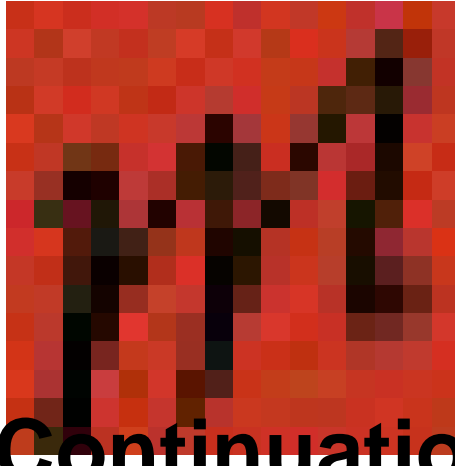


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XXII.22 Continuation of the same subject

- The Spirit of Law - Book XXII. On laws in their relation to the use of money -

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The early Romans had no laws to regulate the rate of usury. [1] In the disputes that arose on this subject between plebeians and patricians, even in the sedition of the Mons Sacer, [2] only good faith was alleged on one side, and on the other only the harshness of contracts.

So they followed individual conventions, and I think the most ordinary ones were at twelve percent per annum. My reason is that in the old language [3] of the Romans, interest at six percent was called half-usury, interest at three percent quarter-usury : full usury was therefore interest at twelve percent.

Now if you ask how such enormous usuries could have become established among a people which was almost without commerce, I will say that this people, very often obliged to go to war without wages, very often needed to borrow ; and that, regularly making felicitous expeditions, it very often could readily repay. And that is clear in the relation of the disputes that arose in this regard : there is no disagreement on the avarice of those who lent, but they say that those who complained could have paid had they lived prudently. [4]

Therefore, they made laws that bore only on the present situation : they ordered, for example, that those who enlisted for the war that had to be sustained would not be pursued by their creditors, that those who were in irons would be delivered, and that the most indigent would be taken to the colonies ; sometimes they opened the public treasury. The people were calmed by relief from present ills, and as they asked for nothing for the future, the senate was far from anticipating it.

At the time when the senate was so steadfastly defending the cause of usury, the love of poverty, of frugality, and of mediocrity was extreme among the Romans ; but such was the constitution that the principal citizens bore all the costs of the state, and the populace paid nothing. How could the principals be deprived of the pursuit of their debtors, and be asked to acquit their responsibilities, and underwrite the pressing needs of the republic ?

Tacitus says that the law of the Twelve Tables set interest at one percent per annum. Obviously he was wrong, and had taken for the law of the Twelve Tables a different law which I shall now discuss. If the law of the Twelve Tables had so determined, why, in the disputes that arose between creditors and debtors, would they not have invoked its authority ? We find no vestige of this law on lending at interest, and anyone who is versed in Roman history will see that such a law could not have been the work of the decemvirs.

The Lician law, [5] made eighty-five years after the law of the Twelve Tables, was one of the temporary laws which we have mentioned. It decreed that what had been paid in interest should be deducted from the capital, the rest to be paid off in three equal payments.

In the Roman year 398, the tribunes Duellius and Menenius put through a law that reduced interest to one percent per annum. [6] It is this law that Tacitus [7] confuses with the law of the Twelve Tables, and it is the first one enacted among the Romans to set the interest rate. Ten years later, [8] this usury was reduced to half that [9] ; later it was completely suppressed [10] ; and if we are to believe some writers whom Livy had read, it was under the consulate [11] of C. Martius Rutilius and P. Servillius, in the Roman year 413.

This law had the same fate as all laws where the legislator took things too far : means were found to evade it. It took many others to confirm, correct, and temper it. Sometimes they left laws aside to follow the practices, [12] sometimes they left practices aside to follow the laws ; but in this case practice was easily to prevail. When a man borrows, he finds an obstacle in the very law that is made in his favor ; that law has against it both the person it helps and the person it condemns. Prætor Sempronius Asellus, having allowed debtors to act in accordance with the laws, [13] was killed by the creditors [14] for wanting to revive the memory of a rigidity that could no longer be maintained.

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Under Sulla, L. Valerius Flaccus made a law allowing interest at three percent per annum. This law, the most equitable and moderate of those the Romans enacted on this subject, is disapproved by Paterculus. [15] But if this law was necessary to the republic, if it was useful to all individuals, and if it formed a communication of convenience between the debtor and the borrower, it was not unjust.

He who pays later, says Ulpian, [16] pays less : that decides the question of whether interest is legitimate, that is to say, whether the creditor can sell time, and the debtor buy it. [17]

[1] Usury and interest meant the same thing to the Romans.

[2] See Dionysius of Halicarnassus, who has described it so well.

[3] *Usuræ semisses, trientes, quadrantes*. See on this subject the various titles of the *Digest* and of the code *De usuris*, and above all law 17 with its note following *De usuris*.

[4] See the speech of Appius on this subject in Dionysius of Halicarnassus.

[5] In the Roman year 388. Livy, book VI.

[6] *Unciaria usura*. Livy, book VII.

[7] *Annals*, book VI.

[8] Under the consulate of L. Manlius Torquatus and C. Plautius, according to Livy, book VII, and that is the law of which Tacitus speaks, *Annals*, book VI.

[9] *Semiunciaria usura*.

[10] As Tacitus says, *Annals*, book VI.

[11] The law on it was made on the pursuit of M. Genucius, tribune of the people, Livy, book VII at the end.

[12] *Veteri jam more fœnus receptum erat*, Appian, *Civil Wars*, book I.

[13] *Permisit eos legibus agere*, Appian, *Civil Wars*, book I, and *Epitome* of Livy, book LXIV.

[14] Roman year 663.

[15] *Turpissimæ legis autor, quâ creditoribus solvi quadrantem jusserat*, book II. Some writers have interpreted this passage as if the law of Flaccus had ordered payment of only one-quarter of the capital ; but it seems to me that that was not the language of the Latin writers : where reduction of debts was concerned, they used the words *quadrans*, *trients*, etc. to denote usury, and *tertia pars* and *quarta pars*, to denote capital. (2) The consul Valerius is said to be the author of a law which a seditious tribune would scarcely have made. (3) This was in the fury of the civil war, and it was more a matter of maintaining the public credit than destroying it ; finally, this civil war was not over the abolishment of debts.

[16] Law 12, following *De verborum significatione* [‘on the meaning of words’].

[17] [In the edition of 1758, chapter XXII continues with [Annex 19](#).]