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XII.12 On indiscrete words

- The Spirit of Law - Book XII. On laws that constitute political liberty in its relation to the citizen -

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Further, nothing makes the crime of lese-majesty more arbitrary than when indiscrete words become the occasion for it. Speech is so subject to interpretation ; there is such a difference between indiscretion and malice, and so little difference in the expressions they use, that law can hardly subject words to capital punishment unless it declares expressly which ones. [1]

Words do not constitute a *corpus delicti* ; they remain only in thought. Most of the time they do not signify by themselves, but by the tone in which they are uttered. Often while repeating the same words one does not impart the same meaning : that meaning depends on the relation they have to other things ; sometimes silence expresses more than all that is said. There is nothing so equivocal as all that. How then can one make it into a crime of lese-majesty ? Wherever this law is established, not only is freedom, but even its shadow, a thing of the past.

In the manifest of the late czarina issued against the Olguruki family, [2] one of those princes is sentenced to death for proffering indecent words which had some relation to her person, another for a malicious interpretation of her wise provisions for the empire, and offending her sacred person with somewhat disrespectful words.

I do not pretend to diminish the indignation one must feel against those who try to tarnish the glory of their prince ; but I shall say that if one wishes to moderate despotism, a simple correctional punishment will be more suited to such occurrences than an accusation of lese-majesty, always terrifying even to innocence. [3]

Acts are not everyday things : many persons can notice them ; a false accusation about facts can easily be clarified. The words which accompany an act take on the nature of that act. Thus a man who enters the public square to exhort subjects to revolt becomes guilty of lese-majesty because the words are accompanied by action and are part of it. It is not the words one punishes, but an act committed in which the words are used. They become crimes only when they prepare, accompany, or follow a criminal act ; everything is upside down if words are made into a capital crime instead of seeing them as the sign of a capital crime.

The emperors Theodosius, Arcadius, and Honorius wrote to Ruffinus, the prætorian prefect : "If someone speaks ill of our person or of our government, we do not wish to punish him [4] ; if he has spoken inconsiderately, he should be scorned ; if out of madness, he should be pitied ; if it is an insult, he must be forgiven. And so, leaving things as they are, you will apprise us of it, so that we may judge the words by the persons, and weigh carefully whether we should have them tried or ignore them."

[1] *Si non tale sit delictum in quod vel scriptura legis descendit vel ad exemplum legis vindicandum est* ['[It should not be punished as a crime] unless the offense is indeed what the law prescribes or must be punished as an example'], says Moestinus in Law 7 following *Ad legem Juliam majestatis*.

[2] In 1740.

[3] *Nec lubricum linguæ ad poenam facile trahendum est* ['An uncertain word should not be easily punished'] (Modestinus, in Law 7 following *Ad legem Juliam majestatis*).

[4] *Si id ex levitate processerit, contemnendum est ; si ex insania miseratione dignissimum ; si ab injuria remittendum* (single law in Cod. *Si quis Imperatori maledixerit* ['If anyone should speak ill of the emperor']).