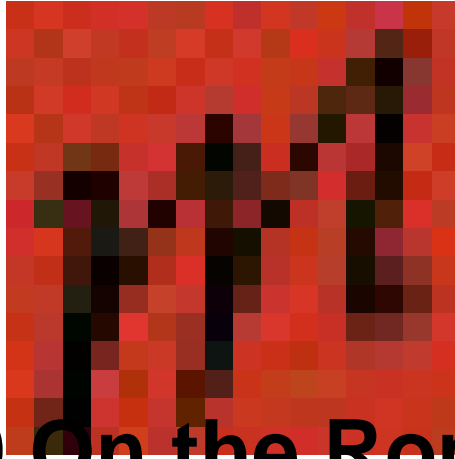


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VII.10 On the Romans' domestic court

- The Spirit of Law - Book VII. Consequences of the different principles of the three governments with respect to sumptuary laws, to luxury, and to the condition of women -

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VII.10 On the Romans' domestic court

The Romans did not have, like the Greeks, specific magistrates with oversight of the conduct of women. Censors supervised them only as they did the rest of the republic. The institution of the domestic court [1] took the place of the magistracy established for the Greeks. [2]

The husband assembled his wife's family and judged her in their presence. [3] This court maintained morality in the republic. But that same morality maintained the court. It was to judge not only violation of the laws, but also violation of morality. Now for morality to be judged, it must exist.

The punishments of this court were bound to be arbitrary, as indeed they were ; for not everything that involves morality, not everything that involves the rules of modesty, can be included under a code of laws. It is easy to specify by laws what a person owes to others ; it is difficult to include in them all that one owes to oneself.

The domestic court dealt with the overall conduct of women ; but there was one crime which, in addition to correction by this court, was further subject to public accusation : that was adultery, either because in a republic such great violation of morality implicated the government, or because the wife's depravity could cast suspicion on the husband's, or finally because they feared that even law-abiding men might prefer to hide this crime rather than punish it, ignore it rather than avenge it.

[1] Romulus instituted this tribunal, as we see in Dionysius of Halicarnassus, book II, p. 96.

[2] See in Livy, book XXXIX, the use made of this court at the time of the conspiracy of the Bacchanalis : they called "conspiracy against the republic" assemblies where the morals of the women and youth were corrupted.

[3] It appears in Dionysius of Halicarnassus, book II, that by the institution of Romulus, the husband in ordinary cases alone judged, in the presence of the wife's family, and that in great crimes he judged her along with five of them. Note too that Ulpian (in tit. 6, §9, 12, and 13) distinguishes, in judgments of morals, those he calls grave from those that were less so, *ethos graviore*s, *ethos leviores*.