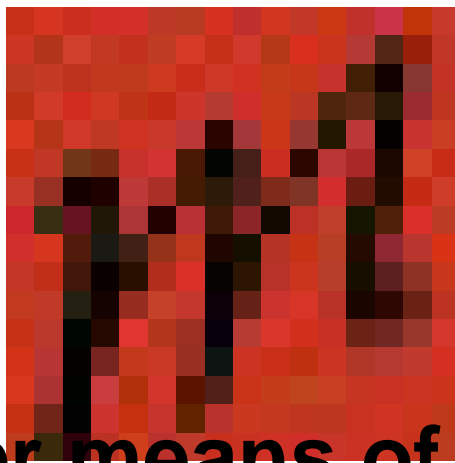


<http://montesquieu.ens-lyon.fr/spip.php?article2624>



V.7 Other means of favoring the principle of democracy

- The Spirit of Law - Book V. That the laws made by the legislator must be relative to the principle of the government -

Date de mise en ligne : mercredi 22 août 2018

Copyright © Montesquieu - Tous droits réservés

V.7 Other means of favoring the principle of democracy

An equal division of land cannot be achieved in all democracies. There are circumstances where such an arrangement would be impracticable, dangerous, and even might be counter to the constitution. It is not always necessary to take extreme paths. If it is seen in a democracy that such a division, which must maintain morality, is not working, then recourse must be had to other means.

If one establishes a fixed body which is in itself the moral rule, a senate to which age, virtue, gravity and services give admittance, senators exposed to the sight of the people as images of the gods will inspire sentiments that will be carried into the bosom of all the families.

It is especially important that this senate cleave to the old institutions, and act so the people and the magistrates never contravene them.

There is much to be gained, in terms of morality, by retaining old customs. As corrupt peoples rarely do great things, and have never established societies, founded cities, or created laws, and on the contrary those who had simple or austere ways have created most settlements, recalling men to the old maxims is ordinarily to lead them back to virtue.

Besides, if there has been some revolution, and the state has taken on a new form, that can hardly have been accomplished without infinite pains and labors, and rarely with idleness and corrupt morals. The very men who have brought about the revolution wanted it to be accepted, and could hardly have succeeded in that without good laws. Ancient institutions are thus usually correctives, and new ones abuses. In the course of a long government, things get imperceptibly worse, and the good cannot be recovered without effort.

They were unsure whether the members of the senate we are discussing should be for life, or chosen for a term. Doubtless they should be chosen for life, as was practiced in Rome, [1] in Lacedæmon, [2] and in Athens itself. For one must not confuse what was called the senate in Athens, which was a body that changed every three months, with the Areopagus, the members of which were established for life, as perpetual models.

The general maxim is this : in a senate made to serve as the rule, and so to speak as the repository of morality, senators should be elected for life. In a senate created for preparing business, the senators can change.

The mind, says Aristotle, ages like the body. This reflection is valid only for a single magistrate, and cannot be applied to an assembly of senators.

Besides the Areopagus, there were guardians of the ethos in Athens, and guardians of the laws. [3] In Lacedæmon all the elderly were censors. In Rome, censorship was held by two designated magistrates. As the senate oversees the people, there must be censors to keep their eye on the people and the senate. They must restore everything that has been corrupted in the republic, record tepidness, judge negligence, and correct mistakes, just as the laws punish crimes.

Roman law, which made the accusation of adultery public, was admirable at maintaining the purity of morals ; it intimidated the women, and also intimidated those who were to oversee them.

Nothing maintains morals better than an extreme subordination of youth with respect to the aged. Both will be contained, the former by the respect they will have for the aged, and the latter by the respect they will have for themselves.

V.7 Other means of favoring the principle of democracy

Nothing gives the laws more force than the extreme subordination of citizens to magistrates. "The great difference which Lycurgus made between Lacedæmon and the other cities," says Xenophon, "consists above all in his making the citizens obey the laws : they come running when the magistrate calls them. But in Athens a rich man would be devastated if he were thought to be subordinate to the magistrate." [4]

Paternal authority also is most useful for maintaining morals. We have already said that there is no force as inhibiting in a republic as in other governments. The laws must therefore attempt to provide reinforcement, and this they do through paternal authority.

In Rome, fathers had the power of life and death over their children. [5] In Lacedæmon, every father had the right to correct another man's child.

Paternal authority was lost in Rome with the republic. In monarchies, where such purity of morals is of no importance, everyone is expected to live under the power of the magistrates.

The laws of Rome, which had accustomed the youth to subordination, instituted a lengthy minority. Perhaps we were wrong to adopt this practice ; in a monarchy such constraint is not necessary.

This same subordination in the republic could require the father to remain throughout his life master of his children's property, as was determined in Rome. But that is not in the spirit of monarchy.

[1] Magistrates there were annual, and senators lifelong.

[2] Lycurgus, said Xenophon (*The Constitution of the Lacedæmonians*), wanted "for senators to be elected among the aged, so they would not neglect themselves even at the end of life ; and by making them judges of the courage of the youth, he made their old age more honorable than the strength of the young."

[3] The Æorpagus itself was subject to censure.

[4] *The Constitution of the Lacedæmonians*.

[5] We can see in Roman history to what advantage for the republic this authority was used. I shall speak only of the time of greatest corruption. Aulus Fulvius had set out to find Catiline ; his father recalled him and had him put to death (Sallust, *De bello catilinæ*).