

Nicholas, *Historical Introduction*, 14). However, Livy's account has been doubted in *Roman Statutes*: 'Nor need any historian feel obliged to accept the traditional account of the first college as legislating in response to plebeian and popular pressure. The Twelve Tables may as readily be the result of self-regulation by a patrician elite' (II, 560).

2.2.1.1 *The Twelve Tables*

Pomponius, *Manual, sole book*: ... it was decided that there be appointed, on the authority of the people, a commission of ten men by whom were to be studied the laws of the Greek city states and by whom their own city was to be endowed with laws. They wrote out the laws in full on ivory tablets and put the tablets together in front of the *rostra*, to make the laws all the more open to inspection. They were given during that year sovereign right in the *civitas*, to enable them to correct the laws ... They themselves discovered a deficiency in that first batch of laws, and accordingly, they added two tablets to the original set. It was from this addition that the laws of the *Twelve Tables* got their name. (D.1.2.2.4.)

(*Rostra*: platforms used by speakers in the Forum Romanum, Rome's commercial, political, and legal centre.)

The main thrust of Pomponius' account can be accepted, even if parts of it are questionable, especially the reference to the study of Greek models. On the other hand, this is not the only reference to possible Greek influence on the Twelve Tables. Livy also mentions that the commissioners visited Greece to study the laws of the great Athenian legislator, Solon. However, modern scholarly opinion on the matter is more cautious. It is improbable that the commission would have made a potentially perilous voyage to Greece; more likely that 'the Greek city states' mentioned referred to cities in southern Italy. But there is little in the Twelve Tables that can be clearly identified as Greek, although some provisions—for example, those concerning behaviour at funerals—appear very similar to Athenian legislation (see *Roman Statutes*, 560). (See, however, the interesting alternative theory proposed by Westbrook, R., 'The Nature and Origins of the Twelve Tables' (1988) 105 ZSS (rA), 74–121 on the Twelve Tables and its resemblance to legal codes of the Ancient Near East.) The constitution was suspended for a while and supreme executive power was vested in the commission. The provisions of the Twelve Tables were eventually enacted by the *comitia centuriata* and given publicity. The original tablets were said to have been destroyed when the Gauls sacked Rome in 386 BC; so our knowledge of the Twelve Tables is based on references by later writers. The style of the provisions appears to have been clear and simple, as one would expect given the demands for an intelligible publication of the law. The basic format involved the use of the conditional imperatives, e.g. 'If someone does so and so, let him be ...'.

The Twelve Tables can be broadly described as Rome's first code of law, although the provisions fell short of the comprehensive restatement of the law that a modern codification normally entails. It is likely that in some areas of the law, only the main rules were stated, or those which needed clarification. Procedure was dealt with rather skimpily and acquisition of property received little mention. This may have been a deliberate ploy to limit the amount of expertise that the plebeians could acquire in the law: 'The *Twelve Tables* were prepared by patricians as the law they were willing to share with plebeians, in response to the latter's demand for equal rights of liberty' (Watson, *Spirit of Roman Law*, 38). Overall, the Twelve Tables

were probably based on the existing customary law of Rome, but with some royal decrees and a few innovations added. The content can be broadly classified as consisting of public and private law, the latter greatly predominant.

(a) Public law. The Tables contained some provisions of a religious or constitutional character. Table X, entitled 'Of sacred law', prescribed detailed rules on burials and funerals: for example, bodies are not to be buried or burned within the city; not more than ten flautists can be hired to play at a funeral; and women mourners must refrain from mutilating themselves or displaying excessive grief. Table IX contained vital constitutional provisions: for example, legislation inflicting capital punishment can be passed only by the *comitia centuriata*; no one can be ordered to be executed except after a trial; there is a right of appeal against a death sentence.

(b) Private law. The Twelve Tables contained provisions relating to procedure as well as substantive law. The first three tables were devoted to procedure. Table I deals with the question of summoning a defendant before a magistrate, i.e. starting a case: if the defendant refuses to go to court, force may be used to ensure his appearance; but if he is ill or aged, the plaintiff must provide a means of transportation. Table II specifies the amounts that must be deposited in court by the parties before the commencement of certain types of action. Table III deals with the enforcement of judgments: a debtor is allowed 30 days after judgment to pay the debt; if he fails, he may be seized by the creditor and brought before the court; if the debt is still unpaid, he may be detained by the creditor with severe consequences (see 3.2.3.1). The importance of procedure is evidenced by its placement at the beginning of the Twelve Tables. However, the *amount* of procedure included was modest compared to that found in other early codes of law. There is some useful detail on how to begin proceedings and how to enforce judgment, but little else. Most citizens, however well versed in the procedures stated in the Twelve Tables, would have lacked sufficient knowledge and expertise to pursue an action successfully.

A major part of the Twelve Tables was concerned with substantive private law. For example, Table IV contained the fundamental principle of Roman family law: a *paterfamilias* has absolute power over his children. Table VII, concerned with land, laid down some rules of practical importance, especially for neighbours, e.g. action can be taken in respect of overhanging branches from a neighbouring tree. Table VIII penalized the commission of various wrongs, e.g. theft; pasturing cattle on another man's land; charging excessive rates of interest; setting fire to houses. Table XI prohibited marriage between a patrician and plebeian, a highly controversial measure that was repealed within a few years. (For a reconstruction of the text and a comprehensive survey of recent literature on the Twelve Tables, see *Roman Statutes* II, 555–721).

The Romans considered the Twelve Tables as the foundation of their civil law. The reverence felt in later ages for the code was reflected in Cicero's story—even allowing for a modicum of exaggeration—that in his time, children could recite parts of the Tables. (However, it seems to have had ceremonial rather than legal authority by the time of the late Republic; see Watson, *Law Making*, 111–22). The literature of the Roman jurists was full of references to the Twelve Tables, and this is reflected in parts of Justinian's codification, the *Digest* especially. The Twelve Tables have helped to shape Western jurisprudence.