The Ides of May came. Without causing any magistrates to be elected, the decemvirs, now private citizens, appeared in public with no abatement either of the spirit with which they exercised their power or the insignia which proclaimed their office. But this was unmistakable tyranny. Men mourned for liberty as forever lost.

[The decemvirate was brought to an end shortly afterward by a plebeian revolt (the so-called Second Secession), touched off, according to tradition, by Appius Claudius’ ruthless attempt to secure possession of a beautiful young maiden, Virginia, and the slaying of the girl by her own father as the only way to keep her out of Appius’ clutches.]


32. The Twelve Tables, 449 B.C.

The recording of the Twelve Tables (or the Law of the Twelve Tables) was a momentous step in the “struggle of the orders.” The story of the decemviral commission appointed to formulate the laws, of its administration, and of its attempt to perpetuate its power illegally, is told in § 31. Plebeian agitation for a written compilation of the law was motivated by a desire not only to curb the arbitrary power of the patrician magistrates, but also to achieve aequatio iuris (equality before the law) for both classes. While some reforms were introduced by the decemvirs, the Law of the Twelve Tables is essentially a codification into statutory law of existing customs, and as such it reflects clearly the preponderantly agricultural and pastoral character of the Roman community of small landowners in the first century of the Republic. It is, in fact, our primary source for the social and economic conditions of the fifth century B.C. Recent efforts to date the code c. 300 B.C. or even as late as c 200 B.C. are now generally rejected.

The code is genuinely Roman in content, and the tradition that a threeman commission was sent to Athens in 454 B.C. to study the legislation of Solon is fanciful, although there is evidence of influences emanating from the law codes of the Greek cities of southern Italy. It is mainly a code of private law, with some provisions of sacred and public law (Livy’s statement that it was “the fountainhead of all public and private law” [III.

14. Cf. the similar political role in Roman tradition of the rape of Lucretia (§ 7), and note 49.
xxxiv] is an exaggeration). Noteworthy are the formalism, the archaic survivals of primitive severity, the generally secular character, and the significant separation that emerges between sacral and civil law.

The first landmark in the history of Roman law, this code was of fundamental importance in its further development. The code was never formally repealed, though many provisions became antiquated, and in theory it remained the foundation of Roman law for 1,000 years, until it was superseded by the Corpus Juris Civilis of Justinian. Until Cicero’s time it was one of the basic texts of Roman education; Cicero says (Laws ii. xxiii. 59) that in his youth Roman boys were still required to memorize it.

Various sources, collected in ROL, 3:424–515. Adapted from LCL

TABLE I: Preliminaries to and Rules for a Trial

If plaintiff summons defendant to court,¹⁶ he shall go. If he does not go, plaintiff shall call witness thereto. Then only shall he take defendant by force.

If defendant shirks or takes to his heels, plaintiff shall lay hands on him.

If disease or age is an impediment, he [who summons defendant to court] shall grant him a team; he shall not spread with cushions the covered carriage if he does not so desire.

For a landowner, a landowner shall be surety; but for a proletarian person, let any one who is willing be his protector.¹⁷

There shall be the same right of bond and conveyance with the Roman people for a person restored to allegiance as for a loyal person.¹⁸

When parties make a settlement of the case, the judge¹⁹ shall announce it. If they do not reach a settlement, they shall state the outline of their case in the meeting place or Forum before noon.

They shall plead it out together in person. After noon, the judge shall


¹⁶. That is, into the presence of the consuls at the time of the Twelve Tables. Subpoena was oral and was accompanied by touching the tip of the ear of the defendant.

¹⁷. The vindex, or surety, was required to appear before the magistrate in place of the defendant at a preliminary trial before an action could begin.

¹⁸. Apparently the right of making contracts and conveyances with Roman citizens was guaranteed to Latin allies even in the case of formerly rebellious peoples.

¹⁹. The index, or judge, agreed upon by both parties at the preliminary trial.
adjudge the case to the party present. If both be present, sunset shall be the time limit [of proceedings].

**TABLE II: Further Enactments on Trials**

Action under solemn deposit: 20500 as pieces 21 is the sum when the object of dispute under solemn deposit is valued at 1,000 in bronze or more, fifty pieces when less. Where the controversy concerns the liberty of a human being, fifty pieces shall be the solemn deposit under which the dispute should be undertaken.

If any of these be impediment for judge, referee, or party, on that account the day of trial shall be broken off.

Whoever is in need of evidence, he shall go on every third day to call out loudly before witness' doorway.

**TABLE III: Execution; Law of Debt**

When a debt has been acknowledged, or judgment about the matter has been pronounced in court, thirty days must be the legitimate time of grace. After that, the debtor may be arrested by laying on of hands. Bring him into court. If he does not satisfy the judgment, or no one in court offers himself as surety in his behalf, the creditor may take the defaulter with him. He may bind him either in stocks or in fetters; he may bind him with a weight no more than fifteen pounds, or with less if he shall so desire. The debtor, if he wishes, may live on his own. If he does not live on his own, the person [who shall hold him in bonds] shall give him one pound of grits for each day. He may give more if he so desires.

Unless they make a settlement, debtors shall be held in bonds for sixty days. During that time they shall be brought before the praetor's court in the meeting place on three successive market days, and the amount for which they are judged liable shall be announced; on the third market day they shall suffer capital punishment or be delivered up for sale abroad, across the Tiber.

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20. The *sacramentum*, or "solemn deposit," was a legal action in civil cases, whereby both parties to the litigation deposited a stake which was forfeited to the state by the loser.

21. The *as* was the Roman bronze monetary unit, originally a pound ingot of copper divided into

12 *uncia*. By the Aetolian-Tarpeian Law of 454 B.C. the following official equation of values was laid down: 1 ox = 10 sheep = 100 pounds bronze.

22. An *arbiter*, or "referee," for complicated cases.

23. Consul's court. In the time of the Twelve Tables the consul may still have retained his original title of praetor.
On the third market day creditors shall cut pieces. Should they have cut more or less than their due, it shall be with impunity.
Against a stranger, title of ownership shall hold good forever.

**TABLE IV: Patria Potestas: Rights of Head of Family**

Quickly kill ... a dreadfully deformed child.
If a father thrice surrender a son for sale, the son shall be free from the father.
A child born ten months after the father’s death will not be admitted into a legal inheritance.

**TABLE V: Guardianship; Succession**

Females shall remain in guardianship even when they have attained their majority ... except Vestal Virgins.
Conveyable possessions of a woman under guardianship of agnates cannot be rightfully acquired by *usucapio* [see note 25], save such possessions as have been delivered up by her with a guardian’s sanction.
According as a person shall will regarding his [household], chattels, or guardianship of his estate, this shall be binding.
If a person dies intestate, and has no self-successor, the nearest agnate kinsman shall have possession of deceased’s household.
If there is no agnate kinsman, deceased’s clansmen shall have possession of his household.
To persons for whom a guardian has not been appointed by will, to them agnates are guardians.
If a man is raving mad, rightful authority over his person and chattels shall belong to his agnates or to his clansmen.
A spendthrift is forbidden to exercise administration over his own goods. ... A person who, being insane or a spendthrift, is prohibited from administering his own goods shall be under trusteeship of agnates.
The inheritance of a Roman citizen-freedman shall be made over to his patron if the freedman has died intestate and without self-successor.
Items which are in the category of debts are not included in the

24. The majority of modern authorities agree with ancient commentators’ literal interpretation that the Twelve Tables authorized actual cutting up of the debtor’s body, though in customary practice the debtor’s estate may have been divided.
25. This probably means that if a thing is stolen or captured by an enemy, *usucapio* (long-term possession) never validates ownership.
26. A person under the legal power of the head of the household.
division when they have with automatic right been divided into portions of an inheritance.

Debt bequeathed by inheritance is divided proportionally amongst each heir with automatic liability when the details have been investigated.

**TABLE VI: Acquisition and Possession**

When a party shall make bond\(^\text{27}\) or conveyance,\(^\text{28}\) the terms of the verbal declaration are to be held binding.

Articles which have been sold and handed over are not acquired by a buyer otherwise than when he has paid the price to the seller or has satisfied him in some other way, that is, by providing a guarantor or a security.

A person who has been ordained a free man [in a will, on condition] that he bestow a sum of 10,000 pieces on the heir, though he has been sold by the heir, shall win his freedom by giving the money to the purchaser.

It is sufficient to make good such faults as have been named by word of mouth, and that for any flaws which the vendor had expressly denied, he shall undergo penalty of double damage.

Usucapio of movable things requires one year’s possession for its completion; but usucapio of an estate and buildings, two years.

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.\(^\text{29}\)

A person shall not dislodge from a framework a [stolen] beam which has been fixed in buildings or a vineyard. . . . Action [is granted] for double damages against a person found guilty of fixing such [stolen] beam.

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27. The *nexum* contract was a form of loan in which the creditor enjoyed the right of execution against the person of the debtor, and through which the defaulting debtor became the bond-slave of the creditor until the debt was paid. Cf. note 50.

28. *Mancipatio*, a method of acquiring ownership through a symbolical sale *per aes et libram*, “by copper and scales.” The conveyance took place in the presence of five Roman citizens. The buyer grasped the property, or part of it, claimed ownership, and struck with a piece of bronze or copper a scale held by a *libripens*, “scale-balancer.” Finally he handed over to the seller the piece of metal as symbolical of the price.

29. This limitation on the *patria potestas* introduced a form of civil marriage without *manus*, the legal power of a husband over his wife.
TABLE VII: Rights concerning Land

Ownership within a five-foot strip [between two pieces of land] shall not be acquired by long usage.

The width of a road [extends] to eight feet where it runs straight ahead, sixteen round a bend. . . .

Persons shall mend roadways. If they do not keep them laid with stone, a person may drive his beasts where he wishes.

If rainwater does damage . . . this must be restrained according to an arbitrator's order.

If a water course directed through a public place shall do damage to a private person, he shall have right of suit to the effect that damage shall be repaired for the owner.

Branches of a tree may be lopped off all round to a height of more than 15 feet. . . . Should a tree on a neighbor's farm be bent crooked by a wind and lean over your farm, action may be taken for removal of that tree.

It is permitted to gather up fruit falling down on another man's farm.

TABLE VIII: Torts or Delicts

If any person has sung or composed against another person a song such as was causing slander or insult to another, he shall be clubbed to death.

If a person has maimed another's limb, let there be retaliation in kind unless he makes agreement for settlement with him.

If he has broken or bruised a freeman's bone with his hand or a club, he shall undergo penalty of 300 as pieces; if a slave's, 150.

If he has done simple harm [to another], penalties shall be 25 as pieces.

If a four-footed animal shall be said to have caused loss, legal action . . . shall be either the surrender of the thing which damaged, or else the offer of assessment for the damage.

For pasturing on, or cutting secretly by night, another's crops acquired by tillage, there shall be capital punishment in the case of an adult malefactor . . . he shall be hanged and put to death as a sacrifice to Ceres. In the case of a person under the age of puberty, at the discretion of the praetor [see note 23] either he shall be scourged or settlement shall be made for the harm done by paying double damages.

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 chastisement.

Any person who has cut down another person's trees with harmful intent shall pay 25 as pieces for every tree.

If theft has been done by night, if the owner kill the thief, the thief shall be held lawfully killed.

It is forbidden that a thief be killed by day . . . unless he defend himself with a weapon; even though he has come with a weapon, unless he use his weapon and fight back, you shall not kill him. And even if he resists, first call out.

In the case of all other thieves caught in the act, if they are freemen, they should be flogged and adjudged to the person against whom the theft has been committed, provided that the malefactors have committed it by day and have not defended themselves with a weapon; slaves caught in the act of theft should be flogged and thrown from the Rock; boys under the age of puberty should, at the praetor's [see note 23] discretion, be flogged, and the damage done by them should be repaired.

If a person pleads on a case of theft in which the thief has not been caught in the act, the thief must compound for the loss by paying double damages.

A stolen thing is debarred from usucapio.

No person shall practice usury at a rate more than one twelfth . . . 31 A usurer is condemned for quadruple amount.

Arising out of a case concerning an article deposited . . . action for double damages.

Guardians and trustees . . . the right to accuse on suspicion . . . action . . . against guardians for double damages.

If a patron shall have defrauded his client, he must be solemnly forfeited. 32

Whosoever shall have allowed himself to be called as witness or shall have been scales-balancer [see note 28], if he do not as witness pro-

30. The Tarpeian Rock on the Capitoline Hill, commonly used as a place of execution in Rome.
31. The first reference to interest rates at Rome. Unciurium foenus was probably 8.33 percent, possibly 10 percent, per annum.
32. The man thus judged sacer was placed outside human law by being dedicated to a divinity for destruction. This original death by sacrifice was later transformed into outlawry and confiscation of property.
nounce his testimony, he must be deemed dishonored and incapable of acting as witness.

Penalty . . . for false witness . . . a person who has been found guilty of giving false witness shall be hurled down from the Tarpeian Rock. . . .

No person shall hold meetings by night in the city.

Members [of associations] . . . are granted . . . the right to pass any binding rule they like for themselves provided that they cause no violation of public law.

**TABLE IX: Public Law**

Laws of personal exception [i.e., bills of attainder] must not be proposed; cases in which the penalty affects the person of a citizen must not be decided except through the greatest assembly \(^{33}\) and through those whom the censors \(^{34}\) have placed upon the register of citizens.

The penalty shall be capital punishment for a judge or arbiter legally appointed who has been found guilty of receiving a bribe for giving a decision.

He who shall have roused up a public enemy, or handed over a citizen to a public enemy, must suffer capital punishment.

Putting to death . . . of any man who has not been convicted, whosoever he might be, is forbidden.

**TABLE X: Sacred Law**

A dead man shall not be buried or burned within the city.

One must not do more than this [at funerals]; one must not smooth the pyre with an axe.

. . . three veils, one small purple tunic, and ten flute-players. . . .

Women must not tear cheeks or hold chorus of "Alas!" on account of funeral.

When a man is dead one must not gather his bones in order to make a second funeral. \(^{35}\) An exception [in the case of] death in war or in a foreign land. . . .

Anointing by slaves is abolished, and every kind of drinking bout.

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\(^{33}\) The right of appeal to the *comitia centuriata*.

\(^{34}\) In the time of the Twelve Tables, the consuls (cf. § 36).

\(^{35}\) This provision forbids prolonged mourning through the device of second funerals.
Let there be no costly sprinkling . . . no long garlands . . . no incense boxes . . .
When a man wins a crown himself or through a chattel or by dint of valor, the crown bestowed on him . . . [may be laid in the grave] with impunity [on the man who won it] or on his father.
To make more than one funeral for one man and to make and spread more than one bier for him . . . this should not occur . . . and a person must not add gold . . .
But him whose teeth shall have been fastened together with gold, if a person shall bury or burn him along with that gold, it shall be with impunity.
No new pyre or personal burning-mound must be erected nearer than sixty feet to another person’s buildings without consent of the owner . . . the entrance chamber [of a tomb] and burning place cannot be acquired by usucapio.

TABLE XI: Supplementary Laws
Intermarriage shall not take place between plebeians and patricians.

TABLE XII: Supplementary Laws
Levying of distress [is granted] against a person who has bought an animal for sacrifice and is a defaulter by non-payment; likewise against a person who is a defaulter by non-payment of fee for yokebeast which any one has hired out for the purpose of raising therefrom money to spend on a sacred banquet. 36
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.
Arising from delicts committed by children and slaves of a household establishment . . . actions for damages are appointed whereby the father or master could be allowed either to undergo “assessment for damages,” or hand over the delinquent to punishment . . .
If a person has taken a thing by false claim, if he should wish . . . official must grant three arbitrators; by their arbitration . . . defendant must make good the damage by paying double the usufruct of the article.

36. In such cases seizure of some articles of property by pignoris capio, “seizure of pledge,” to induce payment was permitted.
It is prohibited to dedicate for consecrated use anything about which there is a controversy; otherwise the penalty is double the amount involved.

Whatever the people has last ordained shall be held as binding by law.

33. THE VALERIO–HORATIAN LAWS

The year 449 B.C. was a landmark in the advance of popular liberties not only because of the publication of the Twelve Tables, but also because of the passage of the Valerio–Horatian Laws, promulgated by the first consuls after the abolition of the decemvirate. Though rejected by many authorities as a fiction of the democratic apologists, the legislation of 449 B.C. as recorded in the traditional accounts seems to contain a substratum of truth. The most debated problem concerns the force of plebiscites. It has been suggested that the first of the laws mentioned in the following selection merely recognized the right of the plebs to pass resolutions binding upon itself, or that plebiscites were accorded validity in areas not covered by statutes.

Livy, History of Rome III. iv. 1–7, 13–15; From ECL

Lucius Valerius and Marcus Horatius were elected to the consulship and at once assumed office. Their administration was favorable to the people without in any way wrongdoing the patricians, though not without offending them; for whatever was done to protect the liberty of the plebs they regarded as a diminution of their own power. To begin with, since it was virtually an undecided question whether the patricians were legally bound by plebiscita, they carried a statute in the centurial assembly, enacting that what the plebs should order in its tribal organization should be binding on the people—a law which provided the motions of the tribunes with a very sharp weapon. Next, they not only restored a consular law about appeal—that unique defense of liberty which had been overthrown by the decemviral power—but they also safeguarded it for the future by the solemn enactment of a new law, that no one should declare the election of any magistrate from whom there was no appeal, and that he who should so declare might be put to death without offense to law or religion, and that such a homicide should not be held a capital crime. And having sufficiently strengthened the plebs by means of the appeal on the one hand and the help of the tribunes on the other, they restored to the tribunes themselves their privilege of sacrosanctity

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