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VI.16 On the just proportion of punishment to crime

- 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.16 On the just proportion of punishment to crime

It is essential that there be some harmony among punishments, because it is essential to deter a great crime rather than a lesser one, what is a threat to society rather than what disrupts it less.

"An imposter who said he was Constantine Doukas provoked a great uprising in Constantinople. He was caught and sentenced to be whipped ; but having accused some highly-placed persons, he was sentenced to be burned as a slanderer." [1] It is singular that they had thus proportioned punishments between the crime of lese-majesty and the crime of slander.

It recalls a remark of Charles II, king of England. He saw in passing a man being pilloried. "Why has he been put there ?" he asked. "Sire," came the reply, "he has written satirical things against your ministers." "The fool !" said the king ; "why did he not write them against me ? There would have been no consequence for that."

"Seventy persons conspired against the emperor Basil ; he had them flogged, their hair and beards were burned. When a stag caught him by the belt with its antlers, someone in his retinue drew his sword, cut his belt, and freed him ; he had the man beheaded because, he said, he had drawn his sword against him." [2] Who could think that these two judgments could have been rendered under the same prince ?

It is a great wrong for us to inflict the same punishment on the highway robber and on the man who steals and murders. It is obvious that for public safety there ought to be some difference made in the punishment.

In China, cruel thieves are cut to pieces, [3] others not ; the effect of this difference is that they steal but do not kill.

In Muscovy, where the punishments for thieves and for killers are the same, they always kill. [4] The dead, they say there, tell no stories.

When there is no difference in the punishment, some must be made in the hope of clemency. In England no one murders, because thieves can hope to be sent to the colonies, but not murderers.

Letters of clemency are a great tool for moderated governments. This power of the prince to pardon, applied wisely, can have admirable effects. The principle of the despotic government which does not pardon, and which is never pardoned, deprives it of these advantages.

[1] *History of Nicephoros, patriarch of Constantinople.*

[2] *Ibid.*

[3] Du Halde, vol. I, p. 6.

[4] *The State of Russia under the Present Czar*, by Perry.