

The Twelve Tables

The first change in the ancient Roman law was to get it written down. About 60 years after the founding of the Roman Republic in 509 B.C., discontented plebeians demanded a written code of laws. The plebeians complained that because the laws were not in writing, the patrician priests could easily abuse the people.

After some resistance, the Senate assigned a 10-member committee the task of writing down the laws. Over two years, the committee produced first 10 tablets of laws and later an additional two tablets. The citizen assembly ratified the laws. In 449 B.C., the Twelve Tables were put up in the Roman forum, the marketplace, where people could read them. Legend has it they were carved in bronze or ivory, but more likely they were carved into wood.

The Romans highly valued the Twelve Tables. Cicero, a leader in the later years of the Roman Republic, reported that school boys memorized and recited these laws. Yet no copy of the Twelve Tables has survived. What we know of them comes from fragments cited by Roman authors. Modern scholars have reconstructed many of the laws, but are unsure of the order and meaning of many of them. Modern collections of the Twelve Tables usually group the laws as follows:

Tables I & II—Pretrial and Trial

Table III—Debt

Table IV—Power of the Head of Family

Table V—Inheritance and Guardianship

Table VI—Ownership and Possession

Table VII—Real Property

Table VIII—Wrongs

Table IX—Public Law

Table X—Funerals

Tables XI and XII—Supplementary Laws

The Twelve Tables stated: "If a plaintiff summons a defendant to court, he must go." But the court would do nothing if the defendant refused to go. It was up to the plaintiff to get the defendant to



The first written laws of Rome were the Twelve Tables.

go to court, and the law allowed the plaintiff to use force get him there. "If he does not go, the plaintiff should call bystanders to witness and then take him by force."

The parties to a case had to get the witnesses themselves. "If a party needs a witness, he shall go every third market day to shout in front of the witness's house." This is the only mechanism mentioned in the Twelve Tables for getting a witness to court. Apparently, social pressure was enough to get witnesses to appear, and the limit to every third market day was to keep parties from harassing potential witnesses.

If the court ruled in the plaintiff's favor, it fell on the plaintiff to enforce the ruling. For example,

the Twelve Tables explained how to collect a debt after a court has decided that the defendant owes it.

If a debtor has a court judgment against him, he shall have 30 days to pay it. After that the creditor may seize him and bring him to court.

Back in court, the debtor must either pay the debt or get someone else to pay it. Otherwise, "the creditor shall take him home" and put him in chains. Strangely, the law gives a *minimum* amount of weight for the chains, but not a maximum. "He shall fasten him with not less than 15 pounds of weight or, if he chooses, with more."

The creditor may hold the debtor for 60 days, providing him with "a pound of meal each day." During this period, the creditor must bring him "to court on three market days in a row and the debt shall be publicly announced." After 60 days, if the debt is not paid or settled, the creditor may take the debtor as his slave or sell him into slavery outside of Rome ("beyond the Tiber River"). The Twelve Tables mysteriously added: "The creditors may cut pieces. If they cut more than their share, it shall be no crime." Some scholars believe "cut pieces" meant that the creditors could literally carve up the debtor. Others believe it simply meant the creditors could split any property the debtor owned.

Part of the Twelve Tables dealt with wrongs people did to one another. Unlike today, an individual had to take another person to court. The state did not prosecute them. The ancient law was *lex talionis*, the law of retaliation, and demanded an "eye for an eye." The Twelve Tables sometimes allowed substitutions for strict *lex talionis*. A person could pay the wronged person instead of receiving an "eye for an eye." The rate of compensation differed for free Romans and slaves.

If a person has broken another's limb, unless he makes an agreement to compensate him, there shall be retaliation in kind. If one has broken a bone of a freeman, let him pay 300 coins. If it was a slave, give him 150 coins. If one is guilty of simple harm, the penalty shall be 25 coins.

An old Roman story is told about a wealthy Roman who lived a couple hundred years after the Twelve Tables were written. It shows a possible problem with the laws setting a specific amount of compensation. As the story goes, the man for fun would go about Rome whacking people on the head. His slave followed him paying each victim 25 coins. At the time of the Twelve Tables this was a large amount. Two hundred years later, however, it was a paltry sum due to inflation.

Penalties also differed based on intention. A person burning down a building "shall be bound, scourged, and burned to death if he intentionally committed this crime." But if it was accidentally done through negligence, "either he shall repair the damage or if he is unable, he shall be corporally punished."

Penalties for theft were harsher if the thief committed the crime at night or was caught in the act. If someone encountered a thief at night and killed him, the killing was lawful. But during the day, "it is unlawful for a thief to be killed unless he defends himself with a weapon. And even if he resists, first call out so that someone may hear and come."

Juvenile offenders were treated differently than adults. A law stated that anyone at night cutting down or letting his animals graze on another's crops "shall be hung up and sacrificed to Ceres" (the goddess of agriculture). The penalty was lighter for a juvenile committing the same crime.

A person below the age of puberty shall at the court's decision be scourged and shall be surrendered to the plaintiff for the damage done or pay double damages.

The laws order the death penalty for treason or official misdeeds such as "giving false testimony," "receiving a bribe," "inciting a public enemy," and "handing over a citizen to a public enemy." The condemned person would be "hurled from the Tarpeian Rock," a steep cliff in Rome.

The Twelve Tables were not a complete code of Roman laws. Many well-known laws and procedures on important subjects were not mentioned.

Excerpts From the Twelve Tables

1. A dreadfully deformed child shall be quickly killed.
2. If a head of a family sells a son into slavery three times, the son shall be free from his father's family.
3. Females shall remain under a guardian even when they are adults.
4. Ownership may be gained by possession. For movable things, a person must possess them for one year. For immovable things like an estate and buildings, two years must elapse. A person may not become the owner of stolen property through possession.
5. Any woman who does not wish to be a member of her husband's family must be absent three nights in succession every year.
6. People living next to a road must keep the road in order. If they have not paved it, a man may drive his team where he likes.
7. If a dispute arises over the boundaries to neighboring fields, the court shall appoint three arbiters to settle the dispute.
8. The owner of a tree may gather fruit that falls onto a neighbor's farm.
9. If a theft be detected by means of a platter and loincloth, it is the same as being caught in the act and shall be punished as such. [This refers to the practice of permitting a man who suspects another of theft to search the person's home if he enters the home naked wearing only a loincloth and carrying a platter.]
10. Whoever unjustly and intentionally cuts down another's trees shall pay 25 coins for each tree.
11. No person shall hold meetings at night in the city.
12. No one is to bury or burn a corpse in the city.
13. Gold must be removed from the corpse. But if the corpse's teeth contain gold, it is lawful to bury or burn the body with it.
14. Marriages are not allowed between plebeians and patricians.

Note: The numbering of the laws is not historical. It is done to make them more convenient to refer to.

For example, the laws say little about marriage, slavery, or the traditional way of making contracts. Probably, the compilers of the laws believed all Romans knew the laws on these subjects. They focused more on laws that people might not know.

The Twelve Tables did not change the law. The patricians remained in control of the republic. The heads of families kept their powerful positions. The ancient law stayed in place. But the Twelve Tables made the law less mysterious. The law was no longer in the hands of the pontiffs and patricians. It was now public.

For Discussion

1. The laws of the Twelve Tables spelled out how to get defendants and witnesses to appear in court. How do these procedures differ from those used today in the United States?
2. What was the process for collecting a debt? How does it differ from today in the United States?
3. What were some penalties under the Twelve Tables? Do you think they were just? Explain.
4. Why were the Twelve Tables important?