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VI.3 In which governments, and in which cases, one must judge according to a precise text of the law

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The closer the government comes to being a republic, the more fixed becomes the manner of judging ; and it was a vice of the republic of Lacedæmon that the Ephors judged arbitrarily without laws to guide them. In Rome, the first consuls judged the way the Ephors did ; they perceived the disadvantages of that situation and made some precise laws.

In despotic states, there is no law : the judge is his own rule. In monarchical states, there is a law, and where it is precise the judge follows it ; where it is not, he tries to find its spirit. In republican government, it is in the nature of the constitution for judges to follow the letter of the law. There is no citizen against whom a law can be interpreted when his property, his honor, or his life are at stake.

In Rome, judges pronounced only that the accused was guilty of a certain crime, and the penalty was found in the law, as we see in various laws that were made. In England, jurors decide whether the fact which has been brought before them is proven or not ; and if it is, the judge pronounces the penalty which the law imposes for that deed : and for that he needs only his eyes.