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VI.13 Powerlessness of Japanese laws

- 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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Exaggerated penalties can corrupt despotism itself : let us have a look at Japan.

Almost all crimes there are punished by death, [1] because to disobey as great an emperor as the emperor of Japan is an enormous crime. There is no thought of punishing the guilty party, but of avenging the prince. These ideas are derived from servitude, and arise especially because, as the emperor is the owner of all property, almost all crimes are committed directly against his interests.

They punish by death lies told before magistrates, [2] which is contrary to natural defense.

What has not even the appearance of a crime is severely punished there : for example, a man who risks money gambling is punished by death.

It is true that the surprising character of that people - obstinate, capricious, determined, and bizarre, braving every peril and every misfortune - seems at first sight to absolve its legislators for the atrocity of their laws. But are men who naturally scorn death and tear open their bowels on the slightest whim corrected or prevented by the continual spectacle of executions ? And do they not become familiar with them ?

The relations tell us, on the subject of the education of the Japanese, that children must be treated gently, because they bristle at punishments ; that slaves must not be treated too harshly, because they immediately become defensive. Could they not have judged, from the spirit that must prevail in domestic government, the spirit that should have been applied in political and civil government ?

A wise legislator would have sought to assuage the minds through a skillful admixture of penalties and rewards ; through maxims of philosophy, morality, and religion matched to these categories ; through the skillful application of the rules of honor ; through the enjoyment of constant contentment and agreeable tranquility. But despotism does not know these resources ; it does not lead down these paths ; it can abuse itself, but that is all it can do : in Japan it has made an effort, and become crueller than itself.

Souls everywhere terrified and made more atrocious could be led only by even greater atrocity. Such is the origin and such the spirit of the laws of Japan. But they have had more fury than force. They have succeeded in destroying Christianity, but such extraordinary efforts are a proof of their impotence. They meant to establish a good political order, and their weakness became even more apparent.

One must read the relation of the conversation between the emperor and the Deyro in Meaco. [3] The number of those who were smothered or killed there by hellions was unbelievable ; they abducted the girls and boys, who were found at all hours exposed in public places stark naked, sewn into cloth bags, so they would not recognize the places where they had passed ; they stole everything they wanted, slashed open horses' bellies to make their riders fall, overturned carriages to rob the ladies inside. The Dutch who were told they could not spend the night on bleachers without being murdered descended from them, etc.

I shall quickly pass over another item. The emperor, addicted to shameful pleasures, failed to marry, and risked dying without a successor. The Deyro sent him two very pretty girls : he married one out of respect, but had no commerce with her. His nurse sent for the most beautiful girls in the empire : it was all for naught. The daughter of an armorer caught his fancy by surprise [4] ; he made up his mind, and had a son by her. The ladies of the court, indignant at his preference of a person of such low birth over them, suffocated the child. The crime was concealed from the emperor, who would have spilled a torrent of blood. The atrocity of the laws thus prevents their execution : when the

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punishment is beyond measure, there is often no alternative to impunity.

[1] See Kaempfer.

[2] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. III, part 2, p. 428.

[3] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. 5, p. 2.

[4] *Ibid.*