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VI.12 On the authority of penalties

- The Spirit of Law - Book VI. Consequences of the principles of the various governments with respect to the simplicity of the civil and criminal laws, the form of judgments, and the establishment of punishments -

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VI.12 On the authority of penalties

Experience has suggested that in the countries where penalties are lenient the mind of the citizen is as impressed by them as it is elsewhere by heavy ones.

If a state becomes aware of some problem, a violent government tries to correct it suddenly, and rather than thinking of apply the old laws they establish a cruel penalty to put an immediate end to the problem. But they sap the government's resource ; the imagination adapts to this heavy penalty as it had to the lesser one ; and since it diminishes the fear of the first one, soon the second has to be established in all cases. Highway robberies were common in some states : to put a stop to them, they came up with breaking on the wheel, which ended them for a while. Since then robbery continues as before on the highways.

In our times, desertion was very frequent ; the death penalty was instituted against deserters, and desertion was not diminished. The reason for this is quite natural : a soldier accustomed to risking his life every day scorns, or flatters himself he scorns, danger. He is every day accustomed to fearing shame : the thing to do was to leave in place a penalty that made him bear a lifelong stain ; the intention was to increase the punishment, and in reality it was lightened.

Men must not be led by extreme paths ; economical use must be made of the means nature gives us for conducting them. If we but examine the cause of all the laxity, we will see that it comes from the impunity of crimes, and not from the moderateness of penalties.

Let us follow nature, which has given men shame as their scourge ; and let the greater part of the penalty be the infamy of suffering it.

Now if there are countries where shame does not follow on punishment, the reason is the tyranny that has inflicted the same penalties on scoundrels and on upstanding persons.

And if you see others where men are restrained only by cruel punishments, be sure once more that it is owing in large part to the violence of the government, which has applied those punishments for petty offenses.

Often a legislator who wants to correct a problem thinks only of this correction ; his eyes are open to the objective, and closed to the drawbacks. Once the problem is corrected, all you can see is the severity of the legislator ; but there remains a vice in the state which this severity has produced : the minds are corrupted ; they have become accustomed to despotism.

After Lysander [\[1\]](#) had won the victory over the Athenians, the prisoners were judged ; the Athenians were accused of having thrown overboard all the captives of two galleys, and of having resolved in open assembly to cut the hand off any prisoners they took. They were all slaughtered except Adymante, who had opposed that decree. Lysander reproached Philoclese, before having him put to death, for having depraved the minds and given lessons in cruelty to all of Greece.

"The Argives having put to death fifteen hundred of their own citizens," says Plutarch, the Athenians sent for sacrifices of expiation, that it might please the gods to turn away such a cruel thought from the hearts of Athenians." [\[2\]](#)

There are two kinds of corruption : one, when the people do not observe the laws ; the other, when they are corrupted by the laws : an incurable disease, because it lies in the remedy itself.

[1] Xenophon, *Hellenica*, book II.

[2] *Moralia*, "Precepts of statecraft."