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# VI.5 Under which governments the sovereign can be the judge

- 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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Machivelli attributes Florence's loss of freedom to the fact that the people did not, as in Rome, judge as a body crimes of lese-majesty committed against her. [1] For that, eight judges were established. "But," says Machiavelli, "few are corrupted by little." I would willingly adopt the great man's maxim. But in these cases, the political interest forces, so to speak, the civil interest (for it is always a disadvantage for the people itself to judge its offenses) ; in order to correct this the laws must, insofar as they can, provide for the security of individuals.

With this in mind, the legislators of Rome did two things : they allowed the accused to choose exile [2] before the trial [3] ; and they wanted the property of the condemned consecrated so the people would not be able to confiscate it. We shall see in Book XI the other limitations they put on the people's authority to judge.

Solon took good steps to anticipate the ways the people could abuse its authority in judging crimes ; he wanted the areopagus to review the case : if it found the accused unjustly acquitted, [4] it should charge him again before the people ; if it found him unjustly condemned, [5] it should halt the execution and have the case retried. The admirable law, which subjected the people to the censure of the magistracy it respected the most, its very own !

It will be well to observe some deliberateness in similar matters, especially once the accused is a prisoner, so the people can calm down and judge dispassionately.

In despotic states, the prince himself can judge. In monarchies he cannot : the constitution would be destroyed, and the dependent intermediary powers reduced to nothing ; all the formalities of judgments would be ended ; fear would invade everyone's mind, every face would blanch : no more confidence, no more honor, no more love, no more security, no more monarchy.

Here are some other thoughts. In monarchical states, the prince is the party who prosecutes the accused and has them punished or acquitted ; were he himself to judge, he would be both judge and party.

In these same states, confiscations often go to the prince ; if he judged the crimes, he would again be both judge and party.

In addition, he would lose the finest attribute of his sovereignty, which is to pardon [6] ; it would be absurd for him to make and then unmake his own verdicts : he would not wish to be in contradiction with himself. That would, moreover, throw everything into confusion ; no one would know whether a man would be acquitted, or receive his pardon.

When Louis XIII wanted to be the judge in the trial of the Duke de la Valette, [7] and for that purpose called several officers of the parlement and several counsellors of state into his office, the king having forced them to opine on the arrest warrant, President de Belière said that in this matter he saw a strange thing : a prince expressing an opinion in the trial of one of his subjects ; that kings had reserved to themselves only pardons, and delegated condemnations to their officers, "and your Majesty would be willing to see a man on the stand before him who by his verdict would go in an hour to his death ?" That the face of the prince, who bears mercy, cannot bear this ; that the very sight of him lifted the roofs of churches ; that no one should leave the prince's presence unsatisfied. When the case was judged, this same president said, in his opinion : "This is a verdict without example, even contrary to every past example until this day, that a king of France has, as judge, with his opinion sentenced a gentleman to death. [8]

Verdicts handed down by the prince would be an endless source of injustices and abuses ; courtiers by dint of their importunities would extort his verdicts. Some Roman emperors had a passion for judging : no reigns more astonished

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the world with their injustices.

"Claudius," says Tacitus, "having taken over the judgment of lawsuits and the functions of the magistrates, made possible all sorts of plunder." [9] That is why Nero, acceding to the empire after Claudius, hoping to gain approval, declared that he would certainly not be the judge of all causes, so that accusers and accused in the walls of a palace would not be exposed to the evil power of a few freed slaves. [10]

"Under the reign of Arcadius," says Zosimus, "the nation of slanderers spread, surrounding and infecting the court. When a man died, it was assumed he had left no children, [11] and his property was given away by a rescript. For as the prince was strangely dull, and the empress overly enterprising, she served the insatiable avarice of her servants and confidants, such that for moderate persons nothing was more desirable than death." [12]

"There were once," says Procopius, "very few people at the court ; but under Justinian, as judges were no longer free to dispense justice, their tribunals were abandoned, whereas the prince's palace echoed with the clamors of litigators soliciting there for their causes." [13] Everyone knows how judgments and even laws were sold there.

Laws are the eyes of the prince ; with them he sees what he could not see without them. If he wishes to exercise the function of the tribunals, he is working not for himself, but for his betrayers against himself.

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[1] *Discourses on the First Ten Books of Livy*, book I, ch. vii.

[2] This is well explained in Cicero's oration *Pro Cæcina*, at the end.

[3] It was a law of Athens, as it appears from Demosthenes. Socrates refused to make use of it.

[4] Demosthenes on the crown, p. 494, Frankfort edition of the year 1604.

[5] See Philostratus, *Lives of the Sophists*, book I, life of Æschines.

[6] Plato does not think that kings, who are, he says, priests, may attend trials that condemn to death, to exile, or to prison.

[7] See the relation of the case made against the Duke de la Valette ; it is printed in the *Mémoires de Montrésor* [1723 ; Catalogue no. 3018], vol. II, p. 62.

[8] It was later changed : see the same relation.

[9] *Annals*, book XI.

[10] *Ibid.*, book XIII.

[11] Same disorder under Theodosius the younger.

[12] *Historiæ*, book V.

[13] *Anecdota sive historia arcana* ['Anecdotes or secret history'].