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VI.9 On the severity of punishments under the various governments

- 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.9 On the severity of punishments under the various governments

Severity of punishments is better suited to a despotic government, the principle of which is terror, than to a monarchy and a republic, which are driven by honor and virtue.

In moderated states, love of the homeland, shame, and fear of accusation are dissuasive motives that can halt many crimes. The greatest punishment for an evil act will be to be convicted for it. Civil laws will therefore correct it more easily, without requiring so much force.

In such states, a good legislator will be less intent on punishing crimes than on preventing them ; he will be more devoted to promoting morality than to imposing punishments.

Chinese writers [1] are continually making the point that the more punishments were found to increase in their empire, the more imminent was revolution. That is because the punishments were being increased as morals were failing.

It would be easy to prove that in all or almost all the states of Europe, penalties have decreased or increased proportionately as the society was moving nearer to or farther from freedom.

In despotic countries, people are so unhappy that they fear death more than they regret the loss of life ; punishments must therefore be more rigorous. In moderated states, loss of one's life is feared more than death as such is dreaded ; here punishments that merely take one's life are therefore sufficient.

Men who are extremely happy and extremely unhappy are equally prone to severity, witness monks and conquerors. Only the average life and the mixture of good and ill fortune lead to contentment and pity.

What we see in men taken individually exists in the various nations. Among savage peoples who live a very hard life, and among peoples of despotic governments where there is but one man exorbitantly favored by fortune while it does violence to everyone else, man is equally cruel. Contentment prevails under moderated governments.

When we read in the histories examples of the atrocious justice of the sultans, we feel with a sort of sadness the sufferings of the human race.

In moderate governments, everything can serve a good legislator as material for punishments. Is it not quite extraordinary that in Sparta one of the principal ones was to be forbidden to lend one's wife to someone else, or to receive someone else's wife, and obliged never to be in one's house except with virgins ? In a word, whatever the law calls a punishment is indeed a punishment.

[1] I will later show that China in this regard fits the case either of a republic or of a monarchy.