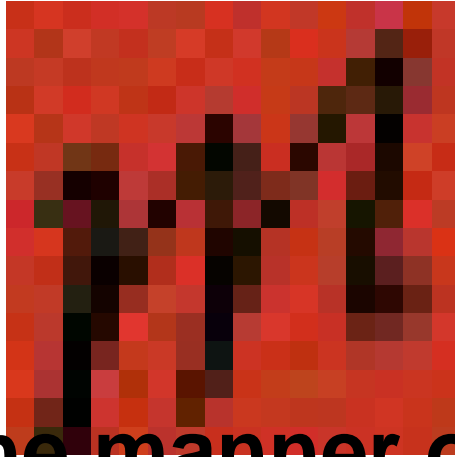


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VI.4 On the manner of arriving at judgments

- 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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VI.4 On the manner of arriving at judgments

From this follow the different manners of arriving at judgments. In monarchies, judges assume the manner of arbiters : they deliberate together, share their thoughts, and come to an agreement ; one modifies his opinion to make it conform to that of another ; the least supported opinions are assimilated to the two leading ones. This is not in the nature of the republic. In Rome and in the Greek cities, judges did not confer : each one gave his opinion in one of these three ways : *I absolve, I condemn, It is not proven*, [1] because the people were judging, or assumed to be judging. But the people are not a jurisconsult ; they are uninterested in all those modifications and accommodations of arbiters ; they must be presented with a single object, one act and one act only, and required only to see whether they must condemn, absolve, or defer judgment.

The Romans, on the Greek model, introduced formulas of actions, [2] and established the necessity of directing each cause by the action suited to it. This was necessary in their manner of judging : the state of the question had to be fixed so the people would always be focused on it. Otherwise, in the course of an important trial, this state of the question would be continually changing, and would cease to be recognizable.

Whence it followed that judges, among the Romans, granted only the precise request, increasing, decreasing, and modifying nothing. But the prætors thought up other formulas of actions that were called *in good faith*, [3] where the manner of pronouncing was more within the judge's discretion. This was more in keeping with the spirit of monarchy. And so it is that French jurisconsults say : *In France all actions are in good faith*. [4]

[1] *Non liquet*.

[2] *Quas actiones ne populus prout vellet institueret, certas solemnesque esse voluerunt* ["They wanted these actions to be solemnly instituted so the people could not change them at their whim"] (book II, §6, *Digest de origine juris*) [in fact Book I, title II, §6 (= D, I.2.6) ; "De origine juris" is the title of Book I, title II].

[3] In which were included these words : *ex bona fide*.

[4] They even the individual who is asked for more than he owes order to pay costs, if he has not offered and deposited what he owes.