

**BOOK XX**

## LIBER VICESIMUS

### I

Disputatio Sex. Caecilii iureconsulti et Favorini philosophi  
de legibus *Duodecim Tabularum*.

- 1 SEXTUS CAECILIUS in disciplina iuris atque in legibus populi Romani noscendis interpretandisque scientia,
- 2 usu auctoritateque inlustris fuit. Ad eum forte in area Palatina, cum salutationem Caesaris opperiremur, philosophus Favorinus accessit conlocutusque est,
- 3 nobis multisque aliis praesentibus. In illis tunc eorum sermonibus orta mentios legum decemviraliū, quas decemviri eius rei gratia a populo creati composuerunt, in duodecim tabulas conscripserunt.
- 4 Eas leges cum Sex. Caecilius, inquisitis exploratisque multarum urbium legibus, eleganti atque absoluta brevitate verborum scriptas diceret, "Sit,"<sup>1</sup> inquit, "hoc" Favorinus, "in pleraque earum legum parte ita uti dicis; non enim minus cupide tabulas istas duodecim legi quam illos duodecim libros Platonis *De Legibus*. Sed quaedam istic esse animadvertuntur aut obscurissima aut durissima<sup>2</sup> aut lenia contra nimis et remissa aut nequaquam ita, ut scriptum est, consistentia."

<sup>1</sup> sit, *Beroaldus*; sed, *ω*.

<sup>2</sup> aut durissima, *added by J. Gronov.*

---

<sup>1</sup> That is, Antoninus Pius.

<sup>2</sup> The *Area Palatina* was originally the space bounded on the west by the *Domus Tiberiana*, or Palace of Tiberius, and the *Domus Augustana*; as time went on, it must have been bounded and restricted by other parts of the Imperial Palace.

## BOOK XX

### I

A discussion of the jurist Sextus Caecilius and the philosopher Favorinus about the laws of the *Twelve Tables*.

SEXTUS CAECILIUS was famed for his knowledge, experience and authority in the science of jurisprudence and in understanding and interpreting the laws of the Roman people. It happened that as we were waiting to pay our respects to Caesar,<sup>1</sup> the philosopher Favorinus met and accosted Caecilius in the Palatine square<sup>2</sup> in my presence and that of several others. In the conversation which they carried on at the time mention was made of the laws of the decemvirs, which the board of ten appointed by the people for that purpose wrote and inscribed upon twelve tablets.<sup>3</sup>

When Sextus Caecilius, who had examined and studied the laws of many cities, said that they were drawn up in the most choice and concise terms, Favorinus rejoined: "It may be as you say in the greater part of those laws; for I read your twelve tables with as eager interest as I did the twelve books of Plato *On the Laws*. But some of them seem to me to be either very obscure or very cruel, or on the other hand too mild and lenient, or by no means to be taken exactly as they are written."

<sup>3</sup> These laws were set up in the Forum on ten tablets of bronze in 451 B.C., to which two more tablets were added in 450.

## ATTIC NIGHTS OF AULUS GELLIUS

- 5 "Obscuritates," inquit Sex. Caecilius, "non adsignemus culpae scribentium, sed inscitiae non adsequentium, quamquam hi quoque ipsi, qui quae scripta sunt  
6 minus percipiunt culpa vacant. Nam longa aetas verba atque mores veteres oblitteravit, quibus verbis moribusque sententia legum comprehensa est. Trecentesimo quoque anno post Romam conditam tabulae compositae scriptaeque sunt, a quo tempore ad hunc diem anni esse non longe minus sescenti<sup>1</sup>  
7 videntur. Dure autem scriptum esse in istis legibus quid existimari potest? nisi duram esse legem putas, quae iudicem arbitrumve iure datum, qui ob rem iudicandam<sup>2</sup> pecuniam accepisse convictus est, capite poenitur aut quae furem manifestum ei cui furtum factum est in servitutem tradit, nocturnum  
8 autem furem ius occidendi tribuit. Dic enim, quaeso, dic, vir sapientiae studiosissime, an aut iudicis illius perfidiam contra omnia divina atque humana iusiurandum suum pecunia vendentis aut furis manifesti intolerandam audaciam aut nocturni grassatoris insidiosam violentiam non dignam esse capitis poena existumes?"
- 9 "Noli," inquit Favorinus, "ex me quaerere quid ego existumem. Scis enim solitum esse me, pro disciplina sectae quam colo, inquirere potius quam  
10 decernere. Sed non levis existimator neque asper-

<sup>1</sup> sexcenti, *J. F. Gronov*; septingenti,  $\omega$ .

<sup>2</sup> iudicandam, *Scioppius* (cf. *Quint.* v. 10. 87; *Tac. Ann.* iv. 31; etc.); dicendam,  $\omega$ . *Herarus* suggests that we have a fusion of ob rem iudicandam and ob ius dicendum or ob falsum testimonium dicendum.

---

<sup>1</sup> The chronology of Nepos; see note on § 3, above, and on the chapter heading of xvii. 21.

<sup>2</sup> ix. 3.

<sup>3</sup> viii. 4.

<sup>4</sup> viii. 12.

“As for the obscurities,” said Sextus Caecilius, “let us not charge those to the fault of the makers of the laws, but to the ignorance of those who cannot follow their meaning, although they also who do not fully understand what is written may be excused. For long lapse of time has rendered old words and customs obsolete, and it is in the light of those words and customs that the sense of the laws is to be understood. As a matter of fact, the laws were compiled and written in the three hundredth year after the founding of Rome,<sup>1</sup> and from that time until to-day is clearly not less than six hundred years. But what can be looked upon as cruel in those laws? Unless you think a law is cruel which punishes with death a judge or arbiter appointed by law, who has been convicted of taking a bribe for rendering his decision,<sup>2</sup> or which hands over a thief caught in the act to be the slave of the man from whom he stole,<sup>3</sup> and makes it lawful to kill a robber who comes by night.<sup>4</sup> Tell me, I pray, tell me, you deep student of philosophy, whether you think that the perfidy of a juror who sells his oath contrary to all laws, human and divine, or the intolerable audacity of an open theft, or the treacherous violence of a nocturnal footpad, does not deserve the penalty of death?”

“Don’t ask me,” said Favorinus, “what I think. For you know that, according to the practice of the sect to which I belong,<sup>5</sup> I am accustomed rather to inquire than to decide. But the Roman people is a judge neither insignificant nor contemptible, and

<sup>5</sup> He probably refers to the Pyrronian sceptics, about whose beliefs he wrote a work in ten books; see xi. 5. 5.

## ATTIC NIGHTS OF AULUS GELLIUS

- nabilis est populus Romanus, cui delicta quidem istaec vindicanda, poenae tamen huiuscemodi nimis durae esse visae sunt; passus enim est leges istas de
- 11 tam inmodico supplicio situ atque senio emori. Sicut illud quoque inhumaniter scriptum improbavit, quod, si homo in ius vocatus, morbo aut aetate aeger ad ingrediendum invalidus est, 'arcera non sternitur,' sed ipse aufertur et iumento imponitur atque ex domo sua ad praetorem in comitium nova funeris facie effertur. Quam enim ob causam morbo affectus et ad respondendum pro sese non idoneus, iumento adhaerens in ius adversario deportatur?
- 12 Quod vero dixi videri quaedam esse inpendio molliora, nonne tibi quoque videtur nimis esse dilutum quod ita de iniuria poenienda scriptum est: 'Si iniuriam alteri faxsit, viginti quinque aeris poenae sunt? Quis enim erit tam inops, quem ab iniuriae faciendae
- 13 libidine viginti quinque asses deterreant? Itaque cum eam legem Labeo quoque<sup>1</sup> vester in libris, quos *Ad Duodecim Tabulas* conscripsit, non probaret: 'Quidam,'<sup>2</sup> inquit, 'L. Veratius fuit egregie homo improbus atque inmani vecordia. Is pro delectamento habebat, os hominis liberi manus suae palma verberare. Eum servus sequebatur ferens crumenam plenam assium; ut quemque depalmarat, numerari statim secundum *Duodecim Tabulas* quinque et viginti asses iubebat.' Propterea," in-

<sup>1</sup> Labeo quoque, *Huschke*; cum Labeo q., δNO; cum (tum, Π) quoque Labeo, ΠX.

<sup>2</sup> quidam added by *Carrio*; various other suggestions for partly filling the lacuna before inquit have been made.

<sup>1</sup> That is, with a pallet for lying upon.

<sup>2</sup> At that time one of the two chief magistrates, corresponding to the consuls of later times.

while they thought that such crimes ought to be punished, they yet believed that punishments of that kind were too severe; for they have allowed the laws which prescribed such excessive penalties to die out from disuse and old age. Just so they considered it also an inhuman provision, that if a man has been summoned to court, and being disabled through illness or years is too weak to walk, 'a covered waggon he need not spread';<sup>1</sup> but the man is carried out and placed upon a beast of burden and conveyed from his home to the praetor<sup>2</sup> in the comitium, as if he were a living corpse. For why should one who is a prey to illness, and unable to appear, be haled into court at the demand of his adversary, clinging to a draught animal? But as for my statement that some laws were excessively lenient, do not you yourself think that law too lax, which reads as follows with regard to the penalty for an injury:<sup>3</sup> 'If anyone has inflicted an injury upon another, let him be fined twenty-five asses'? For who will be found so poor that twenty-five asses would keep him from inflicting an injury if he desired to? And therefore your friend Labeo also, in the work which he wrote *On the Twelve Tables*,<sup>4</sup> expressing his disapproval of that law, says:<sup>5</sup> 'One Lucius Veratius was an exceedingly wicked man and of cruel brutality. He used to amuse himself by striking free men in the face with his open hand. A slave followed him with a purse full of asses; as often as he had buffeted anyone, he ordered twenty-five asses to be counted out at once, according to the provision of the *Twelve Tables*'

<sup>3</sup> viii. 4.<sup>4</sup> Frag. 25, Hushke; 3, Bremer.<sup>5</sup> There seems to be a lacuna in the text; see crit. note.

# END OF SAMPLE TEXT



The Complete Text can be found on our CD:  
**Primary Literary Sources For Ancient Literature**  
which can be purchased on our Website :  
[www.Brainfly.net](http://www.Brainfly.net)

or

by sending **\$64.95** in check or money order to :  
**Brainfly Inc.**  
**5100 Garfield Ave. #46**  
**Sacramento CA 95841-3839**

## **TEACHER'S DISCOUNT:**

If you are a **TEACHER** you can take advantage of our teacher's discount. Click on **Teachers Discount** on our website ([www.Brainfly.net](http://www.Brainfly.net)) or **Send us \$55.95** and we will send you a full copy of *Primary Literary Sources For Ancient Literature* **AND** our *5000 Classics CD (a collection of over 5000 classic works of literature in electronic format (.txt))* plus our *Wholesale price list*.

If you have any suggestions such as books you would like to see added to the collection or if you would like our wholesale prices list please send us an email to:

[webcomments@brainfly.net](mailto:webcomments@brainfly.net)