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XII.21 On the cruelty of the laws toward debtors in a republic

- The Spirit of Law - Book XII. On laws that constitute political liberty in its relation to the citizen -

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XII.21 On the cruelty of the laws toward debtors in a republic

A citizen has already given himself a great superiority over another citizen by lending him money which the latter has borrowed only to spend, and which consequently he no longer has. What will happen in a republic if the laws further increase this servitude ?

In Athens and in Rome [1] it was at first permitted to sell debtors who were unable to pay. Solon rectified this practice in Athens. [2] He ordered that no one be bodily committed for civil debts. But the decemvirs [3] did not similarly reform the practice in Rome ; and although they had Solon's rule before their eyes, they did not chose to follow it. This is not the only place in the law of the Twelve Tables where we can see the decemvirs' intention of striking at the spirit of democracy.

Many times those cruel laws against debtors put the Roman republic in danger. A man covered with sores escaped from his creditor's house and appeared in public. [4] The people were moved by this spectacle. Other citizens whom their creditors no longer dared detain emerged from their dank cells. Promises were made to them which were broken. The people assembled withdrew to the Mons Sacer : they did not obtain the abrogation of these laws, but a magistrate to defend them. Emerging from anarchy, Rome was on the verge of tyranny. Manlius, to court popularity, was about to free from their creditors' hands citizens they had reduced to slavery. [5] His intentions were blocked, but the evil remained. Specific laws gave debtors means of paying, [6] and in the Roman year 428 the consuls brought forth a law [7] which suppressed creditors' right to detain debtors in servitude in their houses. [8] A usurer named Papirius had tried to corrupt the chastity of a young man named Publius whom he was keeping in irons. The crime of Sextus gave Rome political liberty ; that of Papirius gave her civil liberty.

It was that city's destiny that new crimes confirmed the liberty which former crimes had procured for her. The attempt of Appius on Virginia put the people again in mind of the horror against tyrants that Lucretia's sad end had given them. Thirty-seven years after the crime of the infamous Papirius, [9] a similar crime [10] led the people to withdraw onto the Janiculum, [11] and the law made for the security of debtors took on a new force.

Since that time, creditors were rather pursued by debtors for violations of the laws made against usury, than debtors pursued for failure to pay them.

[1] Some sold their children to pay their debts (Plutarch, *Life of Solon*).

[2] Plutarch, *Life of Solon*.

[3] It seems from history that this custom was established among the Romans before the law of the Twelve Tables (Livy, first decade, book II).

[4] Dionysius of Halicarnassus, *Roman Antiquities*, book VI.

[5] Plutarch, *Life of Furius Camillus*.

[6] See below, ch. xxiv of the book [XXII] on laws in their relation with the use of money.

[7] One hundred twenty years after the law of the Twelve Tables, *eo anno plebi Romanæ, velut aliud initium libertatis, factum est quod necti desierunt* ['This year saw the rebirth of freedom of the plebes, with the end of slavery for debts'] (Livy, book VIII).

[8] *Bona debitoris, non corpus obnoxium esset* ['The property of debtors but not their bodies would be held liable'].

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[9] In the year of Rome 465.

[10] That of Plautius, who tempted the modesty of Veturius (Valerius Maximus, book VI, art. ix). These two events must not be confused ; they were neither the same persons nor the same times.

[11] See a fragment of Dionysius of Halicarnassus in *Extracts of Virtues and Vices* (Livy, *Epitome*, book XI, and Freinsheim, book XI).