

be a third person to decide this contest; that is to say, a judge, or magistrate, from whose determination there should be no appeal; and this determination should consist of a simple affirmation, or negation of fact.

IF it can only be proved, that the severity of punishments, though not immediately contrary to the public good, or to the end for which they were intended, viz. to prevent crimes, be useless; then such severity would be contrary to those beneficent virtues, which are the consequence of enlightened reason, which instructs the sovereign to wish rather to govern men in a state of freedom and happiness, than of slavery. It would also be contrary to justice, and the social compact.

C H A P.