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XII.2 On the freedom of the citizen

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

Date de mise en ligne : mardi 4 septembre 2018

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XII.2 On the freedom of the citizen

Philosophical liberty consists in the exercise of one's will, or at least (if we are to speak of all systems) in the opinion one has that he is exercising his will. Political liberty consists in security, or at least in the opinion one has of one's security.

This *security* is never more threatened than in public or private accusations. It is therefore on the quality of the criminal laws that the citizen's freedom principally depends.

The criminal laws have not been perfected all at once. Even in the places where freedom has most been sought, it has not always been found. Aristotle [1] tells us that in Cumæ the accuser's relatives could be witnesses. Under the kings of Rome the law was so imperfect that Servius Tullius pronounced the sentence against the children of Ancus Martius, accused of the assassinating his father-in-law the king. [2] Under the first Frankish kings, Clotaire made a law [3] that the accused cannot be condemned without being heard, which proves a contrary practice in some particular case or among some barbarian people. It was Charondas who introduced trials for false testimony. [4] When the innocence of citizens is not assured, liberty is not assured either.

The knowledge that has been acquired in some country, and which will be acquired in others, concerning the surest rules that can be applied in criminal trials will be more important to the human race than anything on earth.

It is only on the practice of this knowledge that liberty can be based ; and in a state which had the best possible laws in this respect, a man who is tried and is to be hanged the next day would be more free than a pasha is in Turkey.

[1] *Politics*, book II.

[2] Tarquinius Priscus. See Dionysius of Halicarnassus, book IV.

[3] In the year 560.

[4] Aristote, *Politics*, book II, ch. xii ; he issued his laws at Thurium in the eight-fourth olympiade.