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V.5 How laws establish equality in a democracy

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

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V.5 How laws establish equality in a democracy

Some ancient legislators like Lycurgus and Romulus divided up lands equally. That could occur only at the founding of a new republic, or else when the old one was so corrupt, and people's minds were in such a disposition, that the poor thought themselves obliged to seek, and the rich obliged to tolerate, such a remedy.

If, when the legislator makes such a division, he does not issue laws to maintain it, he creates no more than a transitory constitution ; inequality will enter on the side which the laws have not defended, and the republic will be lost.

It is therefore necessary for this purpose to regulate women's dowries, donations, successions, testaments, in short all means of contracting. For if a man were permitted to give his property to whomever and however he wished, every private will would jeopardize the provision of the fundamental law.

Solon, who allowed the transmission of property in Athens to whomever one wished by testament provided there were no children, [1] was contradicting the earlier laws which required property to remain in the family of the testator ; and he was contradicting his own laws, for in suppressing debts he had sought equality.

It was a good law for democracy that forbade a person from claiming two inheritances. [2] It had originated in the equal division of lands and in the portions given to each citizen. The law had refused to allow one man to have more than one portion.

The law requiring that the nearest relative marry the female heir arose from a similar source. It was instituted among the Jews after such a division. Plato, who bases his laws on this division, also includes it, and it was an Athenian law.

There was a law in Athens, the spirit of which I am not sure anyone has known. Marrying one's paternal half-sister was allowed, but not one's maternal half-sister. [3] This custom originated in republics whose spirit was not to place two portions of land, and consequently two inheritances, on the same head. When a man married his sister on his father's side, he could have but one inheritance, which was his father's ; but when he married his maternal half-sister, it could happen that the father of that sister, having no male children, would leave his estate to her, and that consequently his brother who had married her would have two.

Do not argue against me what Philo said : that although in Athens you married your paternal but not your maternal sister, in Lacedæmon you could marry your maternal but not your paternal sister. [4] For I find in Strabo that when in Lacedæmon a sister married her brother, she received half of her brother's portion as her dowry. [5] It is clear that this second law had been made to avert the undesirable consequences of the first. To prevent the property of the sister's family from passing into the brother's, they gave the sister half of her brother's property as a dowry.

Seneca, speaking of Silanus, who had married his sister, says that in Athens such permission was restricted, and that it was widely available in Alexandria. [6] Under the government of one, there was little concern about maintaining the division of property.

To maintain this division of lands in a democracy, it was a good law that required a father who had several children to choose one to inherit his portion, [7] and offer the others for adoption by someone who had no children, so that the number of citizens could be maintained at parity with the number of shares.

Phaleas of Calcedon had thought of a way of making fortunes equal in a republic where they were not. He would have the wealthy furnish dowries to the poor and receive none, and the poor receive money for their daughters and

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supply none. [8] But I do not know that any republic has adapted to such a statute. It places citizens under conditions so strikingly different that they would hate the very equality it was intending to introduce. It is sometimes good for laws not to appear to aim so directly at their goal.

Although, in a democracy, real equality is the soul of the state, it is nevertheless so difficult to institute that extreme exactness in this regard would not always be good. It is enough to establish a *cens* [9] that would reduce or fix the differences up to a point, after which it remains for specific laws to equalize the inequalities, so to speak, through charged they imposed on the wealthy and the relief they provide to the poor. Only modest wealth can offer or suffer these sorts of compensation ; for immoderate fortunes regard as an insult all the authority and honor that is not allocated to them.

All inequality in a democracy must derive from the nature of democracy and the principle of equality itself. For example, it can be feared lest persons who need continual work in order to live be impoverished by a magistracy, or neglect its functions, lest artisans glory, lest too many emancipated slaves become more powerful than the older citizens. In these cases equality between citizens [10] can be suppressed in a democracy for the good of the democracy. But it is only an apparent equality that is suppressed : for a man ruined by a magistracy would be in a worse situation than the other citizens, and that same man who would be obliged to neglect its functions would place the other citizens in a worse situation than his own, and so forth.

[1] Plutarch, *Life of Solon*.

[2] Philolaus of Corinth instituted in Athens that the number of portions of land and of inheritances would always be the same (Aristotle, *Politics*, book II, ch. xii).

[3] *Cornelius Nepos*, in the preface. This custom dated from the earliest times. Thus did Abraham say of Sarah, "She is my sister, the daughter of my father and not of my mother" [Genesis 20:12]. The same reasons had caused the same law to be instituted among different peoples.

[4] *De specialibus legibus quæ pertinent ad præcepta Decalogi* ['Of special laws pertaining to the precepts of the Decalogue'].

[5] Book X.

[6] *Athenis dimidium licet, Alexandriæ totum* (Seneca, *De morte Claudii* ['On the death of Claudius']).

[7] Plato makes a similar law (book III of *Laws*).

[8] Aristotle, *Politics*, book II, ch. vii.

[9] Solon excluded from office everyone in the fourth *cens*.

[10] Solon made four classes : the first, of those who had five hundred *mines*' income, in grains and liquid gains ; the second, of those who had three hundred, and could maintain a horse ; the third, of those who only had two hundred ; the fourth, of all those who lived by toil (Plutarch, *Life of Solon*).