

Research on the Progressiveness and Deficiency of Laws of the Twelve Tables

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Abstract: The wheel of history rolls forward, leaving a profound mark on the land of ancient Rome. In this long history, Roman law, as the birthplace of Western civilization, has a far-reaching impact. Among them, the bloodshed between the aristocrats and the commoners is undoubtedly the most profound mark in Roman history. However, behind this mark is hidden a great law - the *Laws of the Twelve Tables*. *Laws of the Twelve Tables* is the earliest written law of ancient Rome, which had a profound influence on the development of the legal system of later generations. The birth of this law marked the transformation of Roman society from a tribal union to a centralized system, and laid the foundation for the later Roman Empire. This paper will assess the historical significance and impact of the *Twelve Bronze Tables Law* in light of contemporary legal theories. This will offer a fresh viewpoint and source of inspiration for future research on Roman legal history, help people around the world gain a better understanding of the principles and practices of the rule of law in ancient Rome, and serve as a helpful guide for the development of the rule of law in contemporary society.

Keywords: Laws of the Twelve Tables, Roman Law, Customary Law and Statute Law, Slaves Barbarism

1. Introduction

The Law of the Twelve Bronze Tables is not only the first written code of ancient Rome, but also marks the important turning point of Roman law from customary law to written law. Despite its millennia-long history, the Code still has a profound influence on the formation of modern legal systems and legal thought. However, with the continuous in-depth study of the academic circle, disputes and doubts about the "Twelve Copper Tables Law" have gradually surfaced. At present, the academic circles have a unified understanding of the progressiveness of the Code, but there is still room for controversy and discussion on its shortcomings. Under this background, this paper aims to comprehensively and objectively analyze the progress and shortcomings of the Law of the Twelve Bronze Tables in order to contribute new strength to the study of ancient Roman legal history. This paper will use a variety of research methods, such as document analysis, comparative method, and historical analysis method, to deeply explore the historical background, legal provisions, implementation status, and other aspects of the "*Twelve Bronze Tables Law*", in order to reveal the deep reasons behind its progress and the specific manifestations of deficiencies. At the same time, this paper will also evaluate the historical status and influence of the *Twelve Bronze Tables Law* in

combination with modern legal theories, so as to provide a new perspective and inspiration for the future study of ancient Roman legal history, promote the world to better understand the spirit and practice of the rule of law in ancient Rome society, and provide useful inspiration and reference for the construction of the rule of law in today's society.

2. The origin of the *Laws of the Twelve Tables*

In the early days of the Roman Republic, the plebeians and the nobles were two very opposite classes. The aristocracy not only monopolized politics, but also exploited the common people economically. As customary law was used at that time, the power of interpretation of customary law was controlled in the hands of noble judges, who naturally took advantage of this right to seek the interests of the nobility, who enjoyed the supreme right, and the common people had no right to participate in the allocation and use of state-owned land. Poor civilians often borrow usury from nobles in desperate situations, and such usury is mortgaged by the person. The possible consequence is that those who cannot repay the usury will become debt slaves. As a result, in terms of politics, land, debt and even judicial trials, civilians will always be in the position of aristocrats, and even suffer oppression. Commoners also began to rebel against the nobility. In order to solve these contradictions, Roman commoners used non-violent forms such as the "evacuation movement" to wage a struggle with Roman nobles for two centuries, achieved a series of major victories, and finally realized social equality between commoners and nobles [1].

3. The progress of the *Laws of the Twelve Tables*

The *Laws of the Twelve Tables* is the earliest written law of ancient Rome, and its appearance marks the maturity of Roman legal system. The process of making this law reflects the application of principles and combines them with practice to make the law more just and reasonable.

3.1. Limited certain aristocratic privileges

The first table of the *Laws of the Twelve Tables* is the summons, a total of nine, of which the first: the plaintiff calls the defendant to court, if the defendant refuses, the plaintiff can invite a third party to testify, twist peers. Article 2: The plaintiff shall have the right to resist arrest if the defendant excuses himself or attempts to evade arrest. These two articles do not specify the specific identities of the defendant and the plaintiff, that is, the coercive means of the plaintiff against the defendant in these two articles can be the coercion of the common people against the nobility, and the nobility will also be subject to certain requirements, rather than the social situation in which the interests of the common people are violated at will, but the common people cannot make the nobility make certain compensation. Combined with the actual situation of Rome at that time, this strict regulation seemed to be more favorable to the commoners with fewer assets and lower status, because if the commoners were absent from the court, the nobles could achieve their goals even without legal provisions, while if the nobles were absent from the court, the commoners could not make them attend the court on time without relying on relevant laws [2]. Therefore, from this aspect, it is a weakening of the privilege of the aristocracy and a protection and emphasis on the rights of the common people. In Article 4 of the first table, "If the litigant is a wealthy person, the surety who guarantees his due appearance shall be a person of equal financial means", article 7, "If one of the litigants fails to appear in court after noon, the magistrate shall award the case in favor of the party present", and Article 9, "the surety shall guarantee the litigant's due appearance at trial". All three of the above contain certain constraints on the aristocracy. In article 4, "people with equal financial resources" can avoid the social reality that the strong overrule the weak when the litigants are rich, such as aristocrats. If civilians act as guarantors, aristocrats may choose to avoid participating in relevant litigation matters. In this way,

aristocrats will always have loopholes to exploit in the field of litigation, which is not conducive to easing the contradictions between aristocrats and civilians and will only intensify continuously. So Article 4 addresses part of this problem to some extent. Similarly, Article 7 ensures defendants (especially wealthy defendants) to be tried on time by ensuring that those who fail to appear in court after noon and Article 9 makes the guarantor bear the risk of property risk. [2] This restrains arbitrary nobles, reduces nobles' neglect of social fairness and justice, and protects the common people. It is civilians who have more opportunities to realize and defend their damaged interests.

3.2. Closely related to the reality of life

The seventh table is land and houses, and the second one says, "Whoever builds a fence between his own land and his neighboring land shall not cross the boundary of his own land." "Whoever plants olive trees and FIG trees shall leave nine feet of land empty. Five feet for other trees ", and Article 5 "In the event of a dispute over the boundary, three arbitrators appointed by the governor shall settle it", and Article 1 and 2 of Table 12 are also related to livestock, debts, and slaves. From the provisions of the *Laws of the Twelve Tables* on "fields," "demarcations," "slaves," "planting regulations," "debts," and so on, it can be seen that agriculture and the problems related to agricultural life, economic life, and the actual social needs of slaves, which are closely related to Roman life, were all paid great attention and concern. Instead of some theoretical empty talk above the cognitive level of the Romans, it effectively proposed reasonable, effective and feasible solutions to practical problems.

3.3. Formal progress

In the past, ancient Roman rulers ruled the Romans with customary law, and customary law was often monopolized by the Roman aristocracy, and the common people did not have the right of interpretation, but the power of interpretation was in the hands of the nobles, which would inevitably lead to the interests of the common people being damaged. Because the customary law was not written, some common people would suffer when their interests were damaged. They do not even know why their interests will be harmed, and they do not have any legal provisions to fight against violations, which will inevitably lead to resistance from the common people. The *Laws of the Twelve Tables* clearly and explicitly stipulated legal provisions in the form of written law, reducing the situation that the nobility was protected by customary law in the past, and allowing the common people to clearly and accurately grasp the legal ways and means to safeguard their rights and fight against the aggressors. The progress of customary law to written law weakened the privilege of the aristocracy, improved the status of the common people in politics, law and economy, and was conducive to maintaining the stability of the Roman social order and the efficient development of the economy.

4. The shortcomings of the *Laws of the Twelve Tables*

Although the *Laws of the Twelve Tables* was progressive to a certain extent, it still had certain deficiencies. It still gave priority to protecting the interests of the nobility, and it was unfair to the common people and slaves.

4.1. Injustice to slaves

The first article of the second table of the *Laws of the Twelve Tables* stipulates that "a lawsuit concerning free status shall be paid 50 as regardless of the amount of the person's family property", which indicates that the lawsuit requires payment, so there will inevitably be some slaves if they cannot pay so much money, does it mean that it is difficult to fight for free status, and is it not a certain degree of suppression of freedom of slaves? This is an injustice to slaves. Article 14 of the

eighth table for private offenders: "When arrested for theft in force, they shall be sentenced to flogging and handed over to the victim for handling; If he is a slave, he shall be flogged and thrown to his death under the rocks of Tarpeio." This reflects that if a slave is caught stealing, the result is only death in any case, and there is no chance to reform, and other ordinary people may have another chance to reform, which is also unfair to the slave and tramples on the life of the slave.

4.2. The originality and barbarism of The Times

The eighth table of the *Laws of the Twelve Tables*, Article 14, "If a slave is flogging, he shall be thrown to death under the Tarpeio rock", and Article 23, "If he gives false testimony, he shall be thrown to death under the Tarpeio Rock", reflect the severity of the punishment and the bloody and barbaric slave society period. Looking back at ancient China, the code of Law with criminal law as its core, the Classic of Law, also has similar barbarism and bloodiness as the *Laws of the Twelve Tables*. Although the "Law Classic" got rid of the criminal law system of "Zhou Li" and "Shangshu Lu Punishment" and changed to "crime punishment", the attitude towards punishment did not change at all. [3] The Classic of Law fully embodies the legalist thought of heavy punishment. First of all, it inherited all kinds of corporal punishment. such as flogging and palace punishment in Zhou Li and Shangshu Lu Punishment, and also stipulated a large number of concurrent punishment, such as Yi clan, and insisted on "heavy punishment and minor crime". The Dharma Sutra says, "The thief shall be punished by his own house." The thief of the seal is punished. He who proposes the laws of the state shall be punished by his house and by his wife's family." There is also "voyeur bin, stolen", so stipulated the reason is "stolen". These provisions all reflect the heavy punishment in the Fa Classic, exude the bloody atmosphere of the primitive clan's warfare and rule [3], and reflect the strong color of violence. In summary, the *Laws of the Twelve Tables* and the Fa Classic both reflect certain limitations of The Times, and reflect the primitive and barbaric nature of the early human society. The author believes that this is the only way that human history must pass through. In the early period, when the economy and ideology were not so developed, the rulers could only take such primitive and brutal measures to consolidate their rule and maintain social stability, so the author believes that this is an unavoidable limitation of the early society.

4.3. Inaccessibility of civilians to senior public office

The supplement to the first five tables of the eleventh table of the *Laws of the Twelve Tables* "prohibits the marriage of commoners and nobles". Because this rule only allowed marriage within the nobility and strictly closed the lineage, this closure became an exclusive and non-transferable fortress [4]. However, since the state power was completely in the hands of the traditional nobility, the high official positions were always held by the nobility, and the privileges in the closed noble circle would never flow to the common class. This prevented commoners from holding high office in the state and from entering the Senate. In this way, it is inevitable that the supreme position of the ruling class will always be the aristocracy, the nobility will always hold high positions, the commoners will always be at a disadvantage relative to the aristocracy, and the aristocracy will still hold more privileges in political office than the commoners. Therefore, the introduction of the *Laws of the Twelve Tables* can only be called a preliminary stage victory of the struggle of the common people against the nobility. [5] In the future conflicts between Roman commoners and nobles, the commoners need to strive for more opportunities to serve as senior officials in the political field. Only in this way, after the commoners have a place in the supreme position of the rule, it is possible to strive for more political rights for the commoners in the future. The enactment of decrees involves more commoners' interests, reduces the privilege of the nobility, and reduces the possibility of aristocracy. Promote the development of equality and rationality.

5. Conclusion

It is undeniable that the *Laws of the Twelve Tables* limited the privilege of the nobility, broke its monopoly over the law, protected the interests of the common people to a certain extent, and was a victory for the common people, which had a profound impact on the development of later written laws. However, due to the limitations of The Times, the *Laws of the Twelve Tables* also had obvious primitive and barbaric nature of the early society and oppression of slaves. Therefore, to a certain extent, the *Laws of the Twelve Tables* is a stage victory in history. In order to realize the true equality between the common people and the nobility, it is necessary to constantly strive to fight, and human beings' exploration of legal fairness and rationality is always in the process of continuous development.

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