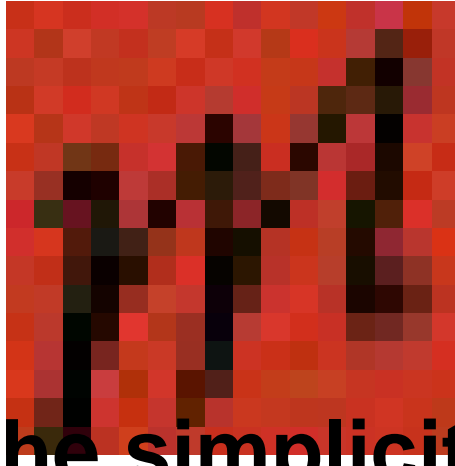


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# VI.1 On the simplicity of civil laws under the various governments

- 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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The monarchical government does not entail laws as simple as the despotic ; it requires tribunals. These tribunals hand down decisions : they must be preserved and they must be learned so that today's judgment will be like yesterday's, and so the property and lives of the citizens will be as assured and fixed as the constitution itself of the state.

In a monarchy, the administration of a justice which decides not only matters of life and possessions, but also of honor, requires scrupulous research. The sensitivity of the judge increases as he holds a greater trust and pronounces on greater interests.

Therefore one should not be surprised to find so many rules, restrictions, and extensions in the laws of these states, which multiply the individual cases and seem to make an art of reason itself.

The difference of rank, origin, and station which is established in the monarchical government often entails distinctions in the nature of property, and laws relative to the constitution of that state can increase the number of such distinctions. Thus, in France, properties are personal, prior legacy, or communal acquisitions, acquired by dowry, holdings of the wife, paternal and maternal ; moveable items of several kinds : free, substituted, family heirlooms or not ; noble or common fiefdoms, annuities on land or contracted for a sum of money. Each kind of property is subject to particular rules ; they must be followed in order to dispose of them, which further reduces simplicity.

In our governments, fiefs have become hereditary. The nobility had to possess a certain amount of property, in other words the fief had to have a certain substance, so the owner of the fief would be in a position to serve the prince. . That was bound to produce many varieties : for example, there are countries where fiefs could not be divided between brothers ; in others, the younger brothers were able to have their subsistence with more land.

The monarch who is familiar with each of his provinces can establish various laws or tolerate different customs. But the despot is familiar with nothing, and cannot keep an eye on anything ; he must have a general approach ; he governs with a rigid will which is everywhere the same ; everything becomes level under his feet.

As the judgments of tribunals multiply in monarchies, jurisprudence takes over decisions, which sometimes contradict each other, either because successive judges think differently, or because the same causes are sometimes well and sometimes badly defended, or finally because of innumerable abuses that slip into everything that passes through human hands. It is a necessary evil which the legislator corrects from time to time even as contrary to the spirit of moderated governments. For when one is obliged to have recourse to tribunals, that must result from the nature of the constitution, and not from the contradictions and uncertainty of the laws.

In governments where there are necessarily distinctions of persons, there must be privileges. This further diminishes simplicity and makes for a thousand exceptions.

One of the privileges least onerous to society, and especially to the person who grants it, is to plead before one court rather than another. Hence more disputes, that is, those over the court before which to plead.

The peoples of despotic states are in a very different situation. I do not know on what, in such a country, the legislator could decide or the magistrate judge. From the fact that the lands belong to the prince it follows that there are almost no civil laws over ownership of lands. It also follows from the sovereign's right to succession that there are no disputes over successions either. In some countries, his exclusive right to engage in trade obviates all sorts of laws

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on commerce. Because of marriages contracted with slave girls, there are scarcely any civil laws over dowries and over the special portions of wives. A further result of this prodigious multitude of slaves is that there are very few who have a will of their own, and who consequently must answer for their conduct before a judge. Most moral acts which are but the decisions of the father, the husband, or the master, are decided by them and not by magistrates.

I neglected to say that since what we call honor is scarcely known in those states, none of the cases that involve such honor, which is such an important matter to us, can arise there. Despotism is self-sufficient ; all around it is void. So it is that when travelers describe to us the countries where it reigns, they rarely have anything to tell us about civil laws. [1]

All opportunities for disputes and lawsuits are thus suppressed. That is in part why litigants are so badly treated there : the injustice of their demand seems patent, not being hidden, hedged, or protected by an infinite number of laws.

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[1] In Machilipatnam it has not been ascertained whether there is any positive law. See *Recueil des Voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. IV, part I, p. 391. In judgments, the Indians go only by certain customs. The *Vedas* and other such books contain no civil laws, but religious precepts. See *Lettres édifiantes et curieuses*, 14th volume.