

certain cases receives appeals from the other tribunals.

The council of Castile is composed of five chambers. The first, the *sala de Gobierno*, which is confined to the affairs of administration; it also receives references accompanied with necessary forms, brought to the council in extraordinary cases, but it is only to send them to the second *sala de Gobierno*, or to the *sala de Justicia* according to circumstances.

The second *sala de Gobierno* judges some of the causes brought before the council of Castile by extraordinary reference, but its chief occupation is in matters relative to the manufactures, bridges, banks, and causeways of the kingdom.

The chamber of *Mil y quinientos* or of one thousand five hundred, thus called because those who appeal to it from the
sen-

sentences and judgments of the sovereign tribunals are obliged to deposit fifteen hundred ducats, which they forfeit in case of losing the appeal.

The *sala de Justicia* has an exclusive cognizance of certain causes, the particulars of which would be uninteresting, and perhaps unintelligible, to most of our readers; and for the judgment of capital causes of a certain description this chamber is united to the others.

The *sala de Provincia* judges the appeals in all important cases, and receives those from the judgments of the two lieutenants civil of Madrid (*Tenientes de Villa*) and from those of the *Alcaldes de Corte* in civil affairs.

These form a sixth chamber. The city of Madrid is divided into a certain number of quarters, and the police of each is superintended by an *Alcalde de Corte*: who judges in the first instance, in concurrence with the lieutenants civil,

civil, all the causes brought by the citizens of his quarter. Their decisions may be appealed from to the whole chamber assembled, which alone can finally pronounce upon criminal causes within its jurisdiction. It is in extraordinary cases only that they are carried before the council of Castile.

The chamber of the *Alcaldes de Casa y Corte* was formerly the tribunal which always accompanied the court of Spain. Since this is understood to be fixed at Madrid, the tribunal has been fixed there also; and as it formerly had a provincial jurisdiction near the residence of the sovereign, it has still preserved such a jurisdiction to a certain distance from the capital. The council of Castile is the only one acknowledged by the grantees of Spain, and all its members have the right of *committimus*, like those of the French parliaments.

Spain is divided into two chanceries, those of Granada and Valladolid, which
have

have an exclusive cognizance of certain causes. Their decisions are not appealed from to the council of Castile, except in two cases, when the appellants address themselves to the chamber of *Mil y quinientos*, or upon a denial of justice, called *Recurfos de Fuerza*. Each chancery has a particular chamber, called *Sala de Hijosdalgo*, or chamber of nobles. Its office is to authenticate nobility, and to hear causes relative thereto. It has also an exclusive cognizance of criminal causes of the *Hidalgos*.

Besides these there are eight audiences, without reckoning the particular tribunal of Navarre, which has the title of *Royal Council*, as some of the provinces of France have, instead of a parliament, a sovereign council. The four audiences of the crown of Arragon are those of Saragossa, Barcelona, Valencia, and Majorca; and of the crown of Castile those of Seville, Corogne, Oviedo, and the Canaries.

Each

Each chancery and each audience has a criminal court, *sala de Crimen*, which definitively pronounces criminal sentences, and causes them to be executed.

Except a few restrictions, these tribunals are equally sovereign. The principal difference between the chanceries and the audiences is, that the first act in the king's name like the council of Castile. There are also some cases in which appeals lie from the audiences of Corogne and Oviedo to the chancery of Valladolid, and from the audience of Seville to the chancery of Granada. But from the four audiences of the crown of Arragon the appeal (in certain cases) is immediately made to the council of Castile, where the causes in question must be determined according to the laws of Arragon.

The limits of these different jurisdictions are not clearly enough defined to prevent frequent contests between the courts. Whilst the council of Castile

tile loses no opportunity of extending its jurisdictions, the chanceries and audiences incessantly struggle against it to support their supreme authority. The council of Navarre alone had preserved its authority unimpaired, until lately, when some of the causes brought before it were carried by appeal to the council of Castile. Unless in cases of appeal, which are rare exceptions to the general rule, there is no resource against the decisions of all the sovereign tribunals, but revision, which in Spain is called *Supplica*. Appeals, in that case, are made to the tribunal itself, praying it to begin the process anew.

The heads of the chanceries are called *Presidents*, and those of the audiences *Regents*.

The head of the council of Castile has the title of president or governor: these two dignities differ but little, except in honorary distinctions. The president of the council of Castile must always
be

be a grandee of Spain. When he appears in public, he has particular privileges. The count d'Aranda was the last person who filled this place, and as he held that of captain-general of all Castile, and possessed firmness and talents, he exercised it with an authority which yielded only to that of the sovereign.

Various reasons, of which it is not yet time to inform the public, induced him to resign this place to become ambassador in France, where he was preceded by his great reputation, and where he has enjoyed since the year 1773, that respect to which on so many accounts he is entitled.

The office of president of the council of Castile had been revived, after a long interruption, in the person of the count, in one of those critical moments when men of genius become necessary. He discharged the duties of it during seven years, with all the energy and wisdom
by

by which he is characterised. Madrid will for a long time exhibit proofs of what he effected for its embellishment, security, and convenience, even during his short administration. It is to his care and prudence that Spain owes the expulsion of the Jesuits, prepared with the greatest secrecy, and executed without tumult. He also procured an account of the present state of population in that kingdom, which, according to the documents laid before him, amounts to about eleven millions of inhabitants*.

The dissipated and frequently licentious lives of the monks were reformed; and their manners rendered more suitable to their profession. The abuses of the asylum which the greatest criminals

* No means were neglected to make this calculation as exact as possible. However, as the public, misinformed, supposed it to be undertaken with views to taxation, several citizens gave in false reports of the number of persons each house contained. It is therefore probable, that the real population of Spain is rather above than below what it is estimated at in the last accounts.

found in the churches were suppressed. The sovereign authority was placed above the reach of the pretensions of the holy see; bounds were set to the exterior practices of religion, more favourable to idleness than devotion; and in some respects, as we shall hereafter find, the power of fanaticism was subjected to controul. The functions of the place of president of the council of Castile were never so actively discharged as during his administration. Since his resignation that title has been conferred on no one; he was succeeded by a sensible and moderate ecclesiastic, M. de Figueroa, who had only the title of governor of the council of Castile, and who died whilst I was in Spain. At present the count de Campomanes, as oldest member of the council, discharges the functions of governor, without having the title, and by his long services, knowledge, and integrity, is in every respect worthy to be at the head of the magistracy of his country.

The oldest members of this council, form what is called in Spain the *Camara*, which in some respects may be compared to the great chamber of the parliament of Paris. It is properly the privy council of the monarch, and at the same time a sovereign tribunal for certain causes, such as all which have relation to the right of patronage, the successions of persons of the royal family, and all contests relative to the rights of cities (*Ciudades*) which differ from *Villas*, the former having a particular jurisdiction, and being represented in the Cortes of the kingdom †.

The *Camara* is also the council which issues all acts or patents of royal favour. All places in the magistracy, and all consistorial benefices are conferred by its means. It recommends to his majesty, through the medium of his mi-

† Madrid is only a *Villa*, yet is represented in the Cortes like the *Ciudades*. But this is the only exception.

nister of favour and justice, three persons to fill them, and the king chuses one of the three.

No place in the magistracy is venal in Spain. This, like all human institutions, has its advantage and inconvenience. If it leaves a greater opening to caprice, favour and intrigue, it prevents the tribunals from being dishonoured by incapacity and ignorance, and diminishes the temptation to sell that justice of which the right of dispensing is bought. It is true that the integrity of magistrates frequently without fortune must appear suspicious, and that their moderate fees seem but a weak rampart against corruption. However, notwithstanding the declamations of dissatisfied clients, iniquitous and partial judges are not more common in Spain than in other countries, whether it be that they are better watched, or that the generosity natural to the Spanish nation secures them from all temptation.

There

There is a kind of gradation in the Spanish magistracy of which the degrees are easily traced. All the members of the *Camara* are ancient counsellors of Castile; these seldom obtain their places without having been presidents of a chancery or an audience, or at least ancient counsellors of one of these tribunals, or *Alcade de Corte*. In the same manner it is from among the advocates *Corregidores*, or *Alcaldes Mayores*, that the latter are chosen. It is here necessary to give some account of these magistrates, of whose offices foreigners in general have but a very confused idea.

First there are two classes of simple *Alcaldes**, who are established in the cities, boroughs and villages. The *Alcalde ordinario* judges in the first instance,

* These different species of *Alcaldes* are usually confounded by foreigners. Not to distinguish an *Alcalde Pedaneo* from an *Alcalde de Corte* is the same as supposing a sheriff's officer and a magistrate upon the bench to be equal in rank and authority.

when there is no Corregidor, but in places where there is one, has cognizance of civil causes in concurrence with him, whilst the latter acts alone in matters of police and administration. The *Alcalde pedaneo*, who is commonly taken from among the common people, has no functions but those of arresting delinquents, and executing the orders of the Corregidor, or the Alcalde Mayor.

The simple *Alcaldes* are differently appointed, according to the privileges of the cities, boroughs and villages in which they reside. In some places chance decides, in others they are named by the council of Castile, the tribunal of the province, or the lord of the manor, who chuses one from three persons proposed to him. They are changed every year.

The *Alcaldes Mayores*, or *Corregidores*, which differ in title only, are all named by the king upon the presentation of the Camara. This inferior degree of

magistracy was formerly under very improper regulations, which government has lately reformed. The place of Corregidor was bestowed on persons of small fortune, who frequently expended their whole property in soliciting the promotion. After having succeeded, they held their places three years, when their office expired, and they were again obliged to have recourse to new solicitations. How could it be hoped, that men scarcely escaped from want, and upon the brink of relapsing into their former indigence, would not be violently tempted to insure to themselves resources at the expence of those over whom they possessed a transient authority? It was necessary to preserve the subjects of the king from their rapacity, and these magistrates themselves from temptation. Men virtuous from a love of virtue, and who firmly refuse to commit evil, even when they can perpetrate it with advantage and impunity, are rare in every country; and the Corregidors but too frequently confirmed

this melancholy truth. The count of Florida Blanca, when minister of favour and justice, had the almost unexampled courage to adopt the measures projected by his predecessor and the count de Comomanes; measures which might excite the emulation of the Corregidores, and enable and encourage them to be honest. He procured that for the future they should continue in office six years instead of three; that there should be three classes of *Corregimientos*; that they should pass from one class to another, after having well discharged the duties of their first place; that their emoluments should be increased at every removal; and that having thus gone through the three classes to the satisfaction of his majesty, they should have what in Spain is called the honours of *Togado*, that is, the title and prerogatives annexed to the place of counsellor of the superior tribunals, whether their acknowledged merit was rewarded by one of these places, or that they continued to occupy the *Corregimientos* of the
first

first class. When I was at Madrid, government was waiting the termination of the commission of the triennial Corregidores to begin this regulation, truly advantageous to the people, who at times, even in monarchies, are considered as of some importance.

Besides the three classes of Corregidores, there is one of another kind; those of Madrid and Seville, two cities in which the magistracy is peculiar and distinct. The Corregidores are for life, and must not be taken from the profession of the law; they are no more than chiefs of the police who preside at city meetings, bull-fights, and the public acts of the city. The lieutenants civil, *Tenientes de Villa*, have a jurisdiction independant of their authority, and supply them in their presidencies. Besides these, Madrid and Seville have *Regidores*, a kind of inspectors, who maintain the police in concurrence with the Corregidor. This is the municipal constitution of Madrid. The *Alcaldes de Corte*
make

make no part of it, and are, as we have observed, dependant upon the court; this, however, prevents not their jurisdiction from extending to the interior of the capital, which is divided into a certain number of quarters, distributed to the different *Alcaldes de Corte*; each of whom has under him an *Alcalde de Barrio* *, a kind of local magistrate, who watches over the preservation of public order, within the extent of his jurisdiction.

Lastly, there is a magistrate with the title of Superintendent, who is particularly charged with the police and the preservation of public order, in concurrence with the *Alcaldes de Corte*, the *Regidores*, the *Corregidor*, and the *Tenientes de Villa*. From this constitution, which is certainly somewhat complicated, results frequent clashings of jurisdiction among the magistrates; but on the other hand, there are few cities in Eu-

* There are therefore five kinds of *Alcaldes*, *Alcalde Pedáneo*, *Alcalde Ordinario*, *Alcalde de Barrio*, *Alcalde Mayor*, and *Alcalde de Corte*.

rope in which the police is better regulated than at Madrid, where there is more safety, or where fewer crimes are committed which escape the vigilance of justice.

It now remains to consider, by what code of laws justice is administered in Madrid, as well as in the rest of the kingdom.

It may be said, strictly speaking, that the Roman or civil law has there no force. This, by some old ordinances of the kings of Castile, is forbidden, under severe penalties, to be so much as quoted. These laws, however, for so long a time the object of a blind admiration, and against which it is now become the custom to declaim with virulence, are frequently consulted in practice. The Spaniards seem to observe a just medium between the two extremes. They do not adopt the civil law implicitly; they look not upon all its decisions as infallible; but their lawyers derive

rive from it knowledge and authorities, because they are convinced, that in the midst of a number of laws contradictory to each other, sometimes absurd, and frequently foreign to our manners and political constitution, many are to be found which cannot be denied to be dictated by reason and applicable to every legislation. The forms of process in Spain, are conformable to the Roman law, except some difference in terms and the use of documents. They are reported, not as in France by members of the tribunal, but by particular magistrates, called *Relatores*, whose places are very lucrative, and consequently much sought after,

The only authentic laws, according to which justice is administered, are registered in the codes published by the ancient kings; such are the *Ley de las siete Partidas*, the *Ordenamiento-Real*, the *Fuero-juzgo*, and *Fuero-Real*. The principal code, that which is in constant use, is called *Recopilacion*. It is a collection of
various

various and distinct edicts of the monarchs of Spain from the earliest ages to the present reign. A new edition is given from time to time in which all the laws published since the last are inserted; for it is not until after they are thus registered that certain edicts acquire the force of law. Such are those which are issued from the council of Castile under the title of *Autos-Accordatos*, and which may sometimes, from intervening circumstances, be revoked by the council itself.

It has been pretended in certain foreign prints, that the present monarch intended to give to Spain a new criminal code, and that the council of Castile had been ordered to digest it. The assertion was at least exaggerated. The council, which too well knows how much men are led by words, would have feared to have dishonoured the memory of Charles III. by placing his name at the head of a criminal code. The title alone awakens an idea of severity and even of cruelty, which

which would have formed too great a contrast to the clemency and goodness which are the characteristic virtues of the reigning sovereign. The following facts are what gave rise to the error: The council of Castile, by the agency of the count de Campomanes, who was then one of its *fiscales*, had proposed the revision and reform of the old criminal laws, some of which were absurd, disgusting or impossible to be enforced; such were those which condemned certain criminals to be pierced with arrows; false witnesses to have their teeth pulled out, &c. The proposition being approved by the king, the council appointed some members of the different tribunals to make a revision of the penal laws, and to substitute others more conformable to modern manners. From the report of this committee, of which the count de Campomanes was president, the chamber of the *Alcaldes de Corte* was directed to draw up a plan which should serve as a basis to the projected reform. Whatever may be the ultimate benefit derived

derived from this measure, it has already produced a tract on the penal laws, the work of a young lawyer named Lardizabal, which appeared in 1784, and may be read with pleasure and advantage, even after the celebrated essays of the marquis of Beccaria.

This is the proper place to speak of the torture, that barbarous institution against which modern philosophy has so forcibly exclaimed. It is not yet formally abolished in Spain, and still finds some defenders. A few years ago an ecclesiastic, named Castro, undertook a formal apology for it; but his work, which inspired almost general indignation, was completely refuted by a gentleman of the profession of the law, who in fact only expressed the moderate sentiments of the first tribunal of the kingdom, and of the reasonable part of the nation. His system has infinitely more partisans than that of his antagonist.

The canon law is the received code in Spain in all ecclesiastical affairs. It must not however be imagined that the court of Madrid pays implicit obedience to the orders of the holy see. There is no catholic kingdom in which more successful efforts have been made to lighten this yoke.

The religion of Rome and its ministers are without doubt still held in the greatest veneration, and the priests and monks, under the pretext of directing consciences, sometimes take part in temporal concerns, and abuse the confidence placed in them by excessive credulity. But these abuses, even under the reign of pious monarchs, were in many respects suppressed; though, during a great part of the present century, they infected the very avenues to the throne.

The dangerous influence which father D'Aubenton, and his successors of the same order enjoyed at the court of Philip

Philip V. is remembered with indignation; as likewise that of father Rabago, the last Jesuit who sat in the confessional chair of the Spanish monarchs, with Ferdinand VI. The confessor of the present king is a Franciscan. But although this monk is very frequently admitted to the presence of his august penitent, he does not extend his jurisdiction beyond the limits of the duties of real religion; and notwithstanding what has been said in Europe, especially upon the subject of the late war, has few connections at court, and concerns himself very little with the affairs of government and political intrigue. The monarch, though he continually treats him with that deference which he thinks due from him to the director of his conscience, has more than once repressed the fervency of his zeal. It is true his majesty generally consults him concerning filling the vacant bishopricks and other ecclesiastical dignities, which are at the disposal of the king, and in this point of view his con-

fessor may be considered as possessing the nomination to benefices, although this properly belongs to the Camara and to the minister of favour and justice. But even in this respect, his influence has lately been circumscribed, and the appointment to vacant sees vested, in exclusion of him, in the count de Florida Blanca, as the present minister of favour and justice.

This incontestible right of the kings of Spain to nominate to the great benefices of their dominions has been allowed by the popes only since the year 1753, the date of the compact between the Spanish court and the holy see.

Until then the collation to benefices had been the object of frequent contests between the two courts. The kings of Spain claimed it by virtue of their right of patronage, as having founded and endowed all the churches in their dominions. That moderate pontiff, Benedict XIV. who perceived that the real means

means of preserving the remaining rights of the holy see in an age when the eyes of every European sovereign were more opened to discover abuses, was to compound for some of them, proposed, that in the first place the subject should be discussed by the cardinals Aquaviva and Belluga; but their interposition having produced a correspondence in which both parties were only inflamed against each other without making much progress towards a conclusion, it was agreed to abandon the discussion and negotiate in an amicable manner. For this purpose Spain deputed the abbé de Figueroa a man of a mild and conciliating character and who has since been at the head of the council of Castile. The result was the compact which has finally settled this dispute between the crown of Spain and the court of Rome.

The holy see did not refuse the kings of Spain the right of nomination to all consistorial benefices, which has been granted to them by different bulls. The

compact confirms them in the possession of this right, regulating however that titularies should be obliged to provide themselves with bulls.

The principal contest turned upon regular and simple benefices. The kings of Spain demanded to nominate to all; the popes claimed a right to confer those at least which became vacant in the apostolical months.

The compact enumerated fifty-two benefices which should be at the nomination of the holy see, with obligation to confer them upon none but Spaniards; and it was also stipulated that the pope should not delegate this power of collation; that the benefices should be exempt from pensions, and that the titularies should pay no *cedulas bancarias*.

These were contracts made with the apostolical chamber, by virtue of which the candidate to whom the benefice was promised engaged himself to pay a certain

tain sum. This sum he frequently did not possess; in which case the apostolical chamber advanced it to him at an enormous interest, and kept agents in Spain who took care to have these engagements fulfilled. These ruinous abuses sent to Rome one year with another, a fifth of the revenue of all the benefices. One of the inconveniences, which were the consequence, was the emigration of the candidates who went to intrigue at Rome and there dishonour their country.

This was not the only impropriety abolished by the compact. Previous to it the pope had always disposed of the *spolios y vacantes*, that is of the spoils of deceased prelates and the revenues of vacant benefices. The administration of these funds was confided to an office composed of Italians, so expert in this business that a fourth of the produce of the benefices of Spain disappeared under their rapacious management. By the

compact the holy see renounced these revenues under the single condition that the administration of the *spolios y vacantes*, should be granted to none but an ecclesiastic. This trifling restriction does not prevent the kings of Spain from disposing of them according to their pleasure. The minister they name employs a part of them in making advances to the new prelates who want money for their establishment. It has been remarked, to the praise of the dignified Spanish clergy, that the repayment of these advances has never been neglected; and it must also be allowed, that though there are still some fanatics among the Spanish prelates, they are highly worthy commendation for their piety, charity, and unimpeachable moral conduct.

Though it is stipulated by the compact that the produce of the *spolios y vacantes*, shall be wholly consecrated to pious uses, the king, as we have observed, makes no scruple of employing a part
of

of them in the encouragement of industry, and even in rewards for military services. But this source of beneficence is much less considerable than it might be. The chapters commonly chosen to liquidate the property of deceased prelates, and to administer the revenues of great vacant benefices, sometimes reduce them both to one-fourth of their real value.

As the compact deprived the holy see of the *spolios y vacantes*, and of some other revenues, and as that see seldom makes voluntary sacrifices, it was necessary that a sort of equivalent should be found. On account of the pensions, payable from the benefices of Spain, and the produce of the *cedulas bancarias*, the court of Madrid engaged to pay it on one part, six hundred thousand Roman crowns, at an interest of three per cent. and on the other a sum of three hundred and ten thousand crowns upon the same condition, as an