

<http://montesquieu.ens-lyon.fr/spip.php?article2652>



# VI.15 On the Romans' laws relating to punishments

- 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 -

Date de mise en ligne : vendredi 24 août 2018

---

Copyright © Montesquieu - Tous droits réservés

---

## VI.15 On the Romans' laws relating to punishments

---

I am confident of my maxims when I have the Romans for me, and I believe that penalties stem from the nature of the government when I see that great people changing civil laws in this regard in conjunction with the changing of political laws.

Royal laws, made for a people composed of fugitives, slaves and brigands, were very severe. The spirit of the republic would have asked the decemvirs not to have these laws included in their Twelve Tables, but people who aspired to tyranny had no intention of following the spirit of the republic.

Livy says of the execution of Metius Fufetius, dictator of Alba, who was sentenced by Tullus Hostilius to be drawn by two chariots, that it was the first and last execution where the people testified to having lost the memory of humanity. [1] He is wrong : the law of the Twelve Tables is full of very cruel provisions. [2]

The one that best reveals the decemvirs' intent is the capital punishment pronounced against poets and the authors of libels. That is not in the genius of the republic, where the people like to see the great brought low. But men who wanted to overturn liberty feared writings that could remind people of the spirit of liberty. [3]

After the expulsion of the decemvirs, almost all the laws that had fixed penalties were suppressed. They were not expressly abrogated, but after the Porcian law prohibited the putting of a Roman citizen to death, they no longer had any application.

That is the time to which we can relate what Livy says of the Romans : that never has any people more loved moderation of punishments. [4]

Now if we add to the moderation of punishments the right the accused had of withdrawing before the trial, we will indeed see that the Romans had followed this spirit, which I have said was natural to the republic.

Sulla, who mixed tyranny, anarchy, and liberty, made the Cornelian laws. He seemed to make statutes only in order to establish crimes. Thus, qualifying innumerable acts by the name of murder, he found murderers everywhere ; and through a practice that was only too well followed, he set traps, scattered thorns, and opened chasms in the path of every citizen.

Virtually all of Sulla's laws prescribed only the deprivation of water and fire. [5] To this Cæsar added confiscation of property, [6] because as the rich kept their patrimony in exile, they were emboldened to commit crimes.

The emperors, after establishing a military government, soon realized that it was not less formidable against them than against their subjects. They tried to temper it ; they thought they needed the dignities and respect people had for them.

They moved somewhat toward monarchy, and punishments were divided into three classes [7] those that applied to the first persons of the state, [8] and which were rather mild ; those that were imposed on persons of an inferior rank, [9] and which were more severe ; and finally those that applied to none but the lowest conditions, [10] and which were the most rigorous.

The fierce and senseless Maximinus angered, so to speak, the military government that needed instead to be tempered. The senate learned, says Capitolinus, that some had been crucified, others exposed to beasts or sewn up

## VI.15 On the Romans' laws relating to punishments

---

in skins of beasts recently killed, without any regard for dignities. [11] He seemed to want to exercise military discipline, on the model of which he intended to regulate civil matters.

To learn how Constantine changed a military despotism into a military and civil despotism approaching monarchy, see *Considerations on the Causes of the Greatness of the Romans and of their Decline*. There the reader can follow the various transformations of that state, how it went from rigor to indolence, and from indolence to impunity.

---

[1] Book I.

[2] We find there torture by fire, punishments that are almost always capital, theft punished by death, etc.

[3] Sulla, inspired by the same spirit as the decemvirs, like them increased the penalties against satirical writers.

[4] Book I.

[5] [Deprivation of water and (hearth) fire, synecdoches for the home, signifies exile.]

[6] *Poenas facinorum auxit, cùm locupletes eo facilius scelere se obligarent, quod integris patrimoniis exularent* (Suetonius in *Julius Cæsar*).

[7] See Law 4 § *legis ad legem Corneliam de sicariis* ['a law concerning the Cornelian law on assassins'], and a very large number of others in the *Digest* and the *Code*.

[8] *Sublimiores*.

[9] *Medios*.

[10] *Infimos*, Law 3 § *legis ad legem Corneliam de sicariis*.

[11] Julius Capitolinus, *Maximini duo*.