

<http://montesquieu.ens-lyon.fr/spip.php?article2752>



XII.8 On the misapplication of the name of crime of sacrilege and of lese-majesty

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

Date de mise en ligne : mardi 4 septembre 2018

Copyright © Montesquieu - Tous droits réservés

XII.8 On the misapplication of the name of crime of sacrilege and of lese-majesty

It is another violent abuse to give the name of crime of lese-majesty to an act that is not one. A law of the emperors [1] pursued as sacrilegious those who questioned the prince's judgment and doubted the merit of those he had chosen for some office. [2] It was, to be sure, the council and the favorites who instituted this crime. Another law had declared that those who make attempts on the prince's ministers and officers are guilty of lese-majesty, as if their attempt were on the prince himself. [3] We owe this law to two princes [4] whose weakness is legendary in history : two princes who were conducted by their ministers as herds are led by shepherds ; two princes who were slaves in the palace, children in the council, strangers to the armies, and who preserved the empire only by giving it away day by day. Some of these favorites conspired against their emperors. They went further : they conspired against the empire ; they called in the barbarians, and those who wanted to stop them found the state was so weak that it was necessary to break their law and risk the crime of lese-majesty in order to punish them.

Yet it was on this law that the judge-advocate of M. de Cinq-Mars [5] relied when, trying to prove him guilty of the crime of lese-majesty for attempting to drive the Cardinal de Richelieu out of the council, he said : "The crime touching the person of the princes' ministers is reputed by the constitutions of the emperors of equal weight with those touching their person. A minister indeed serves his prince and his state ; he is taken from both : it is as if the former were being deprived of an arm [6] and the second of a part of its authority." Were servitude in person to come to earth, it would not speak otherwise.

Another law of Valentinian, Theodosius, and Arcadius [7] declares counterfeiters guilty of the crime of lese-majesty. But was that not to confuse ideas and things ? Is applying to another crime the name of lese-majesty not to diminish the horror of the crime of lese-majesty ?

[1] Gratian, Valentinian, and Theodosius. It is the second one of the Code *De crimine sacrilegii*.

[2] *Sacrilegii instar est dubitare an is dignus sit quem elegerit Imperator (ibid.)* ['It is almost a sacrilege to doubt the emperor's choice']. This law served as a model to that of Roger in the Constitutions of Naples, Tit. 4.

[3] Fifth law *ad legem Juliam majestatis*.

[4] Arcadius and Honorius.

[5] *Mémoires de Montrésor*, vol. I.

[6] *Nam ipsi pars corporis nostri sunt* ['For they themselves are a part of our body'] ; same law in the Code *ad legem Juliam majestatis* ['Julian law on lese-majesty'].

[7] It is the ninth in the *Codex Théodosianus : de falsa moneta* ['On false money'].