

By the middle of the 5th century B.C., the old, exclusive control of the Roman state by the patrician aristocracy was under attack by liberal and popular forces. One way the patricians had held their ascendancy unchallenged was through their knowledge of the law. Only patricians could be priests (pontifices) and only such priests were given knowledge of the unwritten customs of the state. Under tribunician pressure (the tribunes being the representatives of the unprivileged plebeians), the normal constitution was suspended and a 10-man elected board was set up to finally write down salient points of law (certainly not all existing laws) and publicly display these regulations on wooden or bronze tablets for all to see. The year was probably 451 B.C.

Today we do not make much of such writing down of laws, but it must be emphasized that a written, publicly known body of law is integral to constitutional government. In case we become too complacent it should be borne in mind that even today the law is not generally understood, nor is the language of the law readily comprehended, as potentially dangerous a situation to a free society as the state of affairs in Rome before 451. At least the Roman 10-man board attempted to express themselves clearly and succinctly and did not descend to the murky depths of legal obfuscation so popular with today's law makers. Then again, Roman society of the 5th C. B. C. was much simpler than our own, and the provisions of the code throw some illumination on a society which was still agricultural, conservative, and not a little primitive.

Some Interesting Provisions of the Code

- (Table IV) A child born ten months after the father's death will not be admitted into a legal inheritance.
- (Table V) Females shall remain in guardianship even when they have attained their majority . . . except Vestal Virgins.
- (Table VI) 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 VIII) 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.
- (Table VIII) No person shall practice usury at a rate more than one twelfth . . . A usurer is condemned for quadruple amount.
- (Table VIII) If a patron shall have defrauded his client, he must be solemnly forfeited.
- (Table X) Anointing by slaves is abolished, and every kind of drinking bout.
- (Table XI) Intermarriage shall not take place between plebeians and patricians.

The historian Livy called the XII tables the "Fons omnis publici privatique iuris (the source of all private and public law)." In Cicero's day Roman schoolboys were obliged to memorize these provisions by heart in much the way that Canadian school children of an earlier generation committed to memory lengthy pieces from the Bible. By the late Republic, the tables were rather antiquated and superceded by more sophisticated developments in Roman law. Still, with a traditional Roman love and regard for the "Mos Maiorum (Practice of the Ancestors)", some of the provisions of the code were still in force in the 6th century A. D., some, 1,000 years later, and the tables were never formally repealed. Will Canadian laws prove equally enduring?