusinsurgerelegesarmarijuragladioultoreutexquisitispoenissubdanturinfamesquisuntvelquifuturisuntrei.aspx> (Accessed: 18 March 2019).

Ce vice indigne de l'homme n'est pas connu dans nos rudes climats. Il n'y eut point de loi en France pour sa recherche et pour son châtement. On s'imagina en trouver une dans les établissements de saint Louis. *Si aucun est soupçonneux de bulgarie, justice laïc li doit prendre, et l'envoyer à l'évêque ; et se il en est prouvé, l'en doit ardoir et tui li meuble sont au baron.* Le mot *bulgarie*, qui ne signifie qu'hérésie fut pris pour le péché contre nature. Et c'est sur ce texte qu'on s'est fondé pour brûler vifs le peu de malheureux convaincus de cette ordure, plus faite pour être ensevelie dans les ténèbres de l'oubli, que pour être éclairée par les flammes des bûchers aux yeux de la multitude.

Le misérable ex-jésuite aussi infâme par ses feuilles contre tant d'honnêtes gens, que par le crime public d'avoir débauché dans Paris jusqu'à des ramoneurs de cheminée, ne fut pourtant condamné qu'à la fustigation secrète dans la prison des gueux de Bissêtre. On a déjà remarqué que les peines sont souvent arbitraires, et qu'elles ne devraient pas l'être ; que c'est la loi, et non pas l'homme qui doit punir.

La peine imposée à cet homme était suffisante ; mais elle ne pouvait être de l'utilité que nous désirons, parce que n'étant pas publique elle n'était pas exemplaire.

This vile vice of man is unknown in our harsh climates. There was no law in France for its investigation and for its punishment. They imagined finding one of them in the establishments of Saint Louis. *If anyone is suspected of bulgari, secular justice must take him, and send him to the bishop; and if he is proven guilty of it, must be burned and his property is left to the baron.* The word *bulgari*,<sup>414</sup> which only signifies heresy, was considered to be the sin against nature. And it is on this law that they had a basis for burning alive the few poor people convicted of this obscenity, made more to be buried in the darkness of oblivion than to be illuminated by the flames of the stakes in front of the crowd.

The miserable ex-Jesuit,<sup>415</sup> as infamous by his gazettes against so many honest people, as by the public crime of having debauched even chimney sweeps in Paris, was however only condemned to secret whipping in the paupers' prison of Bicêtre. It has already been observed that punishments are often arbitrary, and that they should not be; that it is the law and not man who must punish.

The punishment imposed on this man was adequate; but it could not be of the usefulness that we desire because not being public, it was not exemplary.<sup>416</sup>

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<sup>414</sup> In her work *Heresy in Medieval France: Dualism in Aquitaine and the Agenais, 1000-1249* (Suffolk: Boydell Press, 2005), Claire Taylor explains that the word 'bulgari presumably reflects contemporary knowledge that Bulgaria was the birthplace of heresy.' (p. 172).

<sup>415</sup> Voltaire is referring to Pierre Desfontaines (1685 - 1745). In 1774, Desfontaines issued a defence of Freemasonry. Kenneth Loiseau explains that 'in this short pamphlet, Desfontaines tried to convince readers that Masons did not admit into their fold those who were 'impious' or 'foolish children of libertinage'. He sought to assure the public that brethren conducted themselves in a morally upright manner and simply enjoyed one another's company: 'We are all friends', he declared innocently. However, the abbé would have likely found a good number of sceptics among his readership as his name and moral character already had been well established in the eyes of the public by this time.' *Brotherly Love: Freemasonry and Male Friendship in Enlightenment France* (Ithaca: Cornell University Press, 2014), p. 94.

<sup>416</sup> Kehl edition editors' original note, *op. cit.*

*'La sodomie, lorsqu'il n'y a point de violence, ne peut être du ressort des lois criminelles. Elle ne viole le droit d'aucun autre homme. Elle n'a sur le bon ordre de la société qu'une influence indirecte, comme l'ivrognerie, l'amour du jeu. C'est un vice bas, dégoûtant, dont la véritable punition est le mépris. La peine du feu est atroce. La loi d'Angleterre qui expose les coupables à toutes les insultes de la canaille, et surtout des femmes qui les tourmentent quelquefois jusqu'à la mort, est à la fois cruelle, indécente, et ridicule. Au reste, il ne faut pas oublier de remarquer que c'est à la superstition que l'on doit l'usage barbare du supplice du feu.'* (p. 158).

(Sodomy, when there is no violence, cannot be the responsibility of criminal laws. It does not violate the right of any another man. It only has an indirect influence on the orderliness of society, like drunkenness, the love of gambling. It is a low vice, disgusting, whose real punishment is contempt. The punishment of burning is atrocious. The English law that exposes the guilty parties to all kinds of insults from scoundrels, and especially women, who sometimes torment them until death, is both cruel, indecent, and ridiculous. Furthermore, it should not be forgotten to note that we owe the savage use of torture by burning to superstition.)

**~ ARTICLE XX ~**

**FAUT-IL OBÉIR À L'ORDRE INJUSTE D'UN POUVOIR LÉGITIME ?**

Je suis descendu peut-être dans un trop grand détail sur les délits qui peuvent occuper l'attention des magistrats. Je ne parlerai pas de ces lois passagères qui ne subsistent qu'avec la puissance dont elles émanent ; de ces défenses qui ne peuvent durer qu'autant que le danger dure ; de ces règlements de caprice qui sont ou inutiles, ou inexécutables ; mais je dois vous consulter sur ces ordres souverains qui révoltent l'équité naturelle.

~ ARTICLE XX ~

**MUST THE UNJUST ORDER OF A LEGITIMATE POWER BE OBEYED?**

I have perhaps gone into extremely great detail about the crimes that can occupy the attention of magistrates. I will not speak about these short-lived laws which only subsist on the power from which they emanate; about these defences which can only last for as long as the danger lasts; about these capricious regulations which are either useless, or unenforceable; but I must consult you about these sovereign orders that revolt natural equity.

Vous devez obéir à ceux qui font les lois dans votre patrie, tant que vous demeurez dans cette patrie ; j'en conviens. Mais je suppose que vous vous appelez Banaias, capitaine des gardes d'un petit roi dans un pays de quarante-cinq lieues de long sur quinze de large. Vous savez que le feu roi a laissé deux fils, dont le cadet est né d'une femme adultère, complice de l'assassinat de son premier mari ; le père de ces deux enfants par une nouvelle injustice en faveur de cette prostituée, a déshérité son fils aîné, fils d'une princesse vertueuse. Il a institué ce cadet fils de la prostitution et du meurtre. Le malheureux déshérité ne demande au possesseur de son bien d'autre grâce, que la permission d'épouser une petite fille qui a servi pendant quelques mois à réchauffer son vieux père. Il implore même pour en obtenir l'agrément, la protection de la vieille mère de son frère. Comment ce frère reçoit-il cette supplication ? Il vous ordonne à vous Banaias, capitaine d'une vingtaine de meurtriers qu'on appelle ses gardes d'aller tuer son frère aîné pour toute réponse. Le frère aîné crie miséricorde, invoque son Dieu, embrasse les cornes de l'autel ; le cadet vous commande d'assassiner son frère votre roi légitime sur cet autel même. Je vous demande, Banaias, si vous devez obéir.



You must obey those who make the laws in your homeland, for as long as you reside in that homeland; I agree. But I dare say that your name is Benaiah,<sup>417</sup> commander of the guard of a small king,<sup>418</sup> in a country of forty-five leagues long by fifteen wide. You know that the late king<sup>419</sup> left two sons,<sup>420</sup> of whom the youngest was born of an adulterous woman,<sup>421</sup> an accomplice in the assassination of her first husband;<sup>422</sup> the father of these two children did a new injustice in favour of this prostitute, by disinheriting his eldest son, son of a virtuous princess.<sup>423</sup> He named this youngest son of prostitution and murder his heir. The unfortunate disinherited son asks the possessor of his property nothing else but permission to marry a little girl,<sup>424</sup> who served for a few months to comfort his old father. He even begs to be granted approval, the protection of his brother's old mother. How does this brother receive this supplication? In response, he commands you, you Benaiah, captain of around twenty murderers who are called his guards, to go and kill his eldest brother. The eldest brother shouts mercy, invokes his God, embraces the horns of the altar; the youngest commands you to assassinate his brother, your legitimate king, on this same altar. I ask you, Benaiah,<sup>425</sup> if you must obey.

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<sup>417</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.*

'*Banaïas était capitaine des gardes de David ; voyez, dans la Bible, les livres II et III des Rois.*' (p. 64). (Benaiah was David's commander of the guard; see, in the Bible, the books II and III of Kings.)

<sup>418</sup> Solomon. R. Grandroute, *op. cit.*, p. 159.

<sup>419</sup> David. *Ibid.*

<sup>420</sup> Adoniah. *Ibid.*

<sup>421</sup> Bathsheba was 'daughter of Eliam, the wife of the Uriah the Hittite.' John Rice, *David and Bathsheba* (Murfreesboro: Sword of the Lord Publishers, 1952), p. 3.

<sup>422</sup> Uriah. R. Grandroute, *op. cit.*, p. 159.

<sup>423</sup> Haggit. *Ibid.*

<sup>424</sup> Abishag de Shunem. See Michel Legrain, *Dictionnaire des femmes de la Bible* (Paris: Cerf, 2015).

'*Le roi David était un vieillard avancé en âge ; on le couvrait de vêtements sans qu'il pût se réchauffer. Alors ses serviteurs lui dirent : « Qu'on cherche pour Monseigneur le roi une jeune fille vierge qui assiste le roi et qui le soigne : elle couchera sur ton sein et cela tiendra chaud à Monseigneur le roi. » Ayant donc cherché une belle jeune fille dans tout le territoire d'Israël, on trouva Abishag de Shunem et on l'amena au roi.*' (p. 2).

(King David was an old man, getting on in years; he was covered in clothes without being able to warm himself. So, his servants said to him: "Let us look for a young virginal girl for His Grace, the King, who assists and cares for him: she will sleep on your breast and that will keep His Grace, the King, warm." Having therefore looked for a beautiful girl throughout the territory of Israel, Abishag de Shunem was found and brought to the King.)

Je pense qu'il faudrait que Dieu lui-même descendît de l'empyrée dans toute sa majesté, et qu'il vous commandât de sa bouche ce parricide, pour des raisons inconnues aux faibles mortels. Pour moi je lui dirais, Seigneur la main me tremble, daignez charger quelque autre juif de cette commission.

Puisqu'on s'efforce encore de nos jours à chercher des exemples de conduite chez ce peuple, autrefois gouverné par Dieu même, et si souvent infidèle à Dieu, chez ce peuple qui prépara notre salut, et qui est l'objet de notre horreur, puisqu'on a confondu si souvent ses crimes avec la loi naturelle et divine qui les condamne, je vais choisir encore un exemple chez ce peuple parmi cent autres exemples.

Lorsque Siméon et Lévi firent un pacte avec les habitants de Sichem, aujourd'hui Naplouze, lorsqu'ils engagèrent le chef de ce village à se circoncire, lui, son fils et tous les habitants, lorsque le troisième jour après l'opération la fièvre de suppuration abattant les forces de ces nouveaux frères, Siméon et Lévi égorgèrent le chef, toute sa famille et toute la peuplade ; Siméon et Lévi furent sans doute aidés par leurs serviteurs, par leurs esclaves s'ils en avaient. Je dis que ces esclaves étaient aussi coupables que les maîtres. Je dis que quand même les juifs auraient eu alors un prophète, un pontife, un sanhédrin, c'était un crime exécrationnable d'obéir à leurs commandements.

I think that God himself would have to come down from the empyrean in all his grandeur and would have to command you to commit this parricide from his mouth, for reasons unknown to weak mortals. As for me, I would say to him, lord my hand trembles, deign to task some other Jew with this commission.

As still today we endeavour to seek examples of conduct among this people, in the past governed by God himself, and so often unfaithful to God, among this people who prepared our salvation, and who is the object of our horror, as we have so often confused their crimes with the natural and divine law which condemn them, once more I am going to choose an example among this people amidst one hundred other examples.

When Simeon and Levi made a pact with the inhabitants of Shechem, today Nablus, when they incited the leader of the village to circumcise himself, his son, and all the inhabitants, when on the third day after the operation, the fever of infection, weakening the strength of these new brothers, Simeon and Levi cut the throat of the leader, all his family, and all the tribe; undoubtedly, Simeon and Levi were helped by their servants, by their slaves, if they had some.<sup>426</sup> I say that these slaves were as guilty as the masters. I say that even if the Jews, at the time, had a prophet, a pontiff, a Sanhedrin,<sup>427</sup> it would have been an execrable crime to obey their orders.

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<sup>426</sup> Jacob's sons Simeon and Levi assassinated the inhabitants of Shechem for their sister Dinah. André Wénin explains that they did not want their sister to have the reputation of a 'whore' and wanted to exact retribution for their family's reputation and honour. *Studies in the Book of Genesis: Literature, Redaction and History* (Belgium: Leuven University Press, 2001).

<sup>427</sup> The Sanhedrin, from the Greek synedrion, refers to the body that was in power in Israel towards the end of the Second Temple period. James McLaren, 'Sanhedrin, Jewish Court of Law', in Roger Bagnall, Kai Brodersen, Craige Champion, Andrew Erskine, and Sabine Huebner, eds., *The Encyclopedia of Ancient History* (Massachusetts: Wiley-Blackwell, 2012).

Le rapt des Sabines par Romulus aurait-il été moins un brigandage barbare s'il eût été commis par une délibération du Sénat ?

La Saint Barthélemi perdrait-elle aujourd'hui quelque chose de son horreur si par impossible le parlement de Paris avait rendu un arrêt par lequel il eût enjoint à tout fidèle catholique de sortir de son lit au son de la cloche pour aller plonger le poignard dans le cœur de ses voisins, de ses amis, de ses parents, de ses frères qui allaient au prêche ?

Les misérables gentilhommes nommés les quarante-cinq qui assassinèrent si lâchement le duc de Guise, auraient-ils été moins coupables s'ils avaient commis cette indignité en vertu d'un arrêt du conseil ?

Non sans doute. Un crime est toujours crime, soit qu'il ait été commandé par un prince dans l'aveuglement de sa colère, soit qu'il ait été revêtu de patentes scellées de sang-froid avec toutes les formalités possibles. La raison d'Etat n'est qu'un mot inventé pour servir d'excuse aux tyrans. La vraie raison d'Etat consiste à vous précautionner contre les crimes de vos ennemis, non pas à en commettre. Il y a même de l'imbécillité à leur enseigner à vous détruire en vous imitant.

The abduction of the Sabines by Romulus,<sup>428</sup> would it have been less of a barbaric robbery, if it had been committed by a ruling of the Senate?

The Saint Bartholomew's Day massacre,<sup>429</sup> would it lose something of its horror today, if somehow the parliament of Paris had made a judgement, whereby it ordered every loyal Catholic to leave their bed at the sound of the bell, to go and thrust the dagger into the heart of their neighbours, their friends, their parents, their brothers who were going to the sermon.

Would the miserable gentlemen named the forty-five, who so cowardly assassinated the Duke of Guise,<sup>430</sup> have been less guilty if they had committed this disgraceful act in virtue of a judgement by the council?

Undoubtedly, no. A crime is always a crime, be it that it has been ordered by a prince in the blindness of his anger, or, be it that it has been sealed with letters patent in cold blood with all the possible formalities. State policy is only a word invented to serve as an excuse for tyrants. True State policy consists of protecting you from the crimes of your enemies, not of committing any. There is even some imbecility to teach them to destroy you by imitating you.

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<sup>428</sup> Jacklyn Neel points out that 'the Sabines were numerous and warlike. They lived in unwallled villages, since they were Spartan colonists; they were proud and had no fear. But they saw that they were trapped by their concern for the hostages, since they worried about their daughters' safety. So, they sent an embassy to Romulus, calling for reason and moderation. They requested the return of the Sabine women and reparations for the crime. Once he did that, he could form diplomatic and personal relationships with the parents as was customary. Romulus refused to give the women back and demanded that the Sabines recognize the marriages. So, the Sabines decided to go to war and spent their time planning. But Acron, the King of Caenina, had a temper [...] This matter with the women was the last straw. Acron decided Romulus was a threat to everyone and would be intolerable unless he was punished. So, he attacked with a large force. Romulus marched out against Acron. The two sides came into one another's sight. The leaders eyed each other up and decided to duel while their armed soldiers sat still. Romulus vowed that if he won and killed Acron, he would dedicate Acron's armour to Zeus. And he did win, and moreover he routed Acron's army in the fighting and captured the city of Caenina.' *Early Rome: Myth and Society* (New Jersey: Wiley, 2017), p. 332.

<sup>429</sup> In 1572, during the French Wars of Religion, thousands of French protestants were assassinated by Catholics in Paris. Barbara Diefendorf, *The St. Bartholomew's Day Massacre: A Brief History with Documents* (Boston: Bedford/St. Martins, 2008).

<sup>430</sup> The Duke of Guise (1550 - 1588) was assassinated on the order of Henry III, who appointed the 'Forty-Five' to murder him. Alexandre Dumas, *An Historical, Genealogical, and Classical Dictionary*, vol. 2 (London: Millar, 1743).

L'abbé de Caveirac a beau dire que la Saint Barthélemi *était une affaire de politique*. Cette politique serait celle de Cerbère et des Furies.

On dit que les exécuteurs, les suppôts de la justice doivent obéir aveuglément ; que ce n'est point à eux à examiner si le supplice dont ils ne sont que les instruments est équitable ou non. Et moi je vous dis que ces gens-là sont aussi criminels que les juges, quand ils mettent à exécution une sentence reconnue évidemment injuste et barbare au tribunal de la conscience de tous les hommes.

Je ne sais quel écrivain un peu extraordinaire, dans un roman nommé Emile, dont le héros est un gentilhomme menuisier, a dit, *que le Dauphin de France devait épouser la fille du bourreau s'il y trouvait des convenances*. J'ose affirmer que si le bourreau de Paris avait pu sauver la maréchale d'Ancre par son refus, le fils de cette maréchale aurait bien fait d'épouser la fille du sauveur de sa mère, malgré l'horreur de la profession du père.

The abbot of Caveirac may well say that the Saint Bartholomew Day massacre *was a political affair*.<sup>431</sup> This politics would be that of Cerberus<sup>432</sup> and the Furies.<sup>433</sup>

It is said that the executors, the henchmen of justice must blindly obey; that it is not their responsibility to examine if the torture of which they are only the instruments is fair or not. And I tell you that those people are as criminal as the judges, when they administer a sentence, evidently recognised as unjust and barbarous, to the Court of Conscience of all men.<sup>434</sup>

I do not know what quite extraordinary author in a novel called *Emile*,<sup>435</sup> whose hero is a gentleman carpenter said, *that the Dauphin of France should marry the daughter of the executioner, if he considered it convenient*. I dare to affirm that if the executioner of Paris had been able to save the marshall of Ancre's wife by his refusal,<sup>436</sup> the son of this marshall's wife would have done the right thing to marry the daughter of his mother's saviour, despite the horror of his father's profession.

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<sup>431</sup> See Voltaire, *Œuvres complètes de Voltaire*, vol. 80B, *op. cit.*, p. 162.

*'M. de Voltaire s'est trompé : ce n'est point l'abbé de Caveyrac qui a dit cette sottise ; c'est Gabriel Naudé, dans ses Considérations politiques sur les coups d'État, page 170, édition in-12 de Hollande, 1667.'*

(Mr. Voltaire was mistaken. It is not the abbot of Caveirac who said this nonsense; it is Gabriel Naudé in his *Considérations politiques sur les coups d'état*, page 170, Holland edition in-12, 1667.)

<sup>432</sup> Kathleen Tracy explains that Cerberus is portrayed in several ways, but the most common is that of a three headed hound. Hades was Cerberus's master, he acted as a watchdog for Hades and 'kept souls from leaving the Underworld once they arrived [...] and was almost as feared by mortals as Hades was.' *Cerberus* (Florida: Mitchell Lane Publishers, 2011), p. 7.

<sup>433</sup> The Furies, also referred to as the Erinyes, were a trio of goddesses that dwelled in the underworld. They were goddesses of vengeance, and as Talfourd Ely states, they specifically observed family law as well as all that was inconsistent with nature and moral standards. *The Gods of Greece and Rome* (New Jersey: Dover Publications, 2003).

<sup>434</sup> Norman Doe explains that during the Middle Ages 'conscience formed the basic authority for the chancellor's jurisdiction.' *Fundamental Authority in Late Medieval English Law* (Cambridge: CUP 1990), p. 132.

<sup>435</sup> Jean-Jacques Rousseau, *Émile ou De l'éducation* (Paris: Duchesne, 1762).

<sup>436</sup> Following her husband's assassination, Leonora Dori Galigai was accused of sorcery, charged with treason and was incarcerated at Blois. Having been found guilty, she was guillotined and burned at the stake in Paris. Jean-Joseph Expilly, *Dictionnaire géographique, historique et politique des Gaules et de la France*, vol. 1 (Paris: Durand, 1762).

Voilà une partie du code que j'aurais annoncé aux partisans de Brunehaud ou de Frédégonde ; à la faction de la rose rouge et à celle de la rose blanche ; aux Armagnacs et aux Bourguignons ; aux fripons des deux partis dans le grand schisme de l'Occident, aux infâmes parlements du tyran Henri VIII.

Nous ne vous invitons donc point à parler de ces prétendues lois promulguées dans des temps de tyrannies et de brigandages.

Nous ne regarderons pas même comme un jugement légal l'arrêt de la chambre étoilée d'Angleterre, par lequel l'avocat Prinn eut les oreilles coupées au pilori et paya mille livres sterling d'amende, pour avoir composé un livre contre la comédie en 1633. C'était le temps où le cardinal de Richelieu faisait naître le théâtre en France, et la reine Henriette, fille du grand Henri IV, épouse de l'infortunée Charles I<sup>er</sup> protégeait le théâtre et les autres beaux-arts à Londres. Prinn était un fanatique imbécile, qui ne méritait pas une punition si sévère. Mais dans ce temps le parti de la cour et la faction opposée commençaient à interpréter les lois avec cruauté.

On sait trop que cette sombre rage de joindre les formalités de la loi aux horreurs de la politique, fut poussée si loin chez cette nation alors féroce, que son roi vendu par des Ecossais à des Anglais, fut enfin jugé à mort par une prétendue cour de justice, à laquelle présidait pour grand Stuard un sergent de loi, et où siégeaient un cordonnier et un charretier mêlés à trente-huit colonels. C'est le plus solennel et le plus tranquille assassinat juridique dont jamais aucune nation se soit vantée.



Behold a section of the code that I would have announced to the partisans of Brunhilda or Fredegund,<sup>437</sup> to the faction of the red rose and that of the white rose;<sup>438</sup> to the Armagnacs and the Burgundians; to the scoundrels of the two parties in the great schism of the West,<sup>439</sup> to the infamous parliaments of the tyrant Henry VIII.<sup>440</sup>

We therefore do not invite you to speak about these so-called laws, promulgated in times of tyrannies and robberies.

We will not even consider the decision of England's Star Chamber as a lawful verdict, whereby the lawyer Prinn had his ears cut off at the whipping post and payed a fine of one thousand pounds sterling, for having composed a book against comedy in 1633.<sup>441</sup> It was during this time when Cardinal Richelieu established the theatre in France, and Queen Henrietta, daughter of the great Henry IV, wife of the unfortunate Charles I, protected the theatre and the other fine arts in London. Prinn was an idiotic fanatic who did not deserve such a severe punishment. But during this time, the court's party and the opposed faction started to interpret the laws with cruelty.

We only know this dreadful rage too well, to combine the formalities of the law with the horrors of politics, was pushed so far among this then ferocious nation, that its king, sold by the Scottish to the English, was ultimately sentenced to death by a so-called court of law, over which presided a sergeant of law as great Stewart, and where sat a shoemaker and a carter mixed with thirty-eight colonels. It is the most solemn and the most tranquil legal assassination, which no nation has ever bragged about.

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<sup>437</sup> 'Fredegund, Queen Regent of Neustria (584 - 597).' Guida Jackson-Laufer, *Women Rulers Throughout the Ages: An Illustrated Guide* (California: ABC-CLIO, 1999), p. 150.

<sup>438</sup> Voltaire is referring to the Wars of Roses during the 15<sup>th</sup> Century, which involved two rival factions of the house of Plantagenet: the House of Lancaster and the House of York. The symbol of the latter was a white rose and the former a red rose. David Grummit, *A Short History of the Wars of the Roses* (New York: Tauris & Co., 2013).

<sup>439</sup> The east-west schism in 1054 incited the dissolution of the Eastern Christian churches (ruled by Michael Cerularius) and the Western church (ruled by Pope Leo IX). A. Nichols, *op. cit.*

<sup>440</sup> From 1407 A.D. to 1435 A.D., the Armagnacs and Burgundians, who were rival divisions of the French royal family, engaged in a civil war. This battle took place at the same time as the Hundred Years' War, as well as the wars that were occurring because of the Papal schism in the west. Ronald Cohn and Jesse Russel, *Armagnac Burgundian Civil War* (Wisconsin: Books on Demand, 2012).

<sup>441</sup> As John Goding explains, William Prinn wrote a work against the bishops and their extravagance. The book entitled *Voice from Ipswich* was published anonymously. However, the author was soon found out and was put on trial at the Star Chamber in 1637. He was fined £5,000 and was put in the pillory. In addition, it was ordered that the remainder of his ears be cut off and he was to be punished with a lifelong imprisonment. *Norman's History of Cheltenham* (Cheltenham: Longman, 1863).

Si quelque crime exécuté avec la formalité d'une prétendue justice peut être comparé à ce superbe crime de Cromwell, c'est le supplice du jeune Conradin, légitime roi de Naples et de Sicile, par la grâce du pape

Je ne vous parlerai pas de tant d'autres meurtres commis ailleurs sous une ombre de justice. Nous ne vous demandons un code que pour des peuples policés qui en soient dignes.

If any crime committed with the formality of a so-called justice can be compared to Cromwell's superb crime, it is the torture of the young Conradin, legitimate King of Naples and Sicily,<sup>442</sup> by the grace of the pope.<sup>443</sup>

I will not speak to you about so many other murders committed elsewhere under the guise of justice. We are only asking you for a code for civilised people who are worthy of it.

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<sup>442</sup> In later editions of the treatise, this paragraph appears as follows:

*'Si quelque crime exécuté avec la formalité d'une prétendue justice peut être comparé à ce superbe crime de Cromwell, c'est le supplice du jeune Conradin, légitime roi de Naples et de Sicile par la grâce de Dieu, jugé à mort par les valets en robe de Charles d'Anjou, roi de Sicile par la grâce du pape.'*

(If any crime committed with the formality of a so-called justice can be compared to Cromwell's superb crime, it is the torture of the young Conradin, legitimate King of Naples and Sicily, by the grace of God, judged to die by the valets in the royal robe of Charles of Anjou, King of Sicily.)

<sup>443</sup> Voltaire original note, *op. cit.*

*'Y a-t-il quelqu'un à qui l'on puisse apprendre que Conradin était né roi des Deux-Siciles par son père Conrad, et par son aïeul le grand empereur Frédéric II ? Qui ne sait que ce jeune prince l'espoir de l'Allemagne, destiné à l'empire, eut le courage, à l'âge de seize ans de venir combattre pour son héritage des Deux-Siciles que les papes avaient donné à Charles d'Anjou ? On sait assez que Conradin fut invité par ses sujets et par les Romains à remonter sur son trône. Il aborda dans sa patrie avec Frédéric duc d'Autriche son cousin-germain, son frère d'armes, dont l'amitié fut longtemps aussi célèbre en Italie que celle de Pilade pour Oreste en Grèce. Tous deux étaient secondés par Henri frère du roi de Castille et par une foule de chevaliers castillans. Les musulmans vinrent se ranger sous ses drapeaux ainsi que les chrétiens. Cette florissante armée fut détruite par un stratagème. Conradin et son brave ami furent livrés à Charles d'Anjou. Ce prince qui s'était fait vassal du pape, consulta Clément IV son seigneur suzerain, pour savoir comment il traiterait ses deux captifs. La vie de Conradin est la mort de Charles, répondit le pontife. Charles en conséquence fit juger le roi des Deux-Siciles et le duc d'Autriche, comme des criminels de lèse-majesté divine et humaine. Le bourreau leur trancha la tête dans la place publique, et Conradin mourut en baisant la tête du duc d'Autriche. Nous n'avons point les lettres par lesquelles saint Louis frère du duc d'Anjou reprocha sans doute à son frère un crime si cruel et si lâche.'* (pp. 164-165).

(Is there someone who could be taught that Conradin was born King of the Two Sicilies, by his father Conrad, and by his ancestor, the great Emperor Frederick II? Who does not know how this young prince, the hope of Germany, destined for the empire, had the courage at the age of sixteen to come and fight for his inheritance of the Two Sicilies, which the popes had given to Charles of Anjou? It is well known that Conradin was invited by his subjects and by the Romans to ascend to his throne. He reached his homeland with Frederick, Duke of Austria, his first cousin, his brother in arms, whose friendship was for a long time as famous in Italy as that of Pylades for Orestes in Greece. Both were assisted by Henry, brother of the King of Castile and by a crowd of Castilian knights. The Muslims came to line up under his flags as well as the Christians. This flourishing army was destroyed by a stratagem. Conradin and his brave friend were delivered to Charles of Anjou. This prince, who made himself vassal of the pope, consulted Clement IV, his suzerain, to know how he would deal with his two captives. *The life of Conradin is the death of Charles*, the pontiff responded. Consequently, Charles had the King of the Two-Sicilies, and the Duke of Austria sentenced as criminals of divine and humane high treason. The executioner beheaded them in public, and Conradin died while kissing the head of the Duke of Austria. We do not have the letters whereby Saint Louis, brother of the Duke of Anjou, undoubtedly reproached his brother for such a cruel and cowardly crime.)

~ ARTICLE XXI ~

**DES LIBELLES DIFFAMATOIRES**

Chez les Romains *famosi libelli*, les libelles qui attaquaient la renommée étaient des crimes de lèse-majesté quand l'empereur y était outragé. Tribonien fait dire à son empereur Justinien (dans le *Digeste*, liv. 48, titre. 4) *non lubricum linguæ ad pœnam facile trahendum est*. Une parole imprudemment échappée ne doit pas être facilement punie. On avait auparavant fait parler Théodose avec plus de dignité, et le code lui attribue des paroles plus mémorables (liv. 9, tit. 7). Si c'est légèreté, méprisons ; si c'est folie, ayons-en pitié ; si c'est dessein de nuire, pardonnons : *si ex levitate processerit, contemnendum ; si ex insania, miseratione dignissimum ; si ab injuria, remittendum*.

~ ARTICLE XXI ~

ON DIFFAMATORY LIBELS

In Roman times *famosi libelli*,<sup>444</sup> the libels that attacked reputation were crimes of lese-majesty, when the emperor was offended by them. Tribonian<sup>445</sup> made his Emperor Justinian aware of (in the *Digest*, book. 48, title. 4) *lubricum linguae non facile in poenam est trahendum*.<sup>446</sup> A word imprudently uttered, should not be easily punished. In the past, Theodosius was made to speak with more dignity, and the code<sup>447</sup> ascribes him more memorable words (book. 9, title. 7). If it is frivolity, let us show contempt for it; if it is madness, let us have pity on it; if it is intended to harm, let us pardon: *si ex levitate processerit, contemnendum; si ex insania, miseratione dignissimum; si ab injuria remittendum*.<sup>448</sup>

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<sup>444</sup> It is clarified in *A Dictionary of Greek and Roman Antiquities*, Sir William Smith, ed. (London: Murray, 1875) that the *Libelli famosi* were defamations ‘intended to injure the character of persons. A law of the Twelve Tables inflicted very severe punishments on those who composed defamatory writings against any person.’ (p. 702).

<sup>445</sup> Tribonian (500 A.D. - 547 A.D.) was legal advisor to Justinian I during his reign from 527 A.D. to 565 A.D. Tribonian was ordered by Justinian I to compose the *Digest* or *Digesta*, which was a collection of compositions on Roman Law. Ann Glendon, *The Forum and the Tower: How Scholars and Politicians Have Imagined the World from Plato to Eleanor Roosevelt* (Oxford: Oxford University Press, 2011).

<sup>446</sup> ‘The law tends to overlook rash or inconsiderate language spoken in the heat of the moment.’ *A New Dictionary of Quotations from the Greek, Latin, and Modern Languages: Translated into English, and Occasionally Accompanied with Illustrations, Historical, Poetical, and Anecdotal, with an Extensive Index, Referring to Every Important Word* (Philadelphia: Lipincott & Co., 1869), p. 263.

<sup>447</sup> ‘In the Theodosian Code we find, for the first time, a distinct series of laws, entitled the four constitutions of Constantine de *famosis libellis* [...] In the Theodosian Code they are called *Quatuor Constitutiones Constantini de Famosis Libellis*.’ Francis Holt and Anthony Bleecker, *The Law of Libel: In which is Contained a General History of this Law in the Ancient Codes, and of Its Introduction, and Successive Alterations, in the Law of England. Comprehending a Digest of All the Leading Cases Upon Libels, from the Earliest to the Present Time* (New York: Stephen Gould, 1818), pp. 10-15.

<sup>448</sup> ‘*Si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacessenda ac temulentia turbulentus obtrectator temporum fuerit, eum poenae nolumus subiugari neque durum aliquid nec asperum sustinere, quoniam, si ex levitate processerit, contemnendum est, si ex insania, miseratione dignissimum, si ab injuria, remittendum.*’

(If any one of humility and the person unintentionally, without modesty, ignorant to the wicked one petulancies the curse of our names, that shall believe in annoying the enemy, and the drunkenness be discouraged, detractor of the times, that he was the punishment, we do not want to be subjugated, nor a thing is not harsh to endure it, because, if it is for a slight reason, went forth, is to be despised is to say, whether they be of unsound mind, is by the mercy of the most worthy, if it is from an injury, who can participate.) *Code of our Sacred Principis Iustiniani, Book IX, CJ.9.7.1pr: Emperor Theodosius, Arcadius and Honorius* (09 September 2006). Retrieved from: <http://www.thelatinlibrary.com/justinian/codex9.shtml> (Accessed: 11 December 2018).

L'empereur Julien le Philosophe avait fait mieux, il avait toujours pardonné. Je vous cite ce très grand homme, parce que nos provinces respirèrent sous sa domination, ainsi que les Gaules, parce qu'il y diminua les impôts des deux tiers, parce qu'il y rendit la justice comme Caton, parce que sa vigilance et son courage nous préservèrent du joug des Sicambres et des autres peuples transrhénois qui nous subjuguèrent depuis. Rien ne peut nous dispenser de la reconnaissance que nous devons à un héros notre bienfaiteur.

Un écrit qui vous diffame semble punissable à proportion du mal qu'il peut faire. S'il est à craindre qu'il inspire la sédition contre le souverain, il doit être réprimé par une grande peine : et telle a été souvent la jurisprudence romaine. Si la diffamation ne porte que sur vos goûts, sur votre faiblesse, sur vos ridicules, gardez-vous bien d'intenter un procès, de peur d'être plus ridicule encore.

Emperor Julian,<sup>449</sup> the philosopher, had done better, he had always pardoned. I give you the example of this very great man because our provinces breathed under his domination, as well as the Gauls, because he reduced the taxes by two thirds there, because he applied justice there like Cato,<sup>450</sup> because his vigilance and his courage protected us from the yoke of the Sicambri<sup>451</sup> and of other transrhene peoples, who have since dominated us. Nothing can dispense us from the gratitude that we owe to a hero, our benefactor.

A written work that libels you appears to be punishable in proportion to the harm that it can do. If it is to be feared that it will inspire sedition against the sovereign, it must be repressed by a great punishment: and this was often Roman case law. If the libel is only about your tastes, about your weakness, about your follies, refrain from taking legal action, for fear of being even more ridiculous.

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<sup>449</sup> Julian the Apostate (331 A.D. - 363 A.D.) reigned as Roman Emperor for twenty months before his assassination in 363 A.D. Julian, despite being raised as a Christian, converted to paganism in 361 A.D. His conversion resulted in hostility amongst his Christian subjects. Hans Teitler, *The Last Pagan Emperor: Julian the Apostate and the War against Christianity* (Oxford: Oxford University Press, 2017).

<sup>450</sup> Marcus Porcius Cato (234 B.C. - 149 B.C.), also known as Cato the Elder, was a Roman politician. He was in favour of conservative and anti-Greek policies, in contrast to the principles of the Scipio family, his political opponents. Rob Goodman and Jimmy Soni, *Rome's Last Citizen: The Life and Legacy of Cato, Mortal Enemy of Caesar* (New York: St. Martin's Press, 2012).

<sup>451</sup> As stated in *The Dictionary of Greek and Roman Geography*, vol. 2, William Smith, ed. (London: Spottiswoode, 1857), the Sicambri were 'a powerful German tribe, occupying in the time of Caesar the eastern bank of the Rhine, and extending from the Sieg to the Lippe. [...] When the Usipytes and Tencteri were defeated by Caesar, the remnants of these tribes took refuge in the country of the Sicambri, who took them under their protection. Caesar then demanded their surrender; and this being refused, he built his famous bridge across the Rhine to strike terror into the Germans. The Sicambri however, did not wait for his arrival, but, on the advice of the Usipetes and Teneteri, quitted their own country and withdrew into forests and uninhabited districts, where Caesar neither would nor could follow them.' (p. 974).

Je ne mettrai point ici au rang des libelles diffamatoires réprimables par la justice ordinaire, certaines bulles que pourtant plusieurs parlements de France ont condamnées au feu. Telles par exemple que celle qui fut publiée à Rome en 1588, à l'instigation de la Ligue contre Henri IV notre auguste allié, et contre le prince de Condé son émule en vertu et en courage. Ils sont tous les deux appelés dans ce libelle diffamatoire *proles detestabilis ac degener familiae Borborionorum. Pronontiamus illos hereticos, relapsos, hereticorum duces, impenitentes, lezæ-majestatis divinæ reos. Privamus illum Henricum Navarrae regno ; hunc et utrumque eorumque posteros omnibus principatibus, ducatus dominiis et officiis regiis.* Et voici la traduction de ce mauvais latin. Nous déclarons Henri, ci-devant roi de Navarre, et Henri, ci-devant prince de Condé, race détestable et dégénérée de la maison de Bourbon, hérétiques, relaps, chefs d'hérétiques, impénitents, criminels de lèse-majesté divine. Nous privons ce Henri de Navarre de son royaume, et chacun d'eux et leur postérité de toutes principautés, duchés, domaines, de tous honneurs et offices royaux, etc., etc.



I will not include here up to the rank of defamatory libels, punishable by ordinary justice, certain papal bulls that, however, several *parlements* of France have condemned to be burned. Such as, for example, the one that was published in Rome in 1588, at the instigation of the League against Henry IV, our noble ally, and against the Prince of Condé, his disciple in virtue and in courage.<sup>452</sup> In this defamatory libel both of them are called *Proles detestabilis ac degener familiae borborationum. Pronontiamus illos hereticos, relapsos, hereticorum duces, impenitentes, lezæ-majestatis divinæ reos. Privamus illum Henricum Navarræ regno ; hunc et utrumque eorumque posteros omnibus principatibus, ducatus Dominis et officiis regiis.* And here is the translation of this poor Latin. We declare Henry, ci-devant King of Navarre, and Henry, ci-devant Prince of Condé, a detestable and degenerate race of the house of Bourbon, heretics, relapsed heretics, leaders of heretics, unrepentant, criminals of divine lese-majesty. We deprive this Henry of Navarre of his kingdom, and each of them and their posterity of all principalities, duchies, estates, of all honours and royal offices, etc. etc.

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<sup>452</sup> See *The Tripod, Or, New Satirist*, vol. 14, George Manners and William Jerdan eds. (London: S. Tipper, 1814). Look specifically at the following section: ‘On the 9<sup>th</sup> of September 1585, Pope Sixtus V launched a thundering bull against the King of Navarre (afterwards Henry IV of France) and against the Prince of Condé. After having raised the pontifical power and authority above the legitimate limits, this Pope says, that he is obliged to arm himself with the apostolical sword against two sons of Anger, who have abused the clemency of the Holy See, and to proscribe them as relapsed heretics, and protectors of heretics, as public and notorious defenders of heresy and enemies of God and religion. In consequence of these offences, he declares, that the King of Navarre has lost all his rights on the kingdom of Navarre, and on the principality of Béarn; incapable of succeeding to any sovereignty, and in particular to the crown of France; deprives him, as well as the Prince of Condé, of all rights and privileges attached to their rank, and absolves their subjects from the oath of allegiance.’ (p. 363).

Un Gustave-Adolphe, un Charles XII, un Frédéric de Prusse auraient répondu dans Rome à la tête d'une armée. Henri IV, aussi vaillant qu'eux, ne répondit que par un démenti affiché aux murs du Vatican. Il n'avait point alors d'armée ; il n'en eut jamais une complète que dans le temps où le fanatisme l'assassina par la main du dernier des hommes. Nous osons espérer que les temps de ces libelles diffamatoires absurdes ne reviendront plus.

A Gustavus Adolphus,<sup>453</sup> a Charles XII,<sup>454</sup> a Frederick of Prussia would have responded at the head of an army in Rome. Henry IV, as valiant as them, only responded with a refutation posted to the walls of the Vatican. He did not have an army then; he only ever had an entire one in the past, when he was assassinated by the fanatical hand of a commoner. We dare to hope that the days of these absurd defamatory libels will return no more.

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<sup>453</sup> Gustavus Adolphus (1594 - 1632) reigned as King of Sweden from 1611 to 1632. Theodore Dodge, *Gustavus Adolphus: A History of the Art of War [...]* (Boston: Houghton, Mifflin & Co., 1895).

<sup>454</sup> Charles XII (1682 - 1718) reigned as King of Sweden from 1697 until his death in 1718. Voltaire, *The life of Charles XII, King of Sweden*, Translated from the French of M. de Voltaire (Dewry: Alexander Wilkinson, 1815).

~ ARTICLE XXII ~

**DE LA NATURE ET DE LA FORCE DES PREUVES, ET DES PRÉSOMPTIONS**

**§ I- *Du flagrant délit***

La première preuve est le flagrant délit. Elle atteste le fait, mais elle n'atteste pas toujours que cette flagrante action soit un crime. On voit un homme qui tue un homme ; mais s'il tue l'assassin de son père en le poursuivant dans le moment de l'assassinat, il ne mérite que des applaudissements. S'il tue son agresseur, on n'a rien à lui reprocher. S'il tue pour un affront sanglant dans un premier mouvement de colère, la loi même doit lui pardonner, en dédommageant la famille du mort. En un mot toute action peut avoir diverses faces.

~ ARTICLE XXII ~

ON THE NATURE AND FORCE OF EVIDENCE, AND PRESUMPTIONS

§ I - *On flagrant crime*<sup>455</sup>

The first proof is the flagrant crime. It confirms the fact, but it does not always confirm that this flagrant action is a crime. We see a man who kills a man; but if he kills his father's murderer by pursuing him at the moment of the assassination, he only deserves applause. If he kills his attacker, we have nothing to reproach him for. If he kills in an initial impulse of anger for a harsh insult, the law itself must pardon him, by compensating the family of the dead person. In short, every action can have diverse facets.

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<sup>455</sup> *'In flagrante delicto'* (Latin: In blazing (obvious) crime) is a legal expression that specifies an individual 'caught red handed or while clearly in the process of committing some offense.' James Bretzke, *Consecrated Phrases: A Latin Theological Dictionary: Latin Expressions commonly found in Theological Writings* (Minnesota: Liturgical Press, 2013), p. 104.

## § II - *Des témoins*

La seconde preuve est le témoignage. Faut-il que dans tous les cas deux témoins constants, invariables, dans leurs dépositions uniformes suffisent pour faire condamner un accusé ? Deux hommes également prévenus se trompent si souvent, et croient avoir vu ce qu'ils n'ont point vu ! surtout quand les esprits sont échauffés, quand un enthousiasme de faction, ou de religion fascine les yeux.

N'y eut-il pas dans le procès criminel de Sirven en 1762 un médecin et un chirurgien catholiques zélés, qui virent de l'eau dans l'estomac de la fille de ce Sirven ouverte par eux ? et qui jugèrent que Sirven avait noyé sa fille, parce qu'il était protestant, quoique l'eau dans l'estomac eût été une preuve en bonne physique que la fille n'était pas morte noyée.

## § II - *On witnesses*

The second proof is the testimony.<sup>456</sup> In all cases, should two consistent witnesses,<sup>457</sup> invariable in their uniform depositions suffice to have a defendant condemned? Two men equally prejudiced, so often make errors and believe to have seen what they have not seen! Especially when spirits are heated, when an enthusiasm of faction, or of religion fascinates the eyes.

Was it not during the criminal trial of Sirven,<sup>458</sup> in 1762, that some zealous Catholic doctor and surgeon saw water in the stomach of this Sirven's daughter, which they opened? And who judged that Sirven had drowned his daughter because he was a Protestant, although the water in the stomach had been evidence, according to well-founded physics, that the girl had not died by drowning.

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<sup>456</sup> *'Témoignage, attestation, relation d'une vérité. Testimonium, testificatio.'* (Testimony, confirmation, account of a truth. *Testimonium, testificatio.*) *Dictionnaire Universel Français et Latin*, vol. 6 (Paris: Compagnie des libraires associés, 1752), p. 2052.

<sup>457</sup> The prerequisite for two witnesses' testimonies finds its origins in scripture. See *Illustrations of the Literary History of the Eighteenth Century*, vol. 3 (London: Nichols, 1818). Look specifically at the following section: 'What gives most weight to the Law in question is this, that it seems to be confirmed by the Gospel; for our Saviour confirms the truth of his Mission two testimonies, his own and his Father's, as if in no case a single testimony was good; St. John, VIII. 18. But this seems to be only an argument ad homines. It was written in their Law, that the testimony of two men was true, ver. 17 and therefore the proof of his Mission was valid too, such as their Law required. Our Saviour in another place directs that, if our brother trespass against us, after a private admonition, if he doth not hearken to that, we should take with us one or two more, that in the mouth of two or three witnesses every word might be established; Matthew VXIII. 16. Now if these two or three be to prove the fault we charge him with, by their testimony, or if they are to testify our demeanour towards him to the Church, to whom we are directed in the next verse to complain, then here is a plain Law that in this case we should have two witnesses; but it will not follow that in all other cases two witnesses are necessary; nor perhaps are the two or three which we are bid to take with us strictly witnesses who are to give evidence to a matter of fact, but persons who may by their persuasion or authority prevail with our offending brother to do us right.' (p. 256).

<sup>458</sup> See I. Davidson, *Voltaire in Exile: The Last Years, 1753-78, op. cit.* 'Pierre-Paul Sirven was a master land surveyor and tax assessor, living near Castres in south-west France, with his wife Toinette, and their three daughters, Jeanne, Elisabeth and Marie-Anne. The Sirvens were ostensibly converts to Catholicism, but in reality, were still Protestant, and known to be so; locally, in Castres and nearby Mazamet, Protestants constituted about half the population. Elisabeth Sirven, the second of the three daughters, was mentally unstable. On 6 March 1760 she disappeared from home; she was twenty-three years old. It turned out that she had been virtually abducted, on the instructions of the local Catholic bishop, and held in the Convent of the Black Ladies in Castres; the story the bishop told Pierre-Paul Sirven was that Elisabeth had asked to convert. In the convent, her mind became more disordered; but she refused to convert to Catholicism. After seven months she was returned to her parents, in a state of serious psychological and moral distress; in June 1761, a doctor was called, and declared that she was mad. On the night of 15 December 1761, Elisabeth again disappeared from home. Two weeks later, on 3 January 1762, her body was found, drowned in a local well. At this time, the trial of Jean Calas and his family was already under way in Toulouse, and the authorities in Mazamet immediately assumed that, just as Jean Calas must have murdered his son Marc-Antoine to prevent his conversion, so Pierre-Paul Sirven must have murdered his daughter Elisabeth for the same reason; and this despite the fact that there were no traces of violence on her body. On 20 January 1762, the authorities issued warrants for the arrest of Jean-Paul Sirven and his entire family.' (p. 17).

Une cabale de la populace à Lyon ne vit-elle pas en 1772, des jeunes gens porter en dansant et en chantant le cadavre d'une fille qu'ils venaient de violer et d'assassiner ? Cela ne fut-il pas déposé en justice d'une voix unanime ? Et cependant les juges reconnurent enfin solennellement dans leur sentence, qu'il n'y avait eu ni fille violée, ni cadavre porté, ni chant, ni danse.

On se souviendra longtemps de l'innocent gentilhomme Langlade condamné à la torture et aux galères, où il mourut.



Did a cabal of the populace not witness in 1772, some young people carry, while dancing and singing, the body of a girl that they had just raped and murdered? Was this not brought to court with a unanimous voice? And however, ultimately, the judges formally acknowledged in their sentence, that there had been neither a girl raped, nor body carried, nor singing, nor dance.<sup>459</sup>

We will remember for a long-time the innocent gentleman Langlade, condemned to torture and to the galleys, where he died.<sup>460</sup>

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<sup>459</sup> See Voltaire, *Œuvres complètes de Voltaire*, vol. 121, ed., Theodore Besterman (Geneva: Institut et musée Voltaire, 1975).

*'Il faut que le nouveau parlement de Paris prenne bien garde à ce qu'il fera sur l'affaire des Perra de Lyon. Je pense que là le Rouge a été noyée, que c'est son corps qu'on a trouvé dans le Rhône. Monsieur Loyseau ne s'éloigne pas de cet avis, et je crois avec lui que là le Rouge, en cherchant son chat, ou en étant poursuivie dans cette allée sombre, par quelque effronté tomba dans les privés que l'on curait alors, et qui étaient ouverts malgré les règlements de police. Ceux qui laissèrent ces lieux ouverts, étant en contravention, prirent peut-être le parti d'aller jeter le corps dans le Rhône, ce qui est assez commun à Lyon. Tout le reste de l'accusation contre les Perra et contre les autres accusés me paraît le comble de l'absurdité et de l'horreur. Je trouve d'ailleurs qu'il est contre toute raison, contre toute législation, contre toute humanité, de recommencer un procès criminel contre six personnes déclarées innocentes par trente juges qui les ont examinées pendant neuf mois, et qui ne sont pas des imbéciles.'* (p. 426).

(The new parliament of Paris must be wary of what it will do about the Perra of Lyon affair. I think that the Rougian was drowned there, that it is her body that was found in the Rhone. Mr. Loyseau does not digress from this opinion, and I believe with him that the Rougian, while looking for her cat there, or while being pursued in that dark alley, by some impudence, fell in the privies that were then being cleaned out and were open despite police regulations. Those who left these places open, being in violation of these regulations, perhaps decided to go and throw the body in the Rhone, which is fairly common in Lyon. All the rest of the accusation against Perra and against the other accused persons, to me appears to be the height of absurdity and horror. Incidentally, I find that it is against all reason, against all legislation, against all humanity, to recommence a criminal trial against six persons, declared innocent by thirty judges who examined them for nine months, and who are not idiotic.)

<sup>460</sup> As pointed out by Raymonde Morizot in *Voltaire : de la révolte à la justice* (Paris: Publibook, 2016), Langlade is described as:

*'Un pauvre bougre qui fut accusé d'avoir commis un vol dont il ne savait rien. Mais les juges se trompèrent sincèrement en l'accusant simplement parce qu'ils n'eurent pas même l'inspiration d'analyser les apparences contraires, ce que notre police scientifique moderne sait faire parfaitement aujourd'hui. Il fut enfermé au cachot, ainsi que sa femme et sa fille âgée de sept ans, Langlade envoyé aux galères où il mourut bien vite des mauvais traitements et sa femme bannie ensuite.'* (p. 82).

(A poor sod who was accused of committing a theft, which he knew nothing about. But the judges were sincerely mistaken, by accusing him simply because they did not even have the inspiration to analyse contrary appearances, what our modern scientific police knows how to do perfectly today. He was locked away in the dungeon, just as his wife and his seven-year-old daughter, Langlade was sent to the gallows where he died very quickly from poor treatment and his wife exiled afterwards.)

Le premier indice du vol dont on osa l'accuser fut la déposition de deux domestiques. Ils crurent le voir lui et sa femme pâlir et trembler au premier aspect du comte de Montgoméri qui ne soupçonnait point encore le vol dont il se plaignit depuis. De pareilles méprises ne sont que trop communes, et elles sont trop funestes.

Pour ne citer que des exemples connus, et au-dessus de tout reproche, rapportons encore l'incroyable, mais publique aventure de la Pivardiere. Mme de Chauvelin mariée en secondes noces avec lui, est accusée de l'avoir fait assassiner dans son château. Deux servantes ont été témoins du meurtre. Sa propre fille a entendu les cris et les dernières paroles de son père. *Mon Dieu ayez pitié de moi !* L'une des servantes malade en danger de mort, atteste Dieu en recevant les sacrements de son Eglise, que sa maîtresse a vu tuer son maître. Plusieurs autres témoins ont vu les linges teints de son sang ; plusieurs ont entendu le coup de fusil par lequel on a commencé l'assassinat. Sa mort est avérée. Cependant, il n'y avait eu ni coup de fusil tiré, ni sang répandu, ni personne tué. Le reste est bien plus extraordinaire. La Pivardiere revient chez lui ; il se présente aux juges de la province, qui poursuivaient la vengeance de sa mort. Les juges ne veulent pas perdre leur procédure ; ils lui soutiennent qu'il est mort, qu'il est un imposteur de se dire encore en vie ; qu'il doit être puni de mentir ainsi à la justice ; que leurs procédures sont plus croyables que lui. Ce procès criminel dure dix-huit mois avant que ce pauvre gentilhomme puisse obtenir un arrêt *comme quoi il est en vie*.

The first evidence of theft, which somebody dared to accuse him of, was the deposition of two servants. They believed to have seen him and his wife turn pale and tremble at the first appearance of the Count of Montgomery,<sup>461</sup> who did not yet suspect the theft that he has since complained about. Similar errors are only too common, and they are too appalling.

To only cite some well-known examples, and beyond reproach, let us speak once again about the incredible, but public adventure of de la Pivardière. Madame de Chauvelin who married him in her second marriage, is accused of having him murdered in his castle. Two servants witnessed the murder. His own daughter heard the cries and her father's last words. *My God have pity on me!* One of the sick maids, in danger of dying, attests to God while receiving the sacraments of his Church, that her mistress saw her master killed. Several other witnesses saw the linen stained with his blood; several heard the rifle shot by which the assassination began. His death is proven. However, there had not been neither a gunshot, nor blood spilled, nor anyone killed. The rest is even more extraordinary. La Pivardière returns to his home; he appears before the judges of the province, who were pursuing vengeance for his death. The judges did not want to lose their procedure; they maintain to him that he is dead, that he is an imposter to say he is still alive; that he must thereby be punished for lying to the justice system; that their procedures are more believable than him. This criminal trial lasts eighteen months, before this poor gentleman could obtain a ruling *to show that he is alive*.<sup>462</sup>

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<sup>461</sup> Gabriel de Lorges (1530 - 1574), known under the title of the Count de Montgomery, seriously injured King Henry II of France during a jousting tournament, who later died from his injuries. During the Wars of Religion, Montgomery was also a Huguenot leader up until his execution. Michael Gabriel, *Major General Richard Montgomery: The Making of an American Hero* (New Jersey: Rosemont Publishing, 2002).

<sup>462</sup> La Pivardière 'presented himself before the Judge of Ramorantin and demanded that he might prove his identity at all the places in and about Nerbonne, where he was so well known, which was accordingly done. At Lucé, he was recognized by the curé, by all the officers of the jurisdiction, and by a dozen of the inhabitants. At the village of Jeu, he entered church during vespers, and his arrival caused such a sensation, that the service was interrupted; everyone there had fully believed him murdered, and they imagined it his ghost which they now beheld. At length they were satisfied that it was the real La Pivardière; more than two hundred persons swore to his identity; the curé confirmed it; and his testimony could not well be suspected, as he was to succeed the Prior of Miséray, who as accomplice in the murder would lose all his benefices. He saw his little girl, who had given such fatal evidence against her mother, and she recognized him at once for her father.' *The Panorama of Life and Literature*, vol. 4 (Boston: Litell, 1857), p. 357.

Dieu de justice ! que d'exemples de ces erreurs meurtrières qui se renouvellent chaque année en Europe dans presque tous ces tribunaux gouvernés par la compilation de Tribonien ! ou par l'ancienne coutume féodale ! Ces catastrophes n'excitent pas toutes la même rumeur que celle des Calas ; elles ne sont pas toutes portées au pied du trône. Le fanatisme ne leur donne pas cette célébrité affreuse qui pénètre si profondément les esprits. Mais la mort du nommé Montbailli à Saint-Omer, et la condamnation de sa femme à être brûlée vive a été plus horrible, et encore moins excusable que celle du vieux père de famille Calas.

God of justice! So many examples of these deadly errors that recur every year in Europe, in nearly all these courthouses governed by the compilations of Tribonian!<sup>463</sup> or by the former feudal custom! These catastrophes do not excite all the same rumour as that of Calas; they are not all brought to the leg of the throne. Fanaticism does not give them this dreadful renown that so profoundly penetrates minds. But the death of the named Montbailli<sup>464</sup> in Saint-Omer, and the condemnation of his wife to be burned alive<sup>465</sup> was more horrible, and even less excusable than that of the old Calas father.

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<sup>463</sup> Tribonian (500 A.D. - 547 A.D.) was legal advisor to Justinian I during his reign from 527 A.D. to 565 A.D. Tribonian was ordered by Justinian I to compose the *Digest* or *Digesta*, which was a collection of compositions on Roman Law. A. Glendon, *op. cit.*

<sup>464</sup> Montballi was accused of killing his mother. It is likely that before being sent to the wheel by one of Arras's advisors, that he passed away from natural causes. However, he was exonerated thanks to Voltaire. José Cubero, 'Encyclopédie sur la Mort : La Barre (Affaire)' (30 January 2011). Retrieved from: [http://agora.qc.ca/thematiques/mort/documents/la\\_barre\\_affaire](http://agora.qc.ca/thematiques/mort/documents/la_barre_affaire) (Accessed: 17 April 2018).

<sup>465</sup> Voltaire original note, *op. cit.*

*'En 1770, le tribunal supérieur d'Arras entreprend sans aucune vraisemblance préalable de juger un jeune homme nommé Montbailli, et de le condamner à la question ordinaire et extraordinaire, au supplice du poing coupé, à être rompu, à être jeté vif dans les flammes, et sa femme à être brûlée avec lui ; le mari comme assassin de sa mère, et la femme comme complice. Le tribunal rend cet arrêt de son propre mouvement, sans qu'il y ait un seul accusateur, un seul témoin. Il semble que ce soit pour lui un plaisir de faire périr deux citoyens dans les tourments. Le mari est exécuté ; la femme, étant grosse de trois mois est réservée pour être brûlée en relevant de couche. Si par hasard le chancelier de France n'avait été averti, l'iniquité aurait été consommée. Quels dédommagements a eus cette femme infortunée ? aucun. A peine cette barbarie a-t-elle été connue.'* (p. 174).

(In 1770, the superior court of Arras begins without any preliminary credibility to judge a young man named Montballi, and to condemn him to ordinary and extraordinary torture, subjected to having a fist cut off, broken, to be thrown alive into the flames, and his wife to be burned with him; the husband as the murderer of his mother, and the wife as an accomplice. The court renders this ruling on its own initiative, without there being a single accuser, a single witness. It seems that for the court, it was a pleasure to have two citizens die in torment. The husband is executed; the wife, being three months pregnant, is saved from being burned by falling within the jurisdiction of childbirth. If somehow the Chancellor of France had not been warned, the injustice would have been consummated. What indemnity did this unfortunate woman have? None. This barbarity was hardly known.)

Au moment que je vous parle il se passe en Bretagne une scène moins révoltante. J'ai été témoin de plusieurs. Le cœur se flétrit, et la main tremble quand on se rappelle combien d'horreurs sont sorties du sein des lois mêmes. Alors on serait tenté de souhaiter que toute loi fût abolie, et qu'il n'y en eût d'autres que la conscience et le bon sens des magistrats. Mais qui nous répondra que cette conscience et ce bon sens ne s'égarent pas ? Ne restera-t-il d'autres ressources que de lever les yeux au ciel, et de pleurer sur la nature humaine ?

At the moment when I am speaking to you, a less revolting scene is occurring in Brittany.<sup>466</sup> I have been witness to several. The heart withers and the hand trembles, when we are reminded of how many horrors have emanated from the laws themselves. Thus, one would be tempted to hope that every law is abolished, and that there were no others, but the conscience and common sense of magistrates. But who will respond to us that this conscience and this common sense do not lose their way? Will no other option remain than to raise one's eyes to heaven, and to cry over human nature?

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<sup>466</sup> Voltaire original note, *op. cit.*

*'Voici l'aventure de Bretagne. Deux coupables sont condamnés par un parlement avec deux femmes réputées complices. Les deux hommes par leur testament de mort déclarent que les femmes sont innocentes. Le rapporteur allègue que la loi n'écoute pas cette justification tardive, et veut qu'on les pendre tous quatre. Le bourreau plus pitoyable que le conseiller, et raisonnant mieux, ayant déjà pendu les deux hommes et une femme, conseille tout bas à la dernière de crier qu'elle est grosse. On suspend l'exécution, on écrit à Versailles et la femme est sauvée. N'a-t-on pas vu, dans le procès si connu du comte de Morangiés, deux témoins obstinés à soutenir invariablement le plus absurde mensonge ; séduire le juge subalterne à qui on avait renvoyé cette affaire, au point que ce juge crut en tout ces deux misérables, et principalement un cocher nommé Gilbert, fameux alors parmi la canaille, et regardé dans le peuple comme le vertueux ennemi de la noblesse ? C'est sur les cris de ce séditieux que le juge osa flétrir un maréchal de camp indignement accusé. Il dut bien se repentir de son erreur, lorsqu'un an après ce généreux cocher fut reconnu pour un voleur public, pour un faussaire, et puni par la justice.'* (p. 175).

(Behold the adventure of Brittany. Two guilty parties are condemned by a parliament, with two alleged women accomplices. The two men, by their testament of death, declare that the two women are innocent. The rapporteur alleges that the law does not listen to this late evidence and demands that all four of them be hanged. The executioner, more pitiful than the counsellor, and reasoning better, having already hanged the two men and one woman, advises in a low voice to the last to shout out that she is pregnant. The execution is suspended, Versailles is written to, and the woman is saved. Have we not seen, in the well-known trial of the Count of Morangiés, two witnesses, who persisted to consistently support the most absurd lie; to seduce the subordinate judge, to whom this affair had been referred to, to the point that this judge believed these two paupers entirely, and principally a coach driver named Gilbert, then famous among the dregs of society, and regarded among the people as the virtuous enemy of the nobility? It is on the cries of this seditious person that the judge dared to wither a disgracefully accused field marshal. He had to repent for his error, when one year later, this generous coach driver was recognised as a public thief, as a forger, and punished by the justice system.)

Nous avons vu par les lettres de plusieurs jurisconsultes de France, qu'il n'y a point d'année où quelque tribunal ne fasse périr dans les supplices des malheureux dont l'innocence est ensuite reconnue et non vengée. Il faut de l'argent pour demander justice en révision : mais les pauvres familles qui la demanderaient sont réduites à l'aumône, tandis que dans la capitale trois ou quatre cent mille hommes oisifs, après s'être occupés de convulsions pendant vingt ans, disputent gaiement sur un vauxhall, sur un opéra-comique, sur des doubles croches.

### **§ III - *Des Accusateurs qui administrent des preuves du crime***

Heureuses les nations qui ont été assez sages pour statuer que tout accusateur se mettrait en prison, en y faisant enfermer l'accusé ! C'est de toutes les lois la plus juste. Encore les délateurs ont-ils le moyen de s'y soustraire. Calvin fit accuser Servet par son valet Lafontaine apprenti en théologie ; et s'étant mis ainsi à couvert de la loi il n'en poursuivit que plus vivement son accusation. La loi n'en est pas moins équitable. Elle ressemble aux règles de ces combats en champs clos, dans lesquels les champions étaient obligés de combattre avec des armes égales, et de partager le soleil et le vent. La manière de combattre était raisonnable et juste, quoiqu'il fût très injuste et très insensé de faire dépendre la vérité d'un combat.

Que de témoins accusateurs ont accouru à Paris de six mille lieues pour accuser le général Lalli d'avoir trahi la France, lui qui avait répandu son sang pour la France ainsi que toute sa famille ! On nous mande qu'aujourd'hui sous un roi juste on revoit ce funeste procès. De quelle gloire se couvrira le conseil si son équité peut réformer par les lois l'arrêt impitoyable porté contre le général Lalli à l'abri des lois !



We have seen from the letters of several jurisconsults of France, that there is no year when some courthouse does not have some poor people, whose innocence is then recognised and not avenged, condemned to perish in tortures. It takes money to appeal for the justice system to be reviewed: but the poor families who would ask for it are reduced to charity, while in the capital, three or four hundred thousand idle men, after dealing with convulsions for twenty years, gaily dispute about a Vauxhall, a comic opera, or about some semiquavers.

### § III - *On accusers who administer proofs of the crime*

Happy the nations who have been wise enough to decree that every accuser would be put in prison, by having the accused imprisoned there! It is of all the laws the fairest. Yet, do the informers have the means to avoid it. Calvin had Servet<sup>467</sup> accused by his valet Lafontaine, apprentice theologian; and thereby being protected by the law, he only more intensely pursued his accusation. The law is no less impartial about it. It resembles the rules of those battles in enclosed fields, in which the champions were obliged to fight with equal weapons, and to share the sun and the wind. The manner of fighting was reasonable and fair, although it was very unjust and very senseless to have the truth depend upon a battle.

A great number of accusatory witnesses hurried to Paris from six thousand leagues away, in order to accuse General Lally of having betrayed France, he who had shed his blood for France just like all his family! We are told today under a legitimate king to review this appalling trial. What glory will the council be covered with, if its equity can reform, by way of the laws, the pitiless ruling decreed against General Lally,<sup>468</sup> under the guise of the laws.<sup>469</sup>

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<sup>467</sup> Servet was reprimanded for blasphemy because as Willem Nijenhuis puts it 'in his *Restitutio Christianismi* (1553) he had spoken out against the classical doctrine of the Trinity ('a monster with three heads'), original sin, child baptism ('an accursed horror and murder of the Holy Spirit') and justification through faith. During a stay in Geneva he was pointed out, taken into custody and accused of blasphemy by Calvin on August 13<sup>th</sup> on the basis of his publication. On August 24<sup>th</sup> the procurator-general of the republic took over the role of prosecutor with an indictment of 30 points in which he pointed out the consequences which the spread of Servet's heresy would have on public life. From that moment Calvin and his colleagues served only as theological advisers.' *Ecclesia Reformata: Studies on the Reformation* (Leiden: Brill, 1972), p. 123.

<sup>468</sup> Count Thomas-Arthur Lally (1702 - 1766) was a French general. During the Seven Years' War, Lally surrendered to the British, for which he was charged with treason and executed. Ian Davidson, *Voltaire: A Life* (New York: Pegasus Books, 2012).

<sup>469</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.*

'*Le vœu de Voltaire fut accompli. L'arrêt du parlement, du 6 mai 1766, fut cassé sous le règne de Louis XVI, le 21 mai 1778. Voyez la lettre de Voltaire à Lally fils, du 26 mai 1778.*' (p. 76).

(Voltaire's wish was fulfilled. The ruling of the parliament, dated 6 May 1766, was quashed under the reign of Louis XVI, on 21 May 1778. See Voltaire's letter to Lally's son, dated 26 May 1778.)

#### **§ IV - *Si tout témoin doit être entendu***

Je pencherais à croire que tout homme quel qu'il soit, peut être reçu à témoigner. L'imbécillité, la parenté, la domesticité, l'infamie même, n'empêchent pas qu'on ait pu bien voir, et bien entendre. C'est aux juges à peser la valeur du témoignage, et des reproches qu'on doit lui opposer. Les dépositions d'un parent, d'un associé, d'un domestique, d'un enfant ne doivent décider de rien. Mais elles peuvent être entendues ; parce qu'elles peuvent donner des lumières.

Vous êtes en prison pour dettes ; un prisonnier en assassine un autre ; trente prisonniers qui ont vu le meurtre assurent tous que vous n'êtes pas le coupable.

Leur déposition ne serait-elle pas admise sous prétexte que leurs personnes seraient infâmes, ou réputées mortes civilement ? Et les témoignages de deux misérables non encore flétris seraient-ils seuls écoutés ? Faudrait-il que vous en fussiez la victime ?

#### **§ V - *Le juge doit-il seul entendre le témoin en secret ? Et ce témoin récolé peut-il se dédire ?***

Toutes ces procédures secrètes ressemblent peut-être trop à la mèche qui brûle imperceptiblement pour mettre le feu à la bombe.

Est-ce à la justice à être secrète ? Il n'appartient qu'au crime de se cacher.

C'est la jurisprudence de l'Inquisition. C'est celle par laquelle on fit périr tant de vertueux mais trop riches chevaliers du Temple, dont on voulait le supplice et la dépouille ; première éruption infernale qui annonça de loin le volcan de la Saint Barthelemi. On punit en France le témoin qui se dédit après le récolement, c'est-à-dire après son second interrogatoire secret. Punissez-le s'il s'est laissé corrompre, mais non pas sur la seule supposition qu'il a pu être corrompu.

#### **§ IV - *If every witness must be heard***

I would be inclined to believe that every man, whoever he may be, can be admitted to give evidence. Imbecility, kinship, domesticity, infamy even, do not prevent someone from being able to see and hear well. It is the judges' duty to weigh the value of the testimony and the reproaches, which he must be contested with. The depositions of a relative, of an associate, of a servant, of a child must not decide anything. But they can be heard; because they can shed light on the matter.

You are in prison for debts; a prisoner kills another prisoner; thirty prisoners who have witnessed the murder assure everyone that you are not guilty.

Would their statement not be admitted, under pretext that their persons would be infamous, or considered dead to society? And would the two paupers' testimonies, not yet sullied, be the only ones heard? Would it have to take you to be the victim of it?

#### **§5 - *Must the judge alone hear the witness in secret? And is it possible for this witness who has been read his testimony to retract his statement?***

All these secret procedures perhaps excessively resemble the wick that imperceptibly burns to set the bomb alight.

Is it for the justice system to be secret? It is only inherent of the crime to hide itself.

It is the case law of the Inquisition. It is that by which so many virtuous but overly rich knights of the Temple were killed, of whom one hoped for their torture and their corpse; the first infernal eruption that announced from a distance the volcano of the Saint Bartholomew's Day massacre. In France, the witness who retracts his statement after it is read back to him is punished, that is to say, after their second secret interrogation. Punish him, if he allowed himself to become corrupted, but not on the only supposition that was corrupted.

~ ARTICLE XXIII ~

**DOIT-ON PERMETTRE UN CONSEIL, UN ADVOCAT À L'ACCUSÉ ?**

Plonger un homme dans un cachot, l'y laisser seul en proie à son effroi et à son désespoir, l'interroger seul quand sa mémoire doit être égarée par les angoisses de la crainte et du trouble entier de la machine ; n'est-ce pas attirer un voyageur dans une caverne de voleurs pour l'y assassiner ? C'est surtout la méthode de l'Inquisition. Ce mot seul imprime l'horreur.

En Angleterre, île fameuse par tant d'atrocités et par tant de bonnes lois, les jurés étaient eux-mêmes les avocats de l'accusé. Depuis le temps d'Edouard VI, ils aidaient sa faiblesse, ils lui suggéraient toutes les manières de se défendre. Mais sous le règne de Charles second on accorda le ministère de deux avocats à tout accusé, parce qu'on considéra que les jurés ne sont juges que du fait, et que les avocats connaissent mieux les pièges et les évasions de la jurisprudence. En France le code criminel paraît dirigé pour la perte des citoyens ; en Angleterre pour leur sauvegarde.

Et non seulement le citoyen, mais l'étranger y trouve sa sûreté dans la loi même, puisqu'il choisit six étrangers pour remplir le nombre de douze jurés qui le jugent. C'est un privilège en faveur de l'univers entier.

~ ARTICLE XXIII ~

**MUST AN ADVISOR, A LAWYER BE PERMITTED TO THE ACCUSED?**

To throw a man into a dungeon, to leave him there alone, in the throes of his terror and his despair, to interrogate him alone when his memory must be disorientated by the dread of fear and by the complete torment of the machine; is it not luring a traveller into a cavern of thieves to assassinate him there? It is above all the method of the Inquisition. This word alone imparts horror.

In England, an island famous for so many atrocities and for so many good laws, the jurors themselves were the lawyers of the accused. Since the time of Edward VI, they helped him in his weakness, they suggested to him all the ways to defend himself.<sup>470</sup> But, under the reign of Charles II, two lawyers were granted to the prosecution of each defendant because it was considered that the jurors are only judges of fact, and that the lawyers know the traps and evasions of case law better. In France, the criminal code appears to be administered for the downfall of citizens; in England for their protection.

And not only the citizen, but the foreigner finds his safety there, in the law itself, since he chooses six foreigners to complete the number of twelve jurors who judge him.<sup>471</sup> This is a privilege in favour of the entire universe.

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<sup>470</sup> It is clarified in *Thomas More's Trial by Jury: A Procedural and Legal Review with a Collection of Documents*, Henry Kelly, Louis Karlin, and Gerard Wegemer, eds. (Woodbridge: Boydell Press, 2011) that 'English law was changed during Edward VI's reign to adopt the two-witness rule, likely in reaction against Henry's treason laws.' (p. 86).

<sup>471</sup> Johann Von Archenholz details in his work *A Picture of England: Containing a Description of the Laws, Customs, and Manners of England* (Dublin: Byrne, 1707) that 'in a criminal trial, if the accused be a foreigner, the jury is composed of six English and six foreigners, whose names are communicated to him beforehand, to the end that he may be enabled to reject without explaining his reasons, any of them whom he suspects to be his enemies.' (p. 12).

~ ARTICLE XXIV ~

**DE LA TORTURE**

Puisqu'il est encore des peuples chrétiens, que dis-je ! des prêtres chrétiens, des moines chrétiens, qui emploient les tortures pour leur principal argument, il faut commencer par leur dire que les Caligulas, les Nérons n'osèrent jamais exercer cette fureur sur un seul citoyen romain.

Elle est solennellement prohibée avec exécration dans le vaste empire de la Russie. Elle est abolie dans tous les Etats du héros du siècle, le roi de Prusse ; dans ceux de l'impératrice-reine ; le juste et bienfaisant landgrave de Hesse l'a proscrite ; elle est abhorrée dans l'Angleterre et dans d'autres gouvernements. Que reste-t-il donc à faire aux provinces de l'Europe qui n'ont pas encore adopté cette législation ?

La Caroline cette loi fameuse de Charles-Quint, ne parle que de torture. C'était la première procédure dans tout procès criminel, tandis qu'en France des commissaires nommés par François I<sup>er</sup> le père des lettres appliquaient à la torture le comte Montecuculli sujet de l'empereur Charles-Quint, ridiculement accusé d'avoir empoisonné le jeune Dauphin, et qu'ensuite on tirait à quatre chevaux ce gentilhomme innocent.

~ ARTICLE XXIV ~

ON TORTURE

Since there still are Christian people, what am I saying! Christian priests, Christian monks, who employ tortures for their principal argument, let us start by telling them that the Caligulas<sup>472</sup>, the Neros<sup>473</sup> never dared to practise this rage on a single Roman citizen.

It is solemnly prohibited with execration in the vast empire of Russia. It is abolished in all the states of the hero of the century, the King of Prussia; in those of the Empress-Queen; the fair and charitable Landgrave of Hesse<sup>474</sup> forbade it; it is abhorred in England and in some other governments. Therefore, what remains for the other provinces of Europe to do, that have not yet adopted this legislation?

The Carolina, Charles-Quint's famous law, only speaks of torture. It was the first procedure in every criminal trial, while in France, commissioners named by Francis I, the father of letters, inflicted torture on the Count of Montecucoli,<sup>475</sup> subject of Emperor Charles-Quint, ridiculously accused of having poisoned the young Dauphin, and afterwards this innocent gentleman was pulled apart by four horses.

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<sup>472</sup> Caligula (12 A.D. - 41 A.D.) reigned as Roman Emperor from 37 A.D. to 41 A.D. Aloys Winterling, *Caligula: A Biography* (California: University of California Press, 2015).

<sup>473</sup> Nero (37 A.D. - 68 A.D.) nephew of Caligula. Nero reigned as Roman Emperor and was the last emperor to rule during the Julio-Claudian dynasty. *Ibid.*

<sup>474</sup> Philipp I, Landgrave of Hesse (1504 - 1567) was a protestant ruler in Germany. John Helmke, *Philipp of Hesse: Unlikely Hero of the Reformation* (Missouri: Concordia Publishing House, 2018).

<sup>475</sup> Count Sebastiano of Montecucoli was in the service of Francis I. Montecucoli, who was secretary to the Dauphin, was put to death in 1536 on suspicion of having poisoned him. John Blair, *Blair's Chronological Tables Revised and Enlarged: Comprehending the Chronology and History of the World from the Earliest Times to the Russian Treaty of Peace, April, 1856* (Surry: H. G. Bohn, 1856).

On ne rencontre dans les livres qui tiennent lieu de code en France, que ces mots affreux, question préparatoire, question provisoire, question ordinaire, question extraordinaire, question avec réserve de preuves, question sans réserve de preuves, question en présence de deux conseillers, question en présence d'un médecin, d'un chirurgien ; question qu'on donne aux femmes et aux filles pourvu qu'elles ne soient pas enceintes. Il semble que tous ces livres aient été composés par le bourreau.

On est bien surpris de trouver dans ce code d'horreurs une lettre du chancelier d'Aguesseau du 4 janvier 1734, dans laquelle sont ces propres termes : *Ou la preuve du crime est complète, ou elle ne l'est pas. Au premier cas, il n'est pas douteux qu'on doive prononcer la peine portée par les ordonnances ; mais dans le dernier cas, il est aussi certain qu'on ne peut ordonner que la question, ou un plus amplement informé.*

Quel est donc l'empire du préjugé, illustre chef de la magistrature ! Quoi ! vous n'avez point de preuves, et vous punissez pendant deux heures un malheureux par mille morts, pour vous mettre en droit de lui en donner une d'un moment ! Vous savez assez que c'est un secret sûr pour faire dire tout ce qu'on voudra à un innocent qui aura des muscles délicats, et pour sauver un coupable robuste. On l'a tant dit ! il en est tant d'exemples ! Est-il possible qu'il vous soit égal d'ordonner ou des tourments affreux, ou un plus amplement informé ? Quelle épouvantable et ridicule alternative !



In the books that serve as code in France, we only come across these awful words, preparatory torture, provisional torture, ordinary torture, extraordinary torture, torture with reservation of evidence, torture without reservation of evidence, torture in the presence of two advisors, torture in the presence of a doctor, of a surgeon; torture that is inflicted on women and girls provided that they are not pregnant. It seems that all these books have been composed by the executioner.

It is very surprising to find a letter from the Chancellor d'Aguesseau,<sup>476</sup> dated 4 January 1734, in this code of horrors, in which these exact words are found: *Either the proof of the crime is complete, or it is not. In the former case, there can be no doubt that the punishment ordered by the rulings must be pronounced; but in the latter case, there is also no doubt that torture cannot be ordered, until more complete information comes to light.*<sup>477</sup>

Therefore, what is the influence of the prejudiced, illustrious leader of the magistracy! What! You have no evidence, and you punish a poor person for two hours by way of one thousand deaths,<sup>478</sup> so you have the right to mete out a death at any given moment! As you know, it is a sure secret, to insinuate all that one would like to a naïve person, who will be in a weakened state, and to protect a robust guilty person. It has been said so much! There are so many examples of it! Is it possible that you think it is fair to decree either terrible torments, or more complete information? What a terrible and ridiculous alternative!

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<sup>476</sup> Henri François d'Aguesseau (1668 - 1751) served as Chancellor of France under Louis XIV. *Madame de Sévigné and her contemporaries*, vol. 1 (London: Henry Colburn, 1841).

<sup>477</sup> Voltaire original note, *op. cit.*

'*Cette lettre est rapportée dans l'Instruction criminelle, page 701.*' (p. 185).  
(This letter is reported in the *Instruction criminelle*, page 701.)

<sup>478</sup> Michel Foucault, as cited by Larissa Tracy, stated that 'death-torture is the art of maintaining life in pain, by subdividing it into a thousand-deaths, by achieving before life ceases the most exquisite agonies.' *Torture and Brutality in Medieval Literature: Negotiations of National Identity* (Cambridge: DS Brewer, 2012), p. 19.

J'oserais croire qu'il n'a été qu'un seul cas où la torture parût nécessaire ; et c'est l'assassinat de Henri IV, l'ami de notre république, l'ami de l'Europe, celui du genre humain. Le crime de sa mort perdait la France, exposait nos provinces, troublait vingt états.

L'intérêt de la terre était de connaître les complices de Ravaillac. Mais le supplice d'être tiré à quatre chevaux après avoir reçu du plomb fondu dans ses membres sanglants tenaillés avec des tenailles ardentes, était assez long pour lui donner le temps de révéler ses associés, s'il en avait eu. Il est probable qu'il n'avait d'autres complices que l'esprit de la Ligue et de Rome ; je veux dire de la Rome de son temps ; car assurément celle d'aujourd'hui ne tremperait pas dans de telles abominations.

I would dare to believe that there was only a single case when torture seemed necessary; and it is the assassination of Henry IV, the friend of our republic, the friend of Europe, that of humankind. The crime of his death lost France, exposed our provinces, troubled twenty states.

It was in the interest of the world to know the accomplices of Ravillac. But the torture of being pulled apart by four horses, after having received melted lead with ardent pliers in his tortured bloody limbs, was long enough to give him the time to reveal his associates, if he had had them. It is probable that he did not have any accomplices, other than the spirit of the League and Rome; I mean Rome of his day; as certainly that of today would not be involved in such abominations.

Voyez, Messieurs, si excepté le crime de Ravallac commis contre l'Europe, la question dans toute autre circonstance n'est pas plus affreuse qu'utile. Souvenons-nous toujours comment ce supplice fit périr presque dans la même année l'innocent d'Anglade, et l'innocent Lebrun, leur histoire déjà citée est assez connue par tous ceux qui ont entendu parler des méprises de la justice. Ces deux martyrs de la forme des lois chez nos voisins, font voir assez que la question ne sert pas à découvrir la vérité, mais sert à causer inutilement la mort la plus longue et la plus douloureuse. L'injustice du supplice de ce d'Anglade et de ce Lebrun, ne fut reconnue qu'après leur mort ; leurs juges pleurèrent, mais leur repentir n'abolit point la loi. Je ne conçois pas comment les infortunés juges qui les condamnèrent purent être encore assez hardis pour ordonner la question dans d'autres procès criminels, et comment Louis XIV le souffrit. Mais un roi a-t-il le temps de songer à ces menus détails d'horreurs, au milieu de ses fêtes, de ses conquêtes et de ses maîtresses ? Daignez vous en occuper, ô Louis XVI ! vous qui n'avez aucune de ces distractions !

See, Sirs, if excluding the crime of Ravallac committed against Europe, torture in all other circumstance is no more awful than useful.<sup>479</sup> Let us always remember how this torture nearly had the innocent Langlade killed in the same year,<sup>480</sup> and the innocent Lebrun,<sup>481</sup> their story already cited is quite well-known by all those who have heard of the errors of the justice system.<sup>482</sup> These two martyrs, in the form of the laws among our neighbours, clearly reveal that torture does not serve to discover the truth, but vainly serves to make death longer and more painful. The injustice of the torture of this Langlade and of this Lebrun, was only recognised after their deaths; their judges cried, but their remorse did not abolish the law. I do not see how the unfortunate judges who condemned them, could again be brazen enough to order torture in other criminal trials, and how Louis XIV suffered it. But a king, has he the time to think about these minor details of horrors, in the middle of his parties, his conquests and his mistresses? Deign to occupy yourself with it, oh Louis XVI! You who does not have any of these distractions!

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<sup>479</sup> Kehl edition editors' original note, *op. cit.*

*'L'impératrice de Russie, Catherine II, avant d'abolir la question, fit examiner les ouvrages qu'elle avait ordonné de composer aux partisans encore nombreux de la torture, et aux amis de l'humanité, qui avaient élevé la voix contre cette absurde et inutile barbarie. L'auteur qui soutenait qu'il fallait abolir la question, était d'avis de la conserver pour le crime de lèse-majesté seulement. L'impératrice la proscrivit sans aucune réserve.'* (p. 187).

(The Empress of Russia, Catherine II, before abolishing torture, had the works examined, which she had ordered the still great number of partisans of torture and the friends of humanity to compose, who had risen their voice against this absurd and useless barbarity. The author, who insisted that torture should be abolished, was of the opinion to conserve it only for the crime of lese-majesty. The Empress proscribed it without any reservation.)

<sup>480</sup> Sieur d'Anglade. See *The Legal Observer, Or, Journal of Jurisprudence*, vol. 5 (London: John Richards, 1833), p. 231.

<sup>481</sup> James le Brun. See *Ibid.*, p. 291.

<sup>482</sup> Voltaire original note, *op. cit.*

*'On peut voir l'histoire de leur innocence et de leur mort dans les Causes célèbres.'* (p. 187).  
(We can see the story of their innocence and their deaths in the *Causes célèbres*.)

~ ARTICLE XXV ~

**DES PRISONS, ET DE LA SAISIE DES PRISONNIERS**

Les prisons à Madrid construites dans la grande place, sont décorées d'une façade de belle architecture. Il ne faut pas qu'une prison ressemble à un palais. Il ne faut pas non plus qu'elle ressemble à un charnier. On se plaint que la plupart des geôles en Europe soient des cloaques d'infection, qui répandent les maladies et la mort, non seulement dans leur enceinte, mais dans le voisinage. Le jour y manque, l'air n'y circule point. Les détenus ne s'entrecommuniquent que des exhalaisons empestées. Ils éprouvent un supplice cruel avant d'être jugés. La charité, et la bonne police devraient remédier à cette négligence inhumaine et dangereuse.

L'emprisonnement est déjà une peine par lui-même ; il doit donc être proportionné à l'énormité du délit dont le détenu est accusé. Faut-il plonger dans le fond du même cachot un malheureux débiteur insolvable, et un scélérat violemment soupçonné d'un parricide ? Il y a des degrés à tout, des distinctions à faire dans chaque genre.

Nous voyons que le sage Louis XVI, réforme en partie cet abus dans un édit qui supprime des centaines de petits persécuteurs subalternes qui plongeaient dans des cachots pestiférés les familles indigentes condamnées par eux à des amendes.

~ ARTICLE XXV ~

ON IMPRISONMENT, AND THE SEIZURE OF PRISONERS

The prisons in Madrid, built in the great square, are decorated with a façade of beautiful architecture.<sup>483</sup> A prison should not resemble a palace. It should not resemble a charnel house either. One complains that the majority of prisons in Europe are cesspits of infection, which spread diseases and death, not only in their enclosure, but in the vicinity. Daylight is absent there; air does not circulate there.<sup>484</sup> The prisoners only communicate with each other through polluted exhalations. They experience a cruel torture before being judged. Charity and good police should remedy this inhumane and dangerous negligence.

Imprisonment is already a punishment in itself; it must therefore be proportional to the enormity of the crime that the prisoner is accused of. Must an unfortunate penniless debtor and a criminal, vehemently suspected of parricide, be thrown in the bottom of the same dungeon? There are degrees to everything, distinctions to make in each case.<sup>485</sup>

We see that the wise Louis XVI partly reforms this abuse, in an edict that removes hundreds of little subordinate persecutors, who threw poor families they condemned to fines<sup>486</sup> into plague-stricken dungeons.

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<sup>483</sup> Marat Vicente details the account given by John Howard, a British observer travelling in Spain, about the conditions at Pamplona prison in Spain. Castillo de la Plaza is described as ‘an old building in the middle of the city. It has three small courts: the prisoners lie in boxes without mattresses or bedding.’ The state of the rooms, ‘very dirty and offensive’, seemed to facilitate an ‘epidemical distemper’ that had broken out in 1775, and as a result about eighteen or twenty prisoners had died.’ *Debating Sex and Gender in Eighteenth-Century Spain* (Cambridge: Cambridge University Press, 2017), p. 125.

<sup>484</sup> Citing John Howard (1929; 1977) in *Applied Criminology*, Brian Stout, Joe Yates, and Brian Williams, eds. (London: Sage Publications, 2008), Azrini Wahidin and Jenny Ardley asserted that prisons during the 18<sup>th</sup> Century ‘were characterized by lack of light, air, sanitation, washing facilities and general cleanliness.’ (p. 69).

<sup>485</sup> ‘In our current criminal system, the accused and the convicted are thrown together into the same dungeon; because prison is more a punishment than a place of custody of the accused.’ C. Beccaria, Trans., G. Newman and P. Marongiu, *op. cit.*, p. 74.

<sup>486</sup> Voltaire original note, *op. cit.*

‘Édit pour la suppression des jurandes.’ (p. 190).

(Edict for the abolition of confraternity.)

L'incarcération légale, quoique pénible, n'est point regardée d'abord par les juges comme un châtement. Ce n'est à leurs yeux qu'une assurance de retrouver sous leur main le prévenu, quand ils viendront l'interroger, et le juger. Cependant en Angleterre un ministre d'état qui fait incarcérer sans raison un homme, seulement pour le retrouver au besoin, et sous prétexte que prison n'est pas supplice, est obligé par la loi de payer quatre guinées pour la première heure, et deux guinées pour chaque heure suivante de la détention de cet homme qu'il a voulu avoir sous sa main. La prison est un supplice pour peu qu'elle dure. C'est un supplice intolérable quand on y est condamné pour sa vie.

Dans plusieurs Etats, la manière dont on s'y prend pour s'assurer d'un homme ressemble trop à une attaque de brigands.

N'approuvez-vous pas l'heureuse méthode d'une nation, qui a su donner à la loi seule un si puissant empire, qu'il suffit d'un seul ministre de la loi revêtu des marques de son office pour que le prévenu n'ose résister ?

Comment est-on parvenu à rendre ainsi les lois si respectables à chaque citoyen ? C'est lorsque la nation les a faites.



Legal incarceration, although difficult, is not considered by the judges as a punishment in the first place. It is only in their eyes an assurance to have the accused at hand, when they will come to interrogate and judge him. However, in England, a Minister of State who has a man incarcerated without reason, only to meet him again if needed, and under pretext that prison is not torture, is obliged by law to pay four guineas for the first hour, and two guineas for each subsequent hour of the detention of this man, who he wished to have at hand. Prison is a torture should it last. It is an intolerable torture when you are condemned there for life.

In several states, the procedure for arresting a man truly resembles an attack by bandits.

Do you not approve of the favourable method of a nation, which knew how to give such a powerful empire to the law alone, that a minister of law alone suffices, wearing the symbols of his function of office, so that the prisoner does not dare to resist?

Thus, how did we succeed at rendering the laws so respectable to each citizen? It is when the nation has made them.

~ ARTICLE XXVI ~

**DES SUPPLICES RECHERCHÉS**

Comment le bénédictin Calmet s'est-il pu divertir à faire graver dans un dictionnaire des estampes de tous les tourments qui étaient en usage chez la petite nation judaïque ? Etre précipité du haut d'un rocher sur des cailloux, ou bien être lapidé avec ces cailloux dont le pays est couvert, et de là être pendu à une potence pour y attendre la mort ; être enterré vivant dans un monceau de cendres, mourir écrasé sous des traîneaux de fer, sous des épines, sous des roues, sous les pieds des chevaux ou des éléphants (quand par hasard ce peuple pouvait en avoir ce qui était bien rare) ; écorcher de la tête aux pieds, arracher les côtes et les entrailles avec des ongles de fer, brûler avec des torches ardentes ou dans des bûchers, scier un homme en deux ! Quel honteux amusement les lecteurs trouvent-ils dans ces images !

On prétend que le supplice de la roue fut inventé en Allemagne, et ne fut employé en France que sous François I<sup>er</sup> contre les voleurs publics.

En Angleterre pour crime de haute trahison la loi ordonne encore aujourd'hui que le coupable soit traîné tête nue sur le pavé jusqu'à la potence, que là étant suspendu vivant, on lui arrache les entrailles et le cœur, qu'on en batte les joues du coupable, et que le bourreau en montrant ce cœur sanglant dise à haute voix, voilà le cœur du traître. Mais cette exécration est épargnée. Le coupable n'est plus traîné sur le pavé, on ne lui arrache plus le cœur tandis qu'il est en vie. Aucun supplice n'est permis au-delà de la simple mort. Il a fallu du temps, pour que cette nation sût joindre la pitié à la justice. Elle y est enfin parvenue.

~ ARTICLE XXVI ~

ON REFINED TORTURES

How could it be that the Benedictine Calmet<sup>487</sup> amused himself, by having engravings of all the torments that were in use among the little Jewish nation printed in a dictionary? To be thrown from the summit of a boulder onto stones, or to be lapidated with these stones, which the country is covered with, and from there to be hanged at the gallows to await death there; to be buried alive in a pile of ashes, to be crushed to death under sledges of iron, under thorns, under wheels, under the feet of horses or elephants (when by chance this people could have some, which was quite rare); to be skinned from head to toe, to remove the ribs and the entrails with nails of iron, to be burned with flaming torches, or on the stakes, to saw a man in two! What shameful entertainment do the readers find in these images!

It is alleged that the torture of the wheel was invented in Germany, and was only used in France, under Francis I, against public thieves.<sup>488</sup>

In England, for the crime of high treason, to this day, the law orders that the guilty party be dragged, bare headed, along the cobblestone to the gallows, that there being suspended alive, the entrails and the heart be removed from him, that the cheeks of the guilty party be struck, and that the executioner, while showing this bloody heart, says aloud, behold the heart of the traitor. But this appalling execution is avoided. The guilty party is no longer dragged along the cobblestone, his heart is no longer removed while he is alive. No torture is permitted beyond simple death. It took a while for this nation to know how to combine pity with justice. It has finally succeeded in doing so.

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<sup>487</sup> Antoine Augustin Calmet (1672 - 1757), author of *Dictionary of the Holy Bible*. See, Calmet and Charles Taylor, *Calmet's dictionary of the Holy Bible: with the Biblical fragments* (London: Holdsworth and Ball, 1830).

<sup>488</sup> Kehl edition editors' original note, *op. cit.*

*'La loi qui l'établit est du chancelier Poyet ; il est utile que le public sache que cette loi atroce a été l'ouvrage d'un magistrat flétri, pour ses malversations, par le parlement de Paris. C'est le même qui, ne trouvant pas à son gré la sentence portée par des commissaires contre l'amiral Chabot, la falsifia.'* (p. 193).

(The law that established it is from Chancellor Poyet; it is useful that the public knows that this atrocious law was the work of a withered magistrate, for his embezzlement, by the parliament of Paris. It is the same man who falsified it, not finding the sentence ordered by commissioners against Admiral Chabot as desired.)

~ ARTICLE XXVII ~

DE LA CONFISCATION

Après avoir fait mourir un coupable, il ne reste plus qu'à prendre ses dépouilles.

Je crois ne pouvoir mieux faire, que de vous répéter ici ce qui est imprimé dans un livre moral, fait en forme de dictionnaire.

« Le fisc, soit public, soit royal, soit seigneurial, soit impérial, était un petit panier de jonc, ou d'osier, *fiscus*, dans lequel on mettait l'argent de la république ou du monarque, ou du seigneur ... C'est une maxime reçue dans la plupart des juridictions, *qui confisque le corps, confisque les biens*. Confisquer le corps, n'est pas mettre le corps dans le petit panier de son souverain ; c'est dans le langage barbare du barreau, se rendre maître du corps d'un citoyen, soit pour lui ôter la vie, soit pour le condamner à des peines aussi longues que sa vie ; on s'empare de ses biens dès qu'on l'a fait périr, ou dès qu'il évite la mort par la fuite.

Ainsi ce n'est pas assez de faire mourir un homme pour ses fautes, il faut encore faire mourir de faim ses enfants.

~ ARTICLE XXVII ~

ON CONFISCATION

After having killed a guilty party, all that remains is to take his corpse.<sup>489</sup>

I believe that I cannot do better than to repeat to you here what is printed in a moral book, made in the form of a dictionary.

‘The tax authorities, either public, royal, seignorial, or imperial, were a little basket made of reeds, or wicker, *fiscus*,<sup>490</sup> in which the money of the republic, either the monarch’s, or the lord’s was put ... It is a maxim received in the majority of jurisdictions, *who confiscates the body, confiscates the property*. To confiscate the body is not to put the body in its sovereign’s little basket; it is in the barbarous language of the Bar, to render oneself master of the body of a citizen, either to take his life away from him, or to condemn him to punishments for as long as he lives; his possessions are seized as soon as he has been killed, or as soon as he escapes death by running away.

Thus, it is not enough to have a man killed for his transgressions, his children should still be starved to death.

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<sup>489</sup> Kehl edition editors’ original note, *op. cit.*

*‘Nous nous bornerons à observer ici que la privation des biens peut être une peine ; mais que la confiscation n’en est pas une. Elle est donc injuste. La loi peut accorder des dédommagements à ceux que le crime a lésés ; le reste du bien de celui qu’elle retranche de la société, devient la propriété de ses héritiers.’* (p. 195).

(We will content ourselves with observing here that deprivation of property can be a punishment, but that confiscation is not one. It is therefore unjust. The law can award compensation to those who the crime has wronged; the remainder of their property that confiscation withdraws from society, becomes the property of his heirs.)

<sup>490</sup> The term *fiscus* is of Latin origin and translates to ‘basket’ or ‘moneybag’. As detailed by Henry Black in *A Law Dictionary Containing Definitions of the Terms and Phrases of American terms fiscus* (New Jersey: Lawbook Exchange, 1995), the term *fiscus* referred to the prince’s or emperor’s treasury.

Cette jurisprudence qui consiste à ravir la nourriture aux orphelins, fut inconnue dans tous les temps de la république romaine. Sylla l'introduisit dans ses proscriptions. Il faut avouer qu'une rapine inventée par Sylla n'était pas un exemple à suivre. Ainsi cette loi qui semblait n'être dictée que par l'inhumanité et l'avarice, ne fut suivie ni par César, ni par le bon empereur Trajan, ni par les Antonins, dont toutes les nations prononcent encore le nom avec respect et avec amour. Enfin, sous Justinien la confiscation n'eut lieu, que pour le crime de lèse-majesté. Comme ceux qui en étaient accusés étaient pour la plupart de grands seigneurs très opulents, il semble que Justinien n'ordonna la confiscation que par avarice.

On croit que dans les temps de l'anarchie féodale, les princes et les seigneurs des terres étant très peu riches, ils cherchaient à augmenter leur trésor par les condamnations de leurs sujets, et qu'on voulut leur faire un revenu du crime. Les lois chez eux étant arbitraires, et la jurisprudence romaine ignorée, les coutumes ou bizarres, ou cruelles prévalurent. Mais aujourd'hui que la puissance des souverains est fondée sur des richesses immenses et assurées, leur trésor n'a pas besoin de s'enfler des faibles débris d'une famille malheureuse. Ils abandonnent pour l'ordinaire les confiscations au premier qui les demande. Mais est-ce à un citoyen à s'engraisser des restes du sang d'un autre citoyen ?

This case law that consists of removing food from orphans, was unknown in all the days of the Roman republic. Sulla<sup>491</sup> introduced it in his proscriptions. It must be admitted that a rapine invented by Sulla was not an example to follow. Therefore, this law which seemed to only be dictated by inhumanity and greed, was followed neither by Caesar, nor by the good Emperor Trajan,<sup>492</sup> nor by the Antonys,<sup>493</sup> of whom all the nations still pronounce the names with respect and love. Ultimately, under Justinian, confiscation only took place for the crime of lese-majesty.

As those who were accused of it were, for the most part, very opulent great lords, it seems that Justinian only ordered confiscation out of greed.

It is believed that in the days of feudal anarchy, the princes and the lords of the lands being seldom rich, looked to increase their treasure by convicting their subjects, and one wanted them to make an income from crime.<sup>494</sup> The laws among them being arbitrary, and Roman case law being ignored, the customs either bizarre, or cruel prevailed. But today, the power of the sovereigns is founded on immense and assured riches, their treasure does not need to inflate from the fragile remains of a poor family. They ordinarily leave confiscations to the first who asks for them. But is it for a citizen to get rich from the remaining blood of another citizen?

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<sup>491</sup> Lucius Cornelius Sulla Felix (138 B.C. - 78 B.C.) was a Roman general who maintained a dictatorial regime. Philip Baker, *Sulla the Fortunate: Roman General and Dictator* (Maryland: Rowman & Littlefield, 2001).

<sup>492</sup> Trajan (53 A.D. - 117 A.D.) ruled as Roman Emperor from 98 A.D. to 117 A.D. Julian Bennett, *Trajan: Optimus Princeps* (London: Routledge, 2000).

<sup>493</sup> Mark Antony (83 B.C. - 30 B.C.) was a Roman general who served under Julius Caesar. Eleanor Huzar, *Mark Antony: A Biography* (London: Croom Helm, 1978).

<sup>494</sup> Bruce Lyon (1980; 1989) as cited in Edward Stringham's *Anarchy and the Law: The Political Economy of Choice* (California: Transaction, 2007), explains that one of the most important factors that led to an increase in offenses 'was the king's need of money; to increase his income, the king only needed to use his prerogative and throw his jurisdiction over another offense [...] Again royal greed seems to be the best explanation for the expansion of the concept of felony. Any crime called a felony meant that if the appellee was found guilty his possessions escheated to the king. The more crimes called felonies, the greater the income, and so the list of felonies continued to grow throughout the twelfth century.' (p. 545).

La confiscation n'est point admise dans les pays où le droit romain est établi, excepté le ressort du parlement de Toulouse.

Elle ne l'est point dans quelques pays coutumiers, comme le Bourbonnais, le Berri, le Maine, le Poitou, la Bretagne, où elle respecte au moins les immeubles. Elle était établie autrefois à Calais, et les Anglais l'abolirent lorsqu'ils en furent les maîtres. Il est assez étrange que les habitants de la capitale vivent sous une loi plus rigoureuse que ceux de ces petites villes : tant il est vrai que la jurisprudence a été souvent formée au hasard, sans régularité, sans uniformité, comme on bâtit des chaumières dans un village.

Voici comment l'avocat général Omer Talon parla en plein parlement dans le plus beau siècle de la France, en 1663, au sujet des biens d'une demoiselle de Canillac qui avaient été confisqués. Lecteurs, faites attention à ce discours, il n'est pas dans le style des oraisons de Cicéron ; mais il est curieux. »



Confiscation is not permitted in the countries where Roman law is established, excluding the jurisdiction of the *parlement* of Toulouse.<sup>495</sup>

It is not allowed in some traditional countries, such as Bourbonnais,<sup>496</sup> Berry, Maine, Poitou, Brittany, where it at least respects physical assets. In the past, it was established in Calais, and the English abolished it when they were its masters. It is quite strange that the inhabitants of the capital live under a more rigorous law than those of these little towns: as it is true that case law was often formed at random, without regularity, without uniformity, just as thatched houses are built in a village.

Behold how the assistant public prosecutor Omer Talon<sup>497</sup> spoke in the middle of *parlement*, in the most beautiful century of France, in 1663, about the property of a girl, de Canillac, which had been confiscated. Readers pay attention to this speech; it is not in the style of the prayers of Cicero; but it is curious.’

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<sup>495</sup> See, *A Philosophical Dictionary from the French of M. de Voltaire* (London: Dugdale, 1843), in which it is stated that ‘confiscation is not admitted in countries where the Roman law is established, except within the jurisdiction of the Parliament of Toulouse. It was formerly established at Calais, where it was abolished by the English, when they were of that place. It appears very strange, that the inhabitants of the capital live under a more rigorous law than those of the smaller towns: so true is it, that jurisprudence has often been established by chance, without regularity, without uniformity, as the huts are built in a village.’ (p. 321).

<sup>496</sup> It is clarified by William Kibler and Grover Zinn that Bourbonnais is located in central France ‘lying southeast of Berry and north of Auvergne, with Moulins (Allier) as its principal town, [it] was the site of a lordship in the 10<sup>th</sup> Century, centred on the castle of Bourbon L’Archambaud.’ *Medieval France: An Encyclopedia* (London: Garland publishing, 1995), p. 263.

<sup>497</sup> Omer Talon was secretary to Cardinal Louis de Nogaret de La Valette and died in 1663. Hubert Mailfait and Omer Talon, *Un magistrat de l’Ancien Régime : Omer Talon, sa vie et ses œuvres, 1595-1652* (Paris: Société Française d’Imprimerie et de Librairie, 1902).

EXTRAIT du plaidoyer de l'avocat général Omer Talon sur des biens confisqués.

*Au chapitre 13 du Deuteronome, Dieu dit, si tu te rencontres dans une ville, et dans un lieu où règne l'idolâtrie, mets tout au fil de l'épée sans exception d'âge, de sexe, ni de condition. Rassemble dans les places publiques toutes les dépouilles de la ville, brûle-là tout entière avec ses dépouilles, et qu'il ne reste qu'un monceau de cendre de ce lieu d'abomination. En un mot, fais-en un sacrifice au Seigneur, et qu'il ne demeure rien en tes mains des biens de cet anathème.*

Ainsi dans le crime de lèse-majesté, le roi était maître des biens, et les enfants en étaient privés. Le procès ayant été fait à Naboth, quia male dixerat regi, *le roi Achab se mit en possession de son héritage. David étant averti que Miphibozeth s'était engagé dans la rébellion, donna tous ses biens à Siba, qui lui en apporta la nouvelle. Tua sint omnia quæ fuerunt Miphibozept.*

EXTRACT from the plea of the assistant public prosecutor Omer Talon about confiscated goods.

*In chapter 13 of Deuteronomy,<sup>498</sup> God said, if you meet in a town, and in a place where idolatry reigns, put all in the course of the sword without exception of age, of sex, nor of condition. Gather all the corpses of the town in public places, burn it wholly with its corpses, and only one pile of ash remains from this place of abomination. In short, make it a sacrifice to the Lord, and nothing remains in your hands from the property of this anathema.*

Thus, in the crime of lese-majesty, the king was master of property, and children were deprived of it. The trial having taken place in Naboth, quia male dixerat regi, *the King Achab<sup>499</sup> put himself in possession of his inheritance. David being warned that Mephibosheth<sup>500</sup> had engaged in the rebellion, gave all his property to Ziba, who brought him the news. Tua sint omnia quae fuerunt Mephibosheth.*

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<sup>498</sup> See Thomas Mann, *Deuteronomy* (Kentucky: Westminster John Knox Press, 1995), in which it is stated that ‘deuteronomy gets its name from the Greek word deuteronomion, which means ‘second law’ [...] Deuteronomy embraces different audiences, both hearers and readers. In its present form Deuteronomy is not so much a law code or even a treaty document as it is a series of farewell speeches. It is the testament of Moses, following a tradition associated with the death of other notable figures. Moses is speaking to the second generation of Israelites who came out of Egypt, since virtually all the first generation, the lost generation of the wilderness, have died. On this level, the past is the time of the exodus and the wilderness wandering; and the occupation of Canaan stands in the future.’ (pp. 2-7).

<sup>499</sup> Achab was King of Israel. Gordon Wenham, *Readings from the Old Testament, arranged with notes*, vol. 2 (London: Burns & Oates, 1875).

<sup>500</sup> See John Kohlenberger and Oxford University Press, ‘David and Mephibosheth’, in *The Contemporary Parallel Bible: New King James Version, New International version* (Oxford: Oxford University Press, 2005). Look particularly at the following extract: ‘The king asked, ‘Is there no one still alive from the house of Saul to whom I can show God’s kindness?’ Ziba answered the king, ‘there is still a son of Jonathan; he is lame in both feet.’ ‘Where is he?’ the king asked. Ziba answered, ‘he is at the house of Makir son of Ammiel in Lo Debar.’ So, King David had him brought from Lo Debar, from the house of Makir son of Ammiel. When Mephibosheth son of Jonathan, the son of Saul, came to David, he bowed down to pay him honor. David said, ‘Mephibosheth!’ ‘at your service,’ he replied. ‘Don’t be afraid,’ David said to him, ‘for I will surely show you kindness for the sake of your father Jonathan. I will restore to you all the land that belonged to your grandfather Saul, and you will always eat at my table.’ Mephibosheth bowed down and said, ‘what is your servant, that you should notice a dead dog like me?’ Then the king summoned Ziba, Saul’s steward, and said to him, ‘I have given your master’s grandson everything that belonged to Saul and his family. You and your sons and your servants are to farm the land for him and bring in the crops, so that your master’s grandson may be provided for. And Mephibosheth, grandson of your master, will always eat at my table.’ Then, Ziba said to the king, ‘your servant will do whatever my lord the king commands his servant to do.’ So, Mephibosheth ate at David’s table like one of the king’s sons. Mephibosheth had a young son named Mika, and all the members of Ziba’s household were servants of Mephibosheth. And Mephibosheth lived in Jerusalem because he always ate at the king’s table; he was lame in both feet.’ (p. 366).

« Il s'agit de savoir qui héritera des biens de Mlle de Canillac ; biens autrefois confisqués sur son père, abandonnés par le roi à un garde du trésor royal, et donnés ensuite par le garde du trésor royal à la testatrice. Et c'est sur ce procès d'une fille d'Auvergne, qu'un avocat général s'en rapporte à un Achab, roitelet d'une partie de la Palestine, qui confisqua la vigne de Naboth après avoir assassiné le propriétaire par le poignard de la justice juive ; action abominable, qui passa en proverbe chez les Juifs mêmes, pour inspirer aux hommes l'horreur de l'usurpation. Assurément la vigne de Naboth n'avait aucun rapport avec l'héritage de Mlle de Canillac.

‘It is a question of knowing who will inherit Mademoiselle of Canillac’s property; property, in the past, confiscated from her father, left by the king to a guard of the royal treasure, and then given by the guard of the royal treasure to the testator. And it is on this trial of a girl from Auvergne, that an assistant public prosecutor depended on Achab, kinglet of a part of Palestine, who confiscated the vine of Naboth, after having assassinated the owner by the sword of Jewish law; an abominable action, which became a proverb even among the Jews, to inspire the horror of usurpation in men. Certainly, the vine of Naboth had nothing to do with the inheritance of Mademoiselle of Canillac.

Le meurtre et la confiscation des biens de Miphibozet, petit-fils du roitelet Saül, et fils de Jonatas, ami et protecteur de David, n'ont pas une plus grande affinité avec le testament de cette demoiselle.

C'est avec cette pédanterie, avec cette démente prodigue de citations étrangères au sujet, avec cette ignorance des premiers droits de la nature humaine, avec ces préjugés si mal conçus, si mal appliqués et si mal énoncés, que la jurisprudence a été traitée par des hommes qui ont eu de la réputation dans leur sphère. »

The murder of Mephibosheth, grandson of the kinglet Saul and son of Jonathan, friend and protector of David, and the confiscation of his property did not have a greater affinity with the legacy of this demoiselle.

It is with this pedantry, with this extravagant insanity of foreign quotations on the subject, with this ignorance of the first rights of human nature, with these prejudices, so poorly conceived, so poorly applied, and so poorly stated, that case law was handled by men who had some reputation in their sphere.'

~ ARTICLE XXVIII ~

**DES LOIS DE LOUIS XVI SUR LA DÉsertION.**

**ET CONCLUSION DE L'OUVRAGE**

J'ai parcouru avec vous, Messieurs, une triste carrière, elle n'est semée que de crimes et de châtimens ; vous changerez ce spectacle d'horreur en objet de complaisance, si vous inspirez aux gouvernemens de l'Europe les moyens de changer des scélérats même en serviteurs de la patrie, et de les punir exemplairement sans répandre un sang nécessaire à l'Etat.

Le roi de France en a déjà donné un grand exemple à son avènement à la couronne, non sur des scélérats, mais sur des hommes que l'inconstance, la légèreté, ou la débauche, ou la suggestion avait rendus criminels ; en un mot sur les déserteurs. Il eut pitié d'eux et de la France, qui perdait en eux des défenseurs. Il leur remit la peine de mort, et leur donna des facilités de réparer leur faute, en leur accordant quelques jours pour revenir au drapeau. Et lorsqu'on les punit, c'est par une peine qui les enchaîne au service de la patrie qu'ils ont abandonnée. Ils sont forçats pendant plusieurs années. On doit cette jurisprudence militaire, à un ministre militaire, aussi éclairé que brave. Un autre ministre de même caractère avait auparavant tenté de prévenir toute désertion, en rendant la profession de soldat plus honorable, en leur accordant des distinctions qui devaient leur faire aimer le service, et



~ ARTICLE XXVIII ~

ON THE LAWS OF LOUIS XVI ABOUT DESERTION.

AND CONCLUSION OF THE WORK

I have looked over with you, Sirs, a sad career, it is only fraught with crimes and punishments; you will change this spectacle of horror into an object of deference, if you inspire the governments of Europe with the means to transform even criminals into servants of the motherland, and to punish them in an exemplary manner, without spilling blood that is essential to the State.

The King of France has already given a great example of it, on his accession to the crown, not about criminals, but about men that fickleness, frivolity, either debauchery, or suggestion had made criminals; in short about deserters. He took pity on them and on France, who in them lost defenders. He absolved them of the death penalty and gave them some opportunities to rectify their transgression, by granting them a few days to come back to the flag. And when they are punished, it is by a punishment that binds them to the service of the motherland that they abandoned. They are convicts for a number of years. We owe this military case law to a military minister, as enlightened as he was brave.<sup>501</sup> Another minister<sup>502</sup> of the same character had, in the past, attempted to prevent all desertion, by making the soldier's profession more honourable, by granting them distinctions that should make them like the service, and

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<sup>501</sup> Count of Saint-Germain (1712 - 1784). See, *The Town and Country Magazine* (Oxford: Oxford University Press, 1776), whereby it is stated that 'the Count de St. Germain has laid the following changes in the military before his Majesty, who, it is said, has already agreed to several of them [...] An ordinance was this day published, which grants a general pardon to all deserters, by which it is computed that upwards of 20,000 men will return to the service. By the same ordinance it is decreed, that deserters shall not for the future be punished with death but be sent to work at the fortifications for a longer term than their engagement in the military service.' (p. 51).

<sup>502</sup> See Louis petit de Bachaumont, Pidansat de Mairobert, and Moufle d'Angerville, *Mémoires secrets pour servir à l'histoire de la république des lettres en France*, vol. 19 (London: John Adamson, 1783).

*'Le 13 Mai 1771. M. le Marquis de Monteynard, Secrétaire d'Etat de la guerre, vient de rendre une ordonnance par laquelle il augmente graduellement la paye des soldats à mesure de leur vétérance au service, et leur accorde une marque de qui équivaldra entre eux à la croix de Saint-Louis. Quant à cette plaque honorifique, elle pourra s'exécuter ; mais pour le surplus, on a beaucoup de peine à payer le prêt des troupes, et il semble impossible de subvenir à cette augmentation de dépense. Mais cette ordonnance servira du moins pour mémoire jusqu'à des temps plus heureux, et attestera la bonne volonté du Ministre.'* (p. 316).

(13 May 1771. The Marquis de Monteynard, Secretary of State for war, has just rendered a ruling whereby he gradually increases soldiers' pay, proportionate to their years in service, and grants them a token which for them will equate to the cross of Saint-Louis. As for this honorary plaque, it may be executed; but for the surplus, we are having a lot of difficulty paying troops' credit, and it seems impossible to fulfil this increase in expenditure. But this ruling will serve at least for memory until happier times and will attest to the good will of the Minister.)

leur faire regarder la désertion comme une lâcheté indigne d'eux.

J'ose vous inviter, Messieurs, à chercher pour les citoyens ce que Louis XVI a trouvé pour les soldats. Je vous demande si on ne pourrait pas diminuer le nombre des délits, en rendant les châtimens plus honteux et moins cruels. Ne remarquez-vous pas que les pays où la routine de la loi étale les plus affreux spectacles, sont ceux où les crimes sont le plus multipliés ? N'êtes-vous pas persuadés que l'amour de l'honneur et la crainte de la honte sont de meilleurs moralistes que les bourreaux ? Les pays où l'on donne des prix à la vertu, ne sont-ils pas mieux policés que ceux où l'on ne cherche que des prétextes de répandre le sang, et d'hériter des coupables ?

Pesez ces maximes, rectifiez-les, non pour un seul coin du monde, et je ne dirai pas pour le bonheur de la terre, mais pour l'adoucissement des fléaux dont elle a été tourmentée.

Voyez presque tous les souverains de l'Europe rendre hommage aujourd'hui à une philosophie qu'on ne croyait pas il y a cinquante ans pouvoir approcher d'eux. Il n'y a pas une province où il ne se trouve quelque sage qui travaille à rendre les hommes moins méchants et moins malheureux. Partout de nouveaux établissemens pour encourager le travail et par conséquent la vertu ; partout la raison fait des progrès qui effraient même le fanatisme. La discorde n'est plus que dans l'Amérique boréale. Les souverains ne disputent qu'à qui fera le plus de bien. Profitez de ces moments, peut-être ils seront courts.

**FIN**

making them regard desertion as a cowardice unworthy of them.

I dare to invite you, Sirs, to seek out the citizens who Louis XVI found for soldiers. I ask you if we could not reduce the number of crimes, by making the punishments more shameful and less cruel. Do you not realise that the countries where the procedure of the law displays the most horrible spectacles, are those where crimes are the most multiplied? Are you not convinced that love of honour and fear of shame are better moralists than the executioners? The countries where prizes are given to virtue, are they not better civilised than those where pretexts are sought after to spill blood, and to inherit from guilty parties?

Weigh up these maxims, rectify them, not for a sole corner of the world, and I will not say for the happiness of the world; but for reduce the scourge that it was tormented by.

See, nearly all the sovereigns of Europe pay homage today to a philosophy that fifty years ago was not thought possible to present to them. There is not a province where one will not find some wise man, working to make men less wicked and less wretched. Everywhere there are new establishments to encourage work and consequently virtue; everywhere reason is making progress, which even terrifies fanaticism. The discord is now only in northern America.<sup>503</sup> Sovereigns only fight over who will do the most good. Enjoy these moments, perhaps they will be short.

## THE END

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<sup>503</sup> See Voltaire, *Prix de la Justice et de l'Humanité* (1777), *op. cit.*

*'Le 4 juillet 1776 avait commencé l'insurrection des colonies anglaises dans l'Amérique du Nord, qui sont devenues le gouvernement des États-Unis.'* (p. 87).

(4 July 1776 had begun the insurrection of the English colonies in North America, which became the United States' government.)

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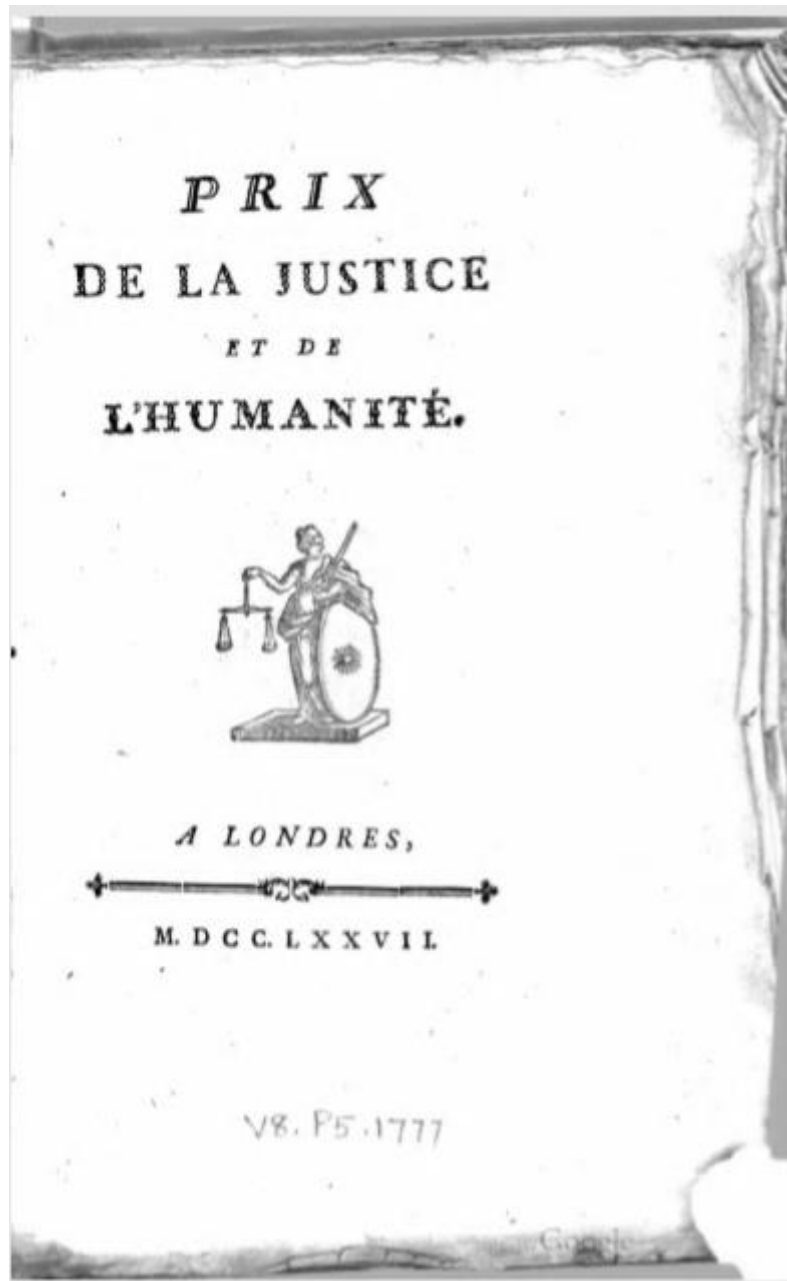
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# **APPENDICES**

APPENDIX A















Title page of the first edition of *Prix de la Justice et de l'Humanité* (1777)



Source: Taylor Institution Library Oxford, Voltaire Room.

## APPENDIX B

Ornaments from the first edition of *Prix de la Justice et de l'Humanité* compared to those used by the Société Typographique de Neuchâtel (STN)

<i>Prix de la Justice et de l'Humanité</i> (1777)	Société Typographique de Neuchâtel
(Title page) 	(or0282) 
(Page 1) 	(or0193-6) 
(Page 3) 	(or0444-1) 
(Page 19) 	(or0419-4) 
(Page 22) 	(or0008) 
(Page 24) 	(or0335-3) 
(Page 72) 	(or0326-3) 

**Source:** Fleuron banque d'ornements d'imprimerie.