

THE TWELVE TABLES LAW, THE MOST IMPORTANT ONE FROM THE ROMAN LAW

Lecturer **Adriana DEAC**¹

Abstract

The most important of Roman law, the Law of the Twelve Tables, *LEX DVODECIM TABVLARVM*, was adopted in 449 BC and was never formally abolished. The consequence of conflicts between the social classes of the Roman state, patricians and plebeians, the Decemviral Law constitutes a true code, given the nature of the regulations of the famous law which concerned both the institutions of Roman private law and the Roman public law. Although it was adopted about 2,500 years ago, the analysis of the Law of the Twelve Tables does not cease to attract the scholars and practitioners of contemporary private law, the study of the current legal institutions requires a retrospective look at their primary source. The paper aims to present the historical and social context that allowed the adoption of the Law of XII Tables, the procedure for the adoption of the law, the persons and bodies involved in this procedure. I will also analyse the content of the law and even present the text of the Law of the XII Tables, as reconstructed over time by the scholars of Roman law. In carrying out this scientific approach, I will use the specific methods of interpretation of the legal norms, namely, the historical, grammatical, systematic and teleological method.

Keywords: law, Roman law, Law of the Twelve Tables, sources of law, civil procedure.

JEL Classification: K10

1. Introduction

In Roman law, the law, *lex*, sometimes represents the decision of the people that acquired a binding character or, sometimes, a convention, a contract between two private persons, The emergence of law as a source of law was determined by the fact that, in the old era of Roman law, custom was the only source of law, the unwritten legal rules applicable to relations in Roman society being kept secret by pontiffs, representatives of the patrician class. In the event of a dispute, the parties were obliged to ask the pontiffs to determine who was right, but the answers always favored the patricians. Over time, the conflicts between the two social classes in Roman society, the patricians and the plebeians, intensified, amid growing discontent of the plebeians who had no role in running society because they did not belong to any gens, having no common ancestor. In an attempt to diminish the influence of the patricians in Roman society, the plebeians also requested the codification and publication of customary norms so that they could be known by the entire population. In this context, the law appears, *lex* as the first written source of law, a huge step forward taken by Roman law and Roman society.

As mentioned earlier, the term *lex* in Roman law has two meanings². When the agreement was concluded between two persons, the meaning of the term *lex* was contractual; when the convention was concluded between the magistrate and the people, the meaning of the term *lex* was by law, as a new way of expressing the right. According to Gaius, *Lex est quod populus romanus iubet atque constituit*, the law is what the Roman people decide and decide. The law, *lex*, is the

¹ Adriana Deac - Faculty of Law, Bucharest University of Economic Studies, Romania, adriana.deac@drept.ase.ro.

² See P. Bontante, *Storia del diritto romano*, 1,2, Roma, 1934, p. 25; Ștefan Cocoș, *Drept Roman*, Ed. All Beck, Bucharest, 2000, p. 10; T.J. Cornell, *The Beginnings of Rome: Italy and Rome from the Bronze Age to the Punic Wars* (c. 1000-264 B.C.). London: Routledge, *Routledge History of the Ancient World*, 1995, p. 34; Harries, Jill, *Roman Law Codes and the Roman Legal Tradition* in Cairns, John W. and Du Plessis (eds.), *Beyond Dogmatics: Law and Society in the Roman World*, 2007, p. 20; Paul J. Edinburg, *Studies in law*; 3, Edinburg: Edinburg University Pr., p. 85-104; J. Ellul, *Histoire des institutions*, Paris, 1955, p. 23; R. von Ihering, *Spiritul dreptului roman (L'esprit du droit romain)*, vol. I, Paris, p. 121; P. Fr. Girard, *Manuel elementaire de droit romain*, Paris; p. 27; Vladimir Hanga, Mihai Jacotă, *Drept Privat Roman*, Didactic and Pedagogical Publishing House, Bucharest, 1964, p. 27; Marcel Le Glay, Rome, *Grandeur et Déclin de la République*, Ed. Perrin, 1990, réédité en 2005, p. 12; Titus Livius, *De la fondarea Romei*, v. I-V, translated from J. Villain, F. Demetrescu, P. Popescu, Scientific Publishing House, Bucharest, 1959. Emil Molcuț, Dan Oancea, *Drept Roman*, Universul Juridic Publishing House, Bucharest, 1993, p. 31; Mihnea Dan Radu, *Drept Roman*, second edition revised and added, Ed. Pro Universitaria, Bucharest, 2018; p. 42; G. Rotondi, *Leges publice populi romani*, Milan, 1912; Arangio Ruiz, *Institutioni di diritto romano*, Napoli, 1951, p. 52; Tellegen-Couperus Olga, *Law and Religion in the Roman Republic*. Mnemosyne supplements. History and Archaeology of Classical Antiquity, Leiden; Boston: Brill, 2011, p. 336.

agreement of will between the magistrate and the people organized in committees, by which the magistrate (consul, praetor or tribune of the plebs) proposed by an edict a bill, the people debated it in informal meetings and then, without could make changes, vote it in the committees, either accepting it, *uti rogas*, or rejecting it, *antiquo*. If the vote was positive and the law was accepted by the people, the senate would check that the law respected Roman traditions and ratify it. In the end, the law was deposited in the state treasury, *aerarium*, transmitted to the citizens to know its contents. The laws voted in the people's assemblies were called *leges rogatae*, being consular (if initiated by a consul), praetorian (if initiated by a praetor) or *tribuncial* (if initiated by a plebeian tribune) depending on the rank of the magistrate who proposed them and even bearing his name. If the text of the law was proposed by a consul, the law bore the name of both consuls (for example: the law of Hortensia, the law of *Aebutia*, the law of Julia, etc.). The law became mandatory and applied immediately after the vote, unless another deadline came into force and until it became obsolete or until it was expressly or tacitly repealed. The express abrogation took place when a new law was voted in order to replace totally or partially the old one, the tacit abrogation results from the incompatibility that exists between the provisions of an old law and those of a later law.

As a structure, the law was composed of 3 parts: introduction, *praescriptio*, content, *rogatio* and sanction, *sanctio*. *Praescriptio* mentioned the date and place of the vote, the name of the magistrate who proposed the law, the name of the committees that voted the law and the order of voting. *Rogatio* contained the actual text of the law, structured in chapters and paragraphs. *Sanctio* provided for the sanction, the negative consequences that would result if the *rogatio* was not respected. Given the sanction that intervened in the case of non-compliance with the rogation, the laws were divided into perfectae, *leges perfectae* (non-compliance with them having as legal consequence the annulment of the act concluded in violation of *rogatio*), *leges perfectae*, *leges minusquam perfectae* (non-compliance with their legal consequence annulment of the act concluded with the violation of the rogation, but the obligation of the party to pay a fine) and imperfect, *leges imperfectae* (not specifying what legal consequence the violation of the rogation has). The law was the main source of Roman law in the republican era when the most important laws that influenced the development of Romanian law were adopted. Unfortunately, in the era of the empire, the importance of the law decreases a lot, the last law that the people voted being an agrarian law at the end of the 1st century B.C. From the time of the principality, following the increase of the emperor's power, the role of the people's assemblies decreases, the commissions meeting only to take note of the emperor's decisions and to acclaim him, he becoming the ruler over the laws, *legibus solutus*.

2. Content

In the year 449 B.C. the Law of the XII Tables was adopted, the first and most important Roman law, published in the Forum so that the people could know the legal norms in force. This was possible as a result of the numerous requests for systematization and publication of the customary norms formulated by the tribune of the plebeians Terentilius Arsa through the draft law of Terentilia, so that in the year 451 B.C. *decemviri legibus scribundis* was set up, a commission of 10 people, which codified and published the customary norms on 10 wooden boards. This approach was not, however, accepted by the commoners dissatisfied with the content of the law, so a new commission was set up which included five commoners who codified customary rules and published them on XII bronze plates in 449 B.C., this becoming the famous Law of the XII Tables. The Law of the Twelve Tables was a veritable code that included both public and private law regulations on property, persons, successions, family organization and, in particular, the regime of private property, the legal form of organization of private property in the old days of Romanian law. The content of the law reflects the level of development of the Roman society in the 5th century BC, a society based on agriculture and pastoralism, the exchanges of products being very rare. As a result, the Law of the XII Tables contains only a few regulations regarding the obligations and in the matter of contracts, only one contract is regulated. Neither the full text of the law nor the comments of jurist Gaius have been preserved. At the beginning of the 4th century B.C. when Rome was set on fire by the Gauls, the bronze plates were

destroyed, so that the original text of the law was not preserved. However, due to the legal and literary works elaborated in the old and classical period of the Roman law, the content of the decemviral code could be reconstituted. The great ancient commentators of the law of the Twelve Tables were Acilius Sapiens and Sextus Aelius Paetus Catus, then Quintus Mucius Scaevola and Servius Sulpicius Rufus and during the principality, Labeo and Gaius. I will present, in the extract, the content of the Law of the XII Tables, as I found it in the French and Italian doctrine, the Romanian specialized literature being deficient on this subject, and I will briefly present some aspects regarding the regulation of legal institutions novel in the XII Tables³.

The law of the twelve Tables.

Table I.

1. *If anyone summons a man before the magistrate, he must go. If the man summoned does not go, let the one summoning him call the bystanders to witness and then take him by force.*
2. *If he shirks or runs away, let the summoner lay hands on him.*
3. *If illness or old age is the hindrance, let the summoner provide a team. He need not provide a covered carriage with a pallet unless he chooses.*
4. *Let the protector of a landholder be a landholder; for one of the proletariat, let anyone that cares, be protector.*
- 6-9. *When the litigants settle their case by compromise, let the magistrate announce it. If they do not compromise, let them state each his own side of the case, in the comitium of the forum before noon. Afterwards let them talk it out together, while both are present. After noon, in case either party has failed to appear, let the magistrate pronounce judgment in favor of the one who is present. If both are present the trial may last until sunset but no later.*

Table II.

2. *He whose witness has failed to appear may summon him by loud calls before his house every third day.*

Table III.

1. *One who has confessed a debt, or against whom judgment has been pronounced, shall have thirty days to pay it in. After that forcible seizure of his person is allowed. The creditor shall bring him before the magistrate. Unless he pays the amount of the judgment or some one in the presence of the magistrate interferes in his behalf as protector the creditor so shall take him home and fasten him in stocks or fetters. He shall fasten him with not less than fifteen pounds of weight or, if he choose, with more. If the prisoner choose, he may furnish his own food. If he does not, the creditor must give him a pound of meal daily; if he choose he may give him more.*
2. *On the third market day let them divide his body among them. If they cut more or less than each one's share it shall be no crime.*
3. *Against a foreigner the right in property shall be valid forever.*

Table IV.

1. *A dreadfully deformed child shall be quickly killed.*
2. *If a father sell his son three times, the son shall be free from his father.*

³ See Cicero, *De Republica*, 2,37,63; Justinian, *Corpus iuris civilis*; Ulrich Harsch, *Leges XII*, Bibliotheca Augustana; Titus Livius, *Historia romană*, III, 9-10; Yves Lassard, Alexandr Koptev, *Loi des XII Tables*, The Roman Law Library, Université de Grenoble; Pomonius, *Digeste*, 43,27,2; Aldo Schiavone (trad. Geneviève et Jean Bouffartigue), *Ius: L'invention du droit en Occident*, Paris, Belin, coll. «L'Antiquité au présent», 2008, 539 p.; Strabon, *Geographia*, XIV, 1, 25.

3. As a man has provided in his will in regard to his money and the care of his property, so let it be binding. If he has no heir and dies intestate, let the nearest agnate have the inheritance. If there is no agnate, let the members of his gens have the inheritance.
4. If one is mad but has no guardian, the power over him and his money shall belong to his agnates and the members of his gens.
5. A child born after ten months since the father's death will not be admitted into a legal inheritance.

Table V.

1. Females should remain in guardianship even when they have attained their majority.

Table VI.

1. When one makes a bond and a conveyance of property, as he has made formal declaration so let it be binding.
3. A beam that is built into a house or a vineyard trellis one may not take from its place.
5. Usucapio of movable things requires one year's possession for its completion; but usucapio of an estate and buildings two years.
6. Any woman who does not wish to be subjected in this manner to the hand of her husband should be absent three nights in succession every year, and so interrupt the usucapio of each year.

Table VII.

1. Let them keep the road in order. If they have not paved it, a man may drive his team where he likes.
9. Should a tree on a neighbor's farm be bent crooked by the wind and lean over your farm, you may take legal action for removal of that tree.
10. A man might gather up fruit that was falling down onto another man's farm.

Table VIII.

2. If one has maimed a limb and does not compromise with the injured person, let there be retaliation. If one has broken a bone of a freeman with his hand or with a cudgel, let him pay a penalty of three hundred coins. If he has broken the bone of a slave, let him have one hundred and fifty coins. If one is guilty of insult, the penalty shall be twenty-five coins.
3. If one is slain while committing theft by night, he is rightly slain.
4. If a patron shall have devised any deceit against his client, let him be accursed.
5. If one shall permit himself to be summoned as a witness, or has been a weigher, if he does not give his testimony, let him be noted as dishonest and incapable of acting again as witness.
10. Any person who destroys by burning any building or heap of corn deposited alongside a house shall be bound, scourged, and put to death by burning at the stake provided that he has committed the said misdeed with malice aforethought; but if he shall have committed it by accident, that is, by negligence, it is ordained that he repair the damage or, if he be too poor to be competent for such punishment, he shall receive a lighter punishment.
12. If the theft has been done by night, if the owner kills the thief, the thief shall be held to be lawfully killed.
13. It is unlawful for a thief to be killed by day....unless he defends himself with a weapon; even though he has come with a weapon, unless he shall use the weapon and fight back, you shall not kill him. And even if he resists, first call out so that someone may hear and come up.
23. A person who had been found guilty of giving false witness shall be hurled down from the Tarpeian Rock.
26. No person shall hold meetings by night in the city.

Table IX.

4. *The penalty shall be capital for a judge or arbiter legally appointed who has been found guilty of receiving a bribe for giving a decision.*
5. *Treason: he who shall have roused up a public enemy or handed over a citizen to a public enemy must suffer capital punishment.*
6. *Putting to death of any man, whosoever he might be unconvicted is forbidden.*

Table X.

1. *None is to bury or burn a corpse in the city.*
3. *The women shall not tear their faces nor wail on account of the funeral.*
5. *If one obtains a crown himself, or if his chattel does so because of his honor and valor, if it is placed on his head, or the head of his parents, it shall be no crime.*

Table XI.

1. *Marriages should not take place between plebeians and patricians.*

Table XII.

2. *If a slave shall have committed theft or done damage with his master's knowledge, the action for damages is in the slave's name.*
5. *Whatever the people had last ordained should be held as binding by law.*

The trial procedure was provided by Table I and Table 2. Corresponding to the development of the Roman society from the 5th century bc. In other words, the regulation was primitive and formalistic. Table I provided for the procedure for summoning the defendant by the plaintiff, mentioning the possible situations that could prevent the defendant from appearing before the magistrate, either because he refuses or because he cannot travel due to age or illness. It should be mentioned that, in the regulation of the procedure of the legislations from the Law of the XII Tables, the summoning of the defendant was obligatory by the plaintiff, *in ius te voco*, he could not summon the defendant before the magistrate by summoning to his home, this being inviolable.

The trial procedure according to the Law of the Twelve Tables was a procedure carried out in two phases: *in iure*, before the magistrate (usually the praetor) and *in iudicio*, before the judge, a person personally chosen by the parties and confirmed by the magistrate.

Also, in the trial phase, it was specified what would happen if none of the parties appeared, and the judge, who was waiting until noon, would give a decision in favor of the one who was present. In addition, the Tables also indicate when the process ends (at sunset). The law establishes the value of the bet for each party depending on the nature of the disputes, the special formulas and gestures that had to be performed, as well as the possibility of hearing witnesses.

The Law of the Twelve Tables was the way to present publicly the rights that citizens had. The XII Tables, as a written source of law, by publishing and posting in the Forum, showed what was previously understood in Roman society as unwritten laws. The publication of the law had as a consequence the diminution of the discrepancies between the Roman patricians and the Roman plebeians who had little experience in understanding the law. By revealing to the public the unwritten rules of society, the XII Tables provided a means of protection for the common people, enabling them to know the applicable legal rules and to defend themselves against the abuses of the ruling class.

Regarding the execution of sentences, the Law of the XII Tables presents five types of actions to resolve disputes between the parties. These rules show how the Romans understood to settle disputes. The 5 legislations, 3 of trial and 2 of execution were the following: *sacramentum in rem* (when the object of the case concerned the property right) and *sacramentum in personam* (when the

object of the case concerned the capitalization of a claim), *iudicis arbitrive postulation* (by which the claims were capitalized from *sposio*, on which occasion the appointment of a judge or arbitrator was requested), *condictio* (similar to *sacramentum* in *personam*, but which had as its object a certain amount of money or a determined good), *manus iniectio* (conviction for an amount of money) and *pignoris capio* (or pledge).

With regard to family relations, the Law of the Twelve Tables recognizes the total authority of the *pater familias* over family members and over property. The relations of agnation (civil relationship) and cognition (blood relationship) are regulated, the parental power of the *pater familias* exercised over his descendants: sons, daughters and grandsons of sons, the conditions of marriage and its effects on the status of women, the sale of the son family, guardianship and curatorship.

In terms of assets, the assets of the *mancipii* (valuable, such as slaves, animals, land) and the *non-mancipii* (less valuable, such as money and receivables) are regulated. The possession of the quiritary property is regulated, as well as the ways of acquiring the property, the real rights over the property of another, etc.

In the matter of successions, the inheritance *ab intestat*, without will, is regulated with the categories of heirs: *sui heredes*, *agnatus proximus* and *gentiles*, as well as the rules of division of the succession.

3. Conclusions

The Twelve Tables were not a reform or a liberalizing of old custom. Rather, they recognized the prerogatives of the patrician class and of the patriarchal family, the validity of enslavement for unpaid debt, and the interference of religious custom in civil cases. That they reveal a remarkable liberality for their time with respect to testamentary rights and contracts is probably the result not of any innovations by the decemvirs but rather of the progress that had been made in commercial customs in Rome in an era of prosperity and vigorous trade.

Beyond the criticisms that can be brought against the Law of the Twelve Tables, we must first of all consider the moment and the context in which the famous law was adopted. We are talking about the middle of the century. V BC, about a patriarchal Roman society, based on restricted economic activities, carried out within the Roman family, based on agriculture and pastoralism. Trade was almost non-existent or, in any case, very rare. That is why the conclusion of a contract or the development of a process presupposed an excessive formalism, the parties being forced to pronounce the sacred formulas and to make the ritual gestures obligatory, otherwise, the consequences being serious.

Analyzing after 2500 years the XII Tables, from the perspective of current law and the society in which we live, I can say that the regulations were brutal, that they continued to favor the patrician class, that they favored slavery, etc. But certainly, if the Law of the Twelve Tables had not appeared 2,500 years ago, the science of law and today's world society would have been different. For the moment when the law appeared, I consider, not only that it codified the customary norms existing at that time and that it secularized the law, but also that it realized "a revolution" in the Roman society and in the Roman law. The Law of the Twelve Tables represents the foundation of Roman law and, therefore, the foundation of most existing legal systems. It entered the consciousness of the Roman people who saw in it a symbol of their way of life, a creation that gave its own identity to its culture. According to Cicero, four centuries after the law was published, its memorization was a compulsory lesson for students, *carmen necessarium*.

Adopted in the social and economic conditions that we have already seen, as the Roman empire expands and the development of trade, including with foreigners, pilgrims, most of the regulations of the XII Table of Laws have not found applicability anymore. Under these conditions, towards the end of the old era and in the classical era of the Roman Law, the magistrate, the praetor, through his edict, was the one who intervened, interpreting, modifying and completing the Law of the XII Tables. Thus, in time, in addition to civil law, quiritary law, codified in the Law of the Twelve

Tables, appeared the praetorian law, the modernized, more flexible and in formalist version of the quiritary law.

During the period of Domination, when the emperor held absolute power, including legislative power, the imperial constitutions remain the only formal source of law, the law, *lex* losing its status.

2500 years after its adoption, the Law of the XII Tables remains the most famous normative act belonging to the Romanian law, constituting even now, object of study for the future jurists. At least with reference to the Romanian legal system, if not with reference to the entire system of Romanian-Germanic law, the study of the Law of the Twelve Tables constitutes the foundation of all civil law institutions, starting with persons, goods, successions, debts, contracts, etc.

Bibliography

I. Books and articles

1. P. Bontante, *Storia del diritto romano*, 1.2, Roma, 1934.
2. Ștefan Cocoș, *Drept Roman*, Ed. All Beck, București, 2000.
3. T.J. Cornell, *The Beginnings of Rome: Italy and Rome from the Bronze Age to the Punic Wars (c. 1000-264 B.C.)*. London: Routledge, Routledge History of the Ancient World, 1995.
4. Harries, Jill, *Roman Law Codes and the Roman Legal Tradition*, in Cairns, John W. and Du Plessis (eds.), *Beyond Dogmatics: Law and Society in the Roman World*, 2007.
5. Paul J., *Edinburgh studies in law*; 3, 85-104. Edinburgh: Edinburgh University Pr.
6. J. Ellul, *Histoire des institutions*, Paris, 1955.
7. R. von Ihering, *Spiritul dreptului roman (L'esprit du droit romain)*, vol. I-IV, Paris.
8. P. Fr. Girard, *Manuel elementaire de droit romain*, Paris.
9. Vladimir Hanga, Mihai Jacotă, *Drept Privat Roman*, Didactic and Pedagogical Publishing House, Bucharest, 1964.
10. Marcel Le Glay, Rome, *Grandeur et Déclin de la République*, Ed Perrin, 1990, réédité en 2005.
11. Titus Livius, *De la fondarea Romei*, v. I-V, translated from J. Villain, F. Demetrescu, P. Popescu, Scientific Publishing House, Bucharest, 1959.
12. Emil Molcuț, Dan Oancea, *Drept Roman*, Ed. Universul Juridic, Bucharest, 1993.
13. Mihnea Dan Radu, *Drept Roman*, second edition revised and added, Ed. Pro Universitaria, Bucharest, 2018.
14. G. Rotondi, *Leges publicae populi romani*, Milan, 1912.
15. Arangio Ruiz, *Institutioni di diritto romano*, Napoli, 1951.
16. Tellegen-Couperus Olga, *Law and Religion in the Roman Republic. Mnemosyne supplements. History and Archaeology of Classical Antiquity*, Leiden; Boston: Brill, 2011.

II. Other sources

1. Cicero, *De Republica*, 2,37,63.
2. Justinian, *Corpus iuris civilis*.
3. Ulrich Harsch, *Leges XII*, Bibliotheca Augustana.
4. Titus Livius, *Historia romană*, III, 9-10.
5. Yves Lassard et Alexandr Koptev, *Loi des XII Tables*, The Roman Law Library, Université de Grenoble.
6. Pomponius, *Digeste*, 43,27,2.
7. Aldo Schiavone (trad. Geneviève et Jean Bouffartigue), *Ius: L'invention du droit en Occident*, Paris, Belin, coll. « L'Antiquité au présent », 2008, 539 p.
8. Strabon, *Geographia*, XIV, 1, 25.

Reproduced with permission of copyright owner. Further reproduction prohibited without permission.