

Modern History Sourcebook:
Jean Domat (1625-1696):
On Social Order and Absolute Monarchy

Jean Domat (1625-1696) was a renowned French jurist in the reign of Louis XIV, the king who perfected the practice of royal absolutism. Domat made it his life's task to explain the theory behind this absolutism by setting French law and social structure into the wider context of the law of nature and the law of God. Louis XIV regarded Domat's work so highly that he assigned him a pension, and in effect the royal government sponsored his publications. Public Law, the treatise that dealt most directly with the origin of social order and government, and with the rights and duties of kings, appeared in 1697, the year after Domat's death.

There is no one who is not convinced of the importance of good order in the state and who does not sincerely wish to see that state well ordered in which he has to live. For everyone understands, and feels in himself by experience and by reason, that this order concerns and touches him in a number of ways

Everyone knows that human society forms a body of which each person is a member; and this truth, which Scripture teaches us and which the light of reason makes plain, is the foundation of all the duties that relate to the conduct of each person toward others and toward the body as a whole. For these sorts of duties are nothing else but the functions appropriate to the place each person holds according to his rank in society.

It is in this principle that we must seek the origin of the rules that determine the duties, both of those who govern and of those who are subject to government. For it is through the place God has assigned each person in the body of society, that He, by calling him to it, prescribes all his functions and duties. And just as He commands everyone to obey faithfully the precepts of His law that make up the duties of all people in general, so He prescribes for each one in particular the duties proper to his condition and status, according to his rank in the body of which he is a member. This includes the functions and duties of each member with respect to other individuals and with respect to the body as a whole.

[Necessity and the Origin of Government]

Because all men are equal by nature, that is to say, by their basic humanity, nature does not make anyone subject to others But within this natural equality, people are differentiated by factors that make their status unequal, and forge between them relationships and dependencies that determine the various duties of each toward the others, and make government necessary

The first distinction that subjects people to others is the one created by birth between parents and children. And this distinction leads to a first kind of government in families, where children owe obedience to their parents, who head the family.

The second distinction among persons arises from the diversity of employments required by society, and which unite them all into a body of which each is a member. For just as God has made each person depend on the help of others for various needs, He has differentiated their status and their employments for the sake of all these needs, assigning to people the place in which they should function. And it is through these interdependent employments and conditions that the ties binding human society are formed, as well as the ties among its

individual members. This also makes it necessary to have a head to unite and rule the body of the society created by these various employments, and to maintain the order of the relationships that give the public the benefit of the different functions corresponding to each person's station in life.

It is a further consequence of these principles that, since all people do not do their duty and some, on the contrary, commit injustices, for the sake of keeping order in society, injustices and all enterprises against this order must be repressed: which was possible only through authority given to some over others, and which made government necessary.

This necessity of government over people equal by their nature, distinguished from each other only by the differences that God established among them according to their stations and professions, makes it clear that government arises from His will; and because only He is the natural sovereign of men, it is from Him that all those who govern derive their power and all their authority, and it is God Himself Whom they represent in their functions.

[The Duties of the Governed]

Since government is necessary for the public good, and God Himself has established it, it is consequently also necessary for those who are subject to government, to be submissive and obedient. For otherwise they would resist God Himself, and government, which should be the bond of peace and unity that brings about the public good, would become an occasion for divisions and disturbances that would cause its downfall.

The first duty of obedience to government is the duty to obey those who hold the first place in it, monarchs or others who are the heads of the body that makes up society, and to obey them as the limbs of the human body obey the head to which they are united.

This obedience to him who governs should be considered as obedience to the power of God Himself, Who has instituted [the prince] as His lieutenant

Obedience to government includes the duties of keeping the laws, not undertaking anything contrary to them, performing what is ordered, abstaining from what is forbidden, shouldering public burdens, whether offices or taxes; and in general everyone is obliged not only not to contravene public order in any way, but to contribute to it [positively) according to his circumstances.

Since this obedience is necessary to maintain the order and peace that should unite the head and members composing the body of the state, it constitutes a universal duty for all subjects in all cases to obey the orders of the prince, without taking the liberty of passing judgment on the orders they should obey. For otherwise, the right to inquire what is just or not would make everyone a master, and this liberty would encourage seditions. Thus each individual owes obedience to the laws themselves and [even] to unjust orders, provided he can obey and follow them without injustice on his own part. And the only exception that can qualify this obedience is limited to cases in which one could not obey without disobeying the divine law.

[The Power, Rights, and Duties of Sovereigns]

The sovereign power of government should be proportionate to its mandate, and in the station he occupies in the body of human society that makes up the state, he who is the head should

hold the place of God. For since God is the only natural sovereign of men, their judge, their lawgiver, their king, no man can have lawful authority over others unless he holds it from the hand of God The power of sovereigns being thus derived from the authority of God, it acts as the arm and force of the justice that should be the soul of government; and that justice alone has the natural claim to rule the minds and hearts of men, for it is over these two faculties of men that justice should reign.

According to these principles, which are the natural foundations of the authority of those who govern, their power must have two essential attributes: one, to make that justice rule from which their power is entirely derived, and the other, to be as absolute as the rule of that justice itself, which is to say, the rule of God Himself Who is justice and Who wishes to reign through [princes] as He wishes them to reign through Him. For this reason Scripture gives the name of gods to those to whom God has entrusted the right of judging, which is the first and most essential of all the functions of government....

Since the power of princes thus comes to them from God, and since He gives it to them only as an instrument of His providence and His rule over the states whose government He delegates to them, it is clear that they should use this power in accordance with the aims that divine providence and rule have established for them; and that the material and visible manifestations of their authority should reflect the operation of the will of God.... [The will of God] Whose rule they ought to make visible through their power, should be the governing principle for the way they use that power, since their power is the instrument [of the divine will] and is entrusted to them only for that purpose.

This, without a doubt, is the foundation and first principle of all the duties of sovereigns, namely to let God Himself rule; that is, to govern according to His will which is nothing other than justice. Thus it is the rule of justice which should be the glory [of the rule] of princes.

Among the rights of the sovereign, the first is the right to administer justice, the foundation of public order, whether he exercises it himself as occasions arise or whether he lets it be exercised by others whom he delegates for the purpose

This same right to enforce the laws, and to maintain order in general by the administration of justice and the deployment of sovereign power, gives the prince the right to use his authority to enforce the laws of the Church, whose *protector, conservator, and defender [sic]* he should be; so that by the aid of his authority, religion rules all his subjects....

Among the rights that the laws give the sovereign should be included [the right] to display all the signs of grandeur and majesty necessary to make manifest the authority and dignity of such wide-ranging and lofty power, and to impress veneration for it upon the minds of all subjects. For although they should see in it the power of God Who has established it and should revere it apart from any visible signs of grandeur, nevertheless since God accompanies His own power with visible splendor on earth and in the heavens as in a throne and a palace...

He permits that the power He shares with sovereigns be proportionately enhanced by them in ways suitable for arousing respect in the people. This can only be done by the splendor that

radiates from the magnificence of their palaces and the other visible signs of grandeur that surround them, and whose use He Himself has given to the princes who have ruled according to His spirit.

The first and most essential of all the duties of those whom God raises to sovereign government is to acknowledge this truth: that *it is from God that they hold all their power [sic]*, that it is His place they take, that it is through Him they should reign, and that it is to Him they should look for the knowledge and wisdom needed to master the art of governing. And it is these truths they should make the principle of all their conduct and the foundation of all their duties.

The first result of these principles is that sovereigns should know what God requires of them in their station and how they should use the power He has given them. And it is from Him they should learn it, by reading His law, whose study He has explicitly prescribed for them, including what they should know in order to govern well.

These general obligations ... encompass all the specific duties of those who hold sovereign power. For [these obligations] cover everything that concerns the administration of justice, the general policing of the state, public order, the repose of subjects, peace of mind in families, vigilance over everything that can contribute to the common good, *the choice of able ministers who love justice and truth [sic]*, the appointment of good men to the dignities and offices that the sovereign himself needs to fill with persons known to him, the observance of regulations for filling other offices with people not subject to his personal choice, discretion in the use of severity or mercy in those cases where the rigor of justice may be tempered, a wise distribution of benefices, rewards, exemptions, privileges, and other favors; good administration of the public finances, prudence in conducting relations with foreign states, and lastly everything that can make government pleasing to good people, terrible to the wicked, and worthy in all respects of the divine mandate to govern men, and of the use of a power which, coming only from God, shares in His own Authority.

We may add as a last duty of the sovereign, which follows from the first and includes all the others, that although his power seems to place him above the law, no one having the right to call him to account, nevertheless he should observe the laws as they may apply to him. And he is obliged to do this not only in order to set a good example to his subjects and make them love their duty, but because his sovereign power does not exempt him from his own duty, and his station requires him to prefer the general good of the state to his personal interests, and it is a glory for him to look upon the general good as his own.

Source:

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