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**XXIX.13 That laws must not be separated from the purpose for which they have been made.**

**On Roman laws relative to**

**theft** Date de mise en ligne : vendredi 7 septembre 2018

- The Spirit of Law - Book XXIX. On the manner of composing laws -

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When the thief was caught with the stolen object before he had taken it to the place where he had decided to hide it, that was what the Romans called a manifest theft ; when the thief was discovered only afterwards, it was a non-manifest theft.

The law of the Twelve Tables prescribed that the manifest thief be beaten with rods and reduced to slavery if he was an adult, or only beaten with rods if he was not ; it condemned the non-manifest thief only to pay double the value of the stolen object.

When the Porcian law had abolished the practice of beating citizens with rods and reducing them to slavery, the manifest thief was sentenced to quadruple the value, [1] and they continued to punish the non-manifest thief with double the value.

It seems bizarre that these laws should have put such a difference in the quality of these two crimes and in the punishment they inflict ; indeed, whether the thief was caught before or after carrying the object to the place he of his destination was a circumstance which in no way changed the nature of the crime. I cannot doubt that the whole theory of Roman laws on theft was taken from Lacedæmonian institutions. Lycurgus, with an aim to developping skill, shrewdness and activity in his citizens, wanted children to be trained in stealing, and wanted those who let themselves get caught to be whipped ; that established for the Greeks, and subsequently for the Romans, a great difference between manifest and non-manifest theft. [2]

Among the Romans, the slave who had stolen was flung from the Tarpeian Rock. There Lacedæmonian institutions cannot be blamed ; the laws of Lycurgus on theft had not been made for slaves ; to do differently from them on this point was to follow them.

In Rome, when a child under age had been caught stealing, the prætor had him beaten at his discretion with rods, as they did in Lacedæmon. All this went back still farther. The Lacedæmonians had taken these practices from the Cretans ; and Plato, who wants to prove that the Cretans' institutions were made for war, cites this one [3] : the ability to bear pain in individual combats and in thefts that required one to hide.

As civil laws depend on political laws, because it is always for a society that they are made, it would be a good thing if, when one wants to take a civil law from one nation to another, it was previously examined whether they both have the same institutions and the same political law.

Thus, when the laws on theft passed from the Cretans to the Lacedæmonians, since they passed with the government and even the constitution, those laws were as sensible for one of these peoples as they were for the other. But when from Lacedæmon they were taken to Rome, as they did not find the same constitution there, they were always foreign, and had no relationship to the Romans' other civil laws.

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[1] See what Favorinus says about Aulus Gellius, book XX, ch. i.

[2] Cf. what Plutarch says in *Life of Lycurgus*, with the laws of the digest, at the title Furtis, and the *Institutes*, book IV, tit. 1, §1-3.

[3] *Laws*, book I.