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XI.16 On legislative authority in the Roman republic

- The Spirit of Law - Book XI. On the laws that constitute political freedom in their relation to the constitution -

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XI.16 On legislative authority in the Roman republic

Under the decemvirs there were no rights to argue over, but when freedom returned, the jealousies re-emerged ; as long as the patricians retained a few privileges, the plebeians took them away.

There would have been little harm if the plebeians had been content with depriving the patricians of their prerogatives, and if they had not offended them in their very quality as citizens. When the people were assembled by *curiæ* or by centuries, they were composed of senators, patricians, and plebeians. In the disputes, the plebeians won the point [1] that alone, and without the patricians and the senate, they could make laws which are called plebiscites, and the *comitia* where they made them were called *comitia by tribes*. Thus there were cases where the patricians [2] had no share in the legislative authority, [3] and where they were subjected to the legislative authority of another body of the state. It was a delirium of freedom. To establish democracy, the people shook the very principles of democracy. It also seemed that such an exorbitant authority ought to have suppressed the role of the senate. But Rome had admirable institutions. She had two above all : by one the legislative authority of the people was regulated ; by the other it was limited.

The censors, and before them the consuls, [4] formed and created, in a manner of speaking, the body of the people every five years ; they applied legislation to the very body that held the legislative authority. "Tiberius Gracchus, censor," says Cicero, "transferred the enfranchised into the city's tribes, not by the force of his eloquence, but by a word and a gesture ; and had he not done this, we would no longer have this republic which today we barely support." [5]

Moreover, the senate had the power to take the republic, in a manner of speaking, out of the people's hands by the creation of a dictator before whom the sovereign bowed its head and the most popular laws remained silent. [6]

[1] Dionysius of Halicarnassus, book XI, p. 725.

[2] By sacred laws, the plebeians could make plebiscites, alone and without the patricians being admitted into their assembly (Dionysius of Halicarnassus, book VI, p. 410, and book VII, p. 430).

[3] By the law made after the expulsion of the decemvirs, the patricians were subjected to plebiscites, although they could not have voted for them (Livy, book III, and Dionysius of Halicarnassus, book XI, p. 725), and this law was confirmed by that of dictator Publius Philo in the year of Rome 416 (Livy, book VIII).

[4] In year 312 of Rome the consuls were still doing the *cens*, as can be seen in Dionysius of Halicarnassus, book XI.

[5] [*De oratore.*]

[6] Like those that allowed appealing the decrees of all the magistrates to the people.