Did the Twelve Tables limit interest?

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This paper takes note of developments in research concerning the Twelve Tables within the last decennia. In consequence of these findings a question concerning the authenticity of one of the provisions, which is traditionally included in the reconstructions of this legislation, is raised. Two new ideas have come to the fore, first, the hypothesis of Humbert in respect of the exact meaning of the legislation of the Twelve Tables and, secondly, a constructive deconstruction of the so-called system of the Twelve Tables or the sequence of the texts. After a short discussion of these developments I wish to pose the question whether the verses relating to the limit on interest, namely Tables 8 18 a and b, should be included in a new reconstruction.

1 *Were the Twelve Tables a codification?*

The French Romanist Humbert is one of the experts on the early Roman republic[1] and has recently proposed a new interpretation of the legislative work of the *decemviri*.[2] In the humanistic tradition he returns to the sources and thus his main authorities are the historiographers Livius and Dionysius of Halicarnassus as well as the text of the statute itself. As a result he proposes the hypothesis that the purpose of the legislation was to place the administration of justice on a statutory basis in order to eliminate the discretion of the holders of *imperium* in this field.

Humbert analyses the political events leading up to the legislation and redefines the concepts *plebs* and *patres* around 450 BC and in consequence the nature of their conflict.[3] According to him the *plebs* during the first half of the fifth century BC represents a political movement of citizens in the process of acquiring wealth and opposed to the ruling oligarchy.[4] This is a drastic step away from the traditional description concentrating on the marginalised, poor masses without political rights clamouring for equality and economic benefits. He bases this argument on the recent establishment of the *plebs* in 494 BC and the theory developed by Magdelain regarding the relative late formation of the patricians into a closed ruling aristocracy.[5] An additional argument may be found in the apparent equality between the parties to the struggle described by Livius. In this context, the struggle between

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1 See for example Humbert *Municipium et Civitas Sine Suffragio. L'organisation de la Conquête Jusqu'a la Guerre Sociale* Collection de l'École francaise de Rome no 36 (1978); *Les Procès Criminels Tribuniciens du 5ème au 4ème Siècle Avant JC* (1995); "Les privilèges, des XII Tables à Cicéron" in *Mélanges Francois Jacques* (1996); "Les XII Tables, une codification?" 1998 *Droits. Revue Francaise de Théorie Juridique* 87-111; "La normativité des plébiscites selon la tradition annalistique" in *Mélanges à la mémoire de André Magdelain* (1998) 211-238; "Le '*Conubium*' des patriciens et plébéiens; une hypothèse" in *Nonagesimo Anno. Mélanges J Gaudemet* (1999) 281-303; *Institutions Politiques et Sociales de l'Antiquité* (2003).

2 "La codificazione decemvirale tentativo d'interpretazione" in Humbert (ed) *Le Dodici Tavole. Dai Decemviri agli Umanisti* (2005) 3-50.

3 (n 2) 5 ff.

4 (n 2) 7 ff.

5 Magdelain "Auspicia ad patres redeunt" (1964) in *Ius, Imperium, Auctoritas* (1990) 341-383. Also Ranouil *Recherches sur le Patriciat (509-366 a C)* (1975).

[ISSN 0257 – 7747]

plebs and *patres* was not for power, nor for equal rights, but for equality before the law; the means to achieve this objective was controlling the administration of justice or in other words the *imperium* of the consuls.[6] According to this interpretation collaboration by the priests was an absolute necessity and Humbert refers to the priests as the intellectual fathers of the codification.[7] This hypothesis is supported by the formulation of the text of the Twelve Tables which does not provide the general public with access to the law, but necessitates learned assistance by an expert;[8] the latter point also explains why it took two hundred years before the science of law became secular.

Humbert's hypothesis is strengthened by inclusion of the *leges regiae*. He views them as pre-codification customary extra-legal norms of behaviour concerning the *patria potestas* and the dysfunction thereof as well as individual cases of misbehaviour traditionally dealt with by the religious authorities.[9] These topics were not included in the Twelve Tables on account of their extra-legal nature, which had kept them outside the administration of justice. A further argument is that the content of the Twelve Tables bears resemblance to the edict of the *praetor,* namely a catalogue of legal remedies, and does not represent a codification of the substantive law.

In spite of this new interpretation, the Twelve Tables continue to represent a revolution within the development of Roman law: rights no longer originated from ritual acts or from the decisions of magistrates or judges, but since 450 BC from statute, namely the Twelve Tables. However, one side of the wall is by necessity in the shade. In this instance the flipside is the fact that the price for legal certainty was paid for by the lack of legal development because it took centuries before the *praetor* reaffirmed the administration of justice as the driving force of progress.

2 *System of Twelve Tables*

The main protagonist of the second point, the order of the texts, is Diliberto,[10] who is of the opinion that reconstruction of the Twelve Tables is far from complete and remains a work in progress. His main argument[11] is that it is highly improbable that the *decemviri* would have applied divisions and systematisation which were only developed centuries later.[12] As an alternative to the modern systematisation of the code he develops a system on the basis of a handful of solid beacons indicating the place of various fragments:

– Table I, *in ius vocatio*; Cicero *De legibus* 2 9;
– Table II, *dies diffusus*; Festus *sv reus*;
– Table IV, *si pater*; Dionysius of Halicarnassus 2 27;

6 (n 2) 11 ff, 26 ff.
7 (n 2) 22 ff.
8 (n 2) *24* ff.
9 (n 2) 41 ff.
10 "Una palingenesi 'aperta'" in *Le Dodici Tavole* (2005) 217-238; "Considerazioni intorno al commento di Gaio alle XII Tavole" 1990 *Index* 403-434; "Contributo alla palingenesi delle XII Tavole. La 'sequenze' nei testi gelleani" 1992 *Index* 229-277; *Materiali per la palingenesi delle XII Tavole* (1992); *Bibliografia ragionata delle edizioni a stampa della Legge delle XII Tavole (sec XVI-XX)* (2001). See also Amirante "Un'ipotesi di lavoro: le 'sequenze'e l'ordine delle norme decemvirali" 1992 *Index* 205-210; Bona "Il '*de verborum siginicatu*' di Festo e le XII Tavole. Gli '*auctores*' di Verrio Flacco" 1992 *Index* 211-228.
11 Another practical argument relates to the different length of the tables. Diliberto (n 10 (2005)) 221 ff, 227 ff. The same point had been made by Puchta *Civilistische Abhandlungen* (1823) 51 ff.
12 Diliberto (n 10 (2005)) 221 ff, 226, 228 and 236.

– Table X funerals; Cicero *De legibus* 2 23-25;
– Table XI or XII prohibition of marriage between patrician and plebeian; Dionysius of Halicarnassus 10 60;
– Table XI or XII intercalation in the calendar; Macrobius *Satyra* 1 13 21.

Furthermore, we know from Ulpian that testamentary succession came before intestate succession[13] and most importantly we have fragments of the commentaries of Labeo and Gaius on the code.[14]

Diliberto does not share the belief held by Jacobus Gothofredus[15] that each of the six books of the commentary on the Twelve Tables by Gaius discusses two tables. The origin of this hypothesis is found in *D* 50 16 233*pr*[16] in which fragment derived from Gaius' first book on the Twelve Tables, the *in ius vocatio*, is discussed; and *D* 50 16 238*pr*[17] which links Gaius' book 6 to the prohibition of marriage between the orders.[18] It should, however, be noted that during the nineteenth century Schoell, Hugo and Puchta had expressed serious misgivings on this point.[19] On the other hand Diliberto is of the opinion that the fourth book of Gaius' commentary on the Twelve Tables holds the key to the so-called system.[20] The fragments which should be placed in the same table – arson of a house or a heap of grain near a building,[21] poison causing the harvest to fail,[22] the *actio finium regundorum*,[23] the *actio de glande legenda* [24]and *collegia*,[25] may all – except the *collegia*[26] – be related to the protection of land, which was the most important means of production in the economy of antiquity. This deduction rejects the modern classification, which is based on the idea that the eighth Table contained criminal law.

Diliberto argues convincingly in favour of an alternative non-dogmatic arrangement of the texts on the basis of the interests protected. The only tool available for such re-ordering appears to be the so-called law of Lindsay. In 1887 Reitzenstein[27] had shown that the citations by Verrius Flaccus from the *Annales* of Ennius ob-

[13] *D* 38 6 1*pr*.
[14] Diliberto (n 10 (2005)) 223; (n 10 (1992)) 112, 223; Albanese "Su alcuni frammenti di Gaio '*ad legem XII Tabularum*'" 1998 *Labeo* 189; D'Ippolito "Gaio e le XII Tavole" 1992 *Index* 279 ff.
[15] *Fragmenta XII Tabularum suis nunc primum tabulis restituta, probationibus, notis et indice munita. Fragmenta legis Iuliae et Papiae nunc primum collecta suoque ordini restituta & notis illustrata* (1616). Ferrary "Saggio di storia della palingenesi delle Dodici Tavole" *Le Dodici Tavole* (2005) 537.
[16] *D* 50 16 233 *Gaius libro primo ad legem duodecim tabularum pr. "Si calvitur": et moretur et frustretur. Inde et calumniatores appellati sunt, quia per fraudem et frustrationem alios vexarent litibus: inde et cavillatio dicta est*.
[17] *D* 50 16 238 *Gaius libro sexto ad legem duodecim tabularum pr. "Plebs" est ceteri cives sine senatoribus*.
[18] Ferrary (n 15) 537.
[19] Puchta (n 11) 52; Schoell *Legis* (1866) 70 f; Ferrary (n 15) 544-547.
[20] (n 10 (2005)) 225 f.
[21] *D* 47 9 9 *Gaius libro quarto ad legem duodecim tabularum. Qui aedes acervumve frumenti iuxta domum positum conbusserit,...*
[22] *D* 50 16 236 *Gaius libro quarto ad legem duodecim tabularum pr. Qui "venenum" dicit, adicere debet, utrum malum an bonum*: *Cf* Diliberto (n 10 (1992)) I 112, 223; Albanese (n 14) 189.
[23] *D* 10 1 13 *Gaius libro quarto ad legem duodecim tabularum. Sciendum est in actione finium regundorum illud observandum esse,...*
[24] *D* 50 16 236 1 *"Glandis" appellatione omnis fructus continetur,...* .
[25] *D* 47 22 4 *Gaius libro quarto ad legem duodecim tabularum. Sodales sunt, qui eiusdem collegii sunt*:...
[26] See however Diliberto (n 10 (2005)) 227.
[27] Reitzenstein *Verrianische Forschungen* (1887).

served the order of the original work. In 1901 Lindsay[28] followed this methodology and proved that Marcellus in his dictionary cited passages from forty-one Latin authors from preceding centuries in the order of the works from which they were excerpts. Lauria[29] has argued that Gaius in his commentary on the Twelve Tables followed the sequence of the code, while Bona[30] researched Festus and Verrius Flaccus to discover the same and proposed[31] the same methodology in respect of Aulus Gellius. In his *Materiali per la Palingenesi Delle XII Tavole* Diliberto applied the law of Lindsay to the *Noctes Atticae*[32] and showed how a number of texts, for example *furtum*, *iniuria* and corruption of a judge, could be re-assigned to different tables.[33]

It is not only possible, but highly probable that the sequence of the texts is ruled by a scheme totally different from modern codes. Such a system may be based on the protection of interests such as land, *fides*,[34] and others still to be identified. This last point is the weak link since deconstruction without reconstruction or even a plan for reconstruction leaves nothing. The result of Diliberto's approach is that a new internal grid of the Twelve Tables must be developed, which entails reconsideration of all available sources.

The difficulties of such an enterprise are clearly shown by Agnati,[35] who tests the application of the law of Lindsay against the rhetorical tradition in his analysis of *De Inventione* 2 148[36] and *Rhetorica ad Herennium* 1 23[37] concerning the position of the *furiosus* text in Table 5. Agnati comes to the conclusion that there are no indications that the authors in question[38] adhered to a fixed system in respect of their citations. This is to be explained by the nature of the works and the use of the texts for the purpose of examples in forensic argumentation rather than lexicography or similar enterprises.

More success was achieved by De Francesco,[39] who analysed fragments from Horatius,[40] Plautus[41] and Terentius.[42] This author assumes a relationship between the *actio iniuriarum* and the self-help of the *in ius vocatio* and some instances of

[28] Lindsay *Nonius Marcellus' Dictionary of Republican Latin* (1901).
[29] Lauri I *Ius Romanum* (1963) 22 and "*Iura*, *leges*" *Atti Accademia* (1970) 21 ff.
[30] Bona (n 10) 211-228.
[31] Bona "Intervento" in "Sulle XII Tavole" 1990 *Index* 392
[32] *Noctes Atticae* 15 13 11, 16 10 7 ff, 20 1 7-8, 20 1 10-19, 20 1 25-53.
[33] For a revised summary see Diliberto (n 10 (2005)) 231-235.
[34] Diliberto (n 10 (2005)) 233 ff.
[35] "Sequenze decemvirali. Analisi di Cicerone *De inventione* 2 148 e *Rhetorica ad Herennium* 1 23" in *Le Dodici Tavole* (2005) 239-264.
[36] Cicero *De inventione* 2 148: Ex ratiocinatione nascitur controversia, cum ex eo, quod uspiam est, ad id, quod nusquam scriptum est, venitur, hoc pacto: lex: SI FURIOSUS EST, AGNATUM GENTILIUMQUE IN EO PECUNIAQUE EIUS POTESTAS ESTO. et lex: PATERFAMILIAS UTI SUPER FAMILIA PECUNIAQUE SUA LEGASSIT, ITA IUS ESTO. et lex: SI PATERFAMILIAS INTESTATO MORITUR, FAMILIA PECUNIAQUE EIUS AGNATUM GENTILIUMQUE ESTO.
[37] *Rhetorica ad Herennium* 1 23: E ratiocinatione controversia constat, cum res sine propria lege venit in iudicium, quae tamen ab aliis legibus similitudine quadam aucupatur. Ea est huiusmodi: lex: si furiosus existet, adgnatum gentiliumque in eo pecuniaque eius potestas esto. Et lex: qui parentem necasse iudicatus erit, ut is obvolutus et obligatus corio devehatur in profluentem. Et lex: paterfamilias uti super familia pecuniave sua legaverit, ita ius esto. Et lex: si paterfamilias <intestato moritur, familia > pecuniaque eius agnatum gentilium esto.
[38] Cicero and the *incertus auctor*; *cf* Agnati (n 35) 246.
[39] "Autodifesa privata e *iniuria* nelle Dodici Tavole" in *Le Dodici Tavole* (2005) 415-440.
[40] *Satura* 1 9 74-78.
[41] *Curculio* 5 2 620-625.
[42] *Phormio* 5 8 980-996.

theft.[43] She commences by explaining the meaning and importance of *antestari*[44] and *endoplorare*.[45] The fact that Gaius discusses *furtum* in the first book of his commentary on the Twelve Tables had caused Gothofredus[46] to develop the hypothesis that *furtum* was placed in the first Table, which construction has been supported by Huvelin[47] and lately Diliberto.[48] Gellius VI 15 1[49] supports this argument and De Francesco proposes a reason for this on the basis of Aulus Gellius XVI 10 8.[50] The author links "proletarii et adsidui et sanates et vades et subvades*"* to the *vindex* and guarantees for the *in ius vocatio*, who prevent *manus iniectio.* The "viginti quinque asses et taliones furtorumque quaestio cum lance et licio" follow the sequence of the Twelve Tables according to the hypothesis of Diliberto, with which De Francesco is in agreement.[51] According to this analysis *iniuria* and *furtum* are repositioned into the beginning of the Twelve Tables on the basis that the criterion is self-help and the application of the *actio iniuriarum* in cases where such self-help exceeded the boundaries of what was allowed.

3 *Table VIII 18 a; Limit on interest*

In view of the above hypotheses, namely that the Twelve Tables did not contain substantive law, but rather a catalogue of legal remedies, and secondly that Table 8 dealt with the protection of land, it may be apposite to pose the question whether the assumption that the Twelve Tables indeed contained a section limiting the rate of interest as represented in *FIRA* Table VIII 18 a is justified. The penalty found in VIII 18 b is obviously dependent on the existence of the first section and will by implication share its fate.

The source of VIII 18 a is Tacitus' *Annales* book VI chapter 16 which states:

> "It was for the first time provided in the Twelve Tables that no one was to practice interest of more than one twelfth, when previously the rate was manipulated by the whim of the wealthy."[52]

3.1 Noodt

At the beginning of the eighteenth century the Dutch Romanist Noodt devoted a monograph to money lending at interest, *De Foenore et Usura.*[53] In chapter 2 of

[43] Self-help is also present in the cases of the thief in the night and the thief practising armed resistance in which events *endoplorare* is required.
[44] (n 39) 417 ff.
[45] (n 39) 429 ff.
[46] (n 15).
[47] Huvelin *Études sur le "Furtum" Dans le Très Ancient Droit Romain* (1915) 18.
[48] (n 10 (2005)) 232 ff.
[49] *Noctes Atticae* VI 15 1: "Labeo in libro de duodecim tabulis secundo acria et severa iudicia de furtis habita esse apud veteres scripsit...."
[50] *Noctes Atticae* XVI 10 8: "Sed enim cum proletarii et adsidui et sanates et vades et subvades et viginti quinque asses et taliones furtorumque quaestio cum lance et licio evanuerint omnisque illa duodecim tabularum antiquitas nisi in legis actionibus centumviralium causarum lege Aebitia lata consopita sit, studium scientiamque ego praestare debeo iuris et legum vocumque earum, quibus utimur."
[51] (n 39) 432 ff.
[52] *Annales* VI 16: "nam primo duodecim tabulis sanctum, ne quis unciario fenore amplius exerceret, cum antea ex libidine locupletium agitaretur; dein rogatione tribunica ad semiuncias redactum; postremo vetita versura. multisque plebi scitis obviam itum fraudibus, quae totiens repressae miras per artes rursum oriebantur."
[53] *De Foenore et Usuris Libri Tres.* This work appeared in 1698 and the fourth edition is found in the *Opera Omnia* of 1735 published in Leiden by Johannes Arnold Langerak, which is the work consulted.

book II he discusses the different terminology used by the Romans in respect of interest. Noodt explains the term *centesima* to mean that one-hundredth part of the principal is to be paid every month as interest.[54] He notes that this is an abridgement and that the full term would read *centesima sortis portio usura*, a hundredth portion of the principal as interest, or even *centesima sortis portio usurae nomine, singulis mensibus pendenda*, a hundredth portion of the principal to be paid monthly under the heading interest.[55]

The *centesima* was divided into twelve.[56] Noodt then explains that one finds *tertia centesimae pars*, a third part of a hundredth;[57] *usura ex quarta centesimae parte*, interest based on a fourth part of a hundredth;[58] and *dimidia centesimae pars*, half a part of a hundredth and *bes centesimae*, two-thirds of a hundredth;[59] one further reads of *usurae unciae*, one-twelfth interest;[60] *quadrantes (usurae)*, a fourth part;[61] *trientes (usurae)*, one-third;[62] *quincunces (usurae)*, five-twelfths;[63] *semisses (usurae)*, half;[64] *besses (usurae)*, two-thirds;[65] and of *deunces (usurae)*, eleven-twelfths.[66] In consequence, when a *centesima* or *assis usura* renders one coin every month from a loan of one hundred coins, that is to say twelve coins every year, it is clear that *unciae usurae*, one-twelfth interest, is when a hundred coins bring forth a twelfth part of a coin per month, that is to say one coin per year.[67] Thus Noodt concludes in respect of the Tacitus fragment that the interest of one-twelfth mentioned by Tacitus is not twelve percent per year but one-twelfth part of that, because the one-twelfth mentioned by Tacitus is one-twelfth of one-hundredth. Noodt is thus forced to argue that the provision of the Twelve Tables did not remain in force long, as it appears that it had fallen into disuse in 385 BC at the time of the revolt of Manlius.[68] This conclusion is forced on him by Livius, book VI chapter 14, where a distinguished soldier cried out during these events that he had been ruined by debt; that he had repaid

[54] (n 53) II 2 207. Noodt refers to Hermolaus Barbarus as the first to come to this conclusion on the basis of Columella's *De re Rustica* III 3. Thereafter Antonius Augustinus *Emendationes et Opiniones Libri IV* (1582) II 10 agreed that with the term *centesima* or *centesima usura* is meant a one hundredth part of the principal to be paid every month as interest. Noodt also cites Constantinus Harmenopulus *Promptuarium Iuris Civilis seu Manuale Legum, Dictum Hexabiblus* (1556) III 3 7.

[55] Noodt (n 53) 207 relies on Johannes Fredericus Gronovius *De Pecunia Vetere* III 13.

[56] Noodt (n 53) 208 cites the Greek scholiast in *Basilica* 38 17 *ad C* 5 56 2, V 189 who says: "They divide the *centesima* into twelve *unciae*, ounces."

[57] *D* 22 1 17 8, *C* 4 32 26 2, *C* 5 12 31 5(2). Noodt incorrectly refers to *C* 4 32 26 1.

[58] *C* 3 31 12 1.

[59] *C* 4 32 26 2.

[60] *D* 26 7 47 4.

[61] *D* 33 1 21 4.

[62] *D* 26 7 7 10 and Cicero *Ad Atticum* IV 15 7 *Faenus ex triente*.

[63] *D* 27 7 7 10 (Noodt refers to par 11), *D* 22 1 17 and *D* 46 3 102 3 and Persius *Satura* V 149.

[64] *D* 46 3 102 3 and Plinius *Naturalis Historia* XIV 4 56.

[65] Cicero *Ad Atticum* IV 15 7.

[66] Persius *Satura* V 150.

[67] Noodt (n 53) II 4 210; see also II 2 208 where he explains that *sextantes usuras*, one-sixth interest, is when a hundred coins produce a sixth part of a coin per month, that is to say two coins per year; the interest is *quadrantes usuras*, one-fourth, when a hundred coins acquire a fourth part of a coin per month, that is to say three coins per year, *trientes usuras*, one-third, when a hundred coins deliver a third part of a coin per month, that is to say four coins per year; *quincunces usuras*, one-fifth, when a hundred coins deliver one-third plus one-twelfth per month, that is to say five coins per year, *semesses usuras*, one half, when a hundred coins bring forth half a coin per month, that is to say six coins per year.

[68] Noodt (n 53) II 4 210.

the principal many times over, but that new interest always surpassed his means.[69] Noodt queries how this could be possible if the Twelve Tables prescribed an interest rate of one percent per year? He concludes that the only explanation is that the provision of the Twelve Tables had by 385 BC fallen into disuse and that the maximum interest of twelve percent had replaced the minimum of one percent.[70]

What Tacitus really meant with *foenus unciarium*[71] has been controversial since the Middle Ages. Recently Pikulska made a well-researched contribution to this debate and in her "Fenus unciarum"[72] she sets out the different positions.

3.2 Pikulska

First, the one percent per year solution supported by Noodt[73] has been rejected on account of anachronisms; not only is the method of calculating interest of later centuries placed into the fifth century BC, but the classical term *usurae unciae* is held to be the equivalent of the *fenus unciarium*. Moreover, an interest rate of one percent per year is incompatible with Livius's history of social conflict.

During the nineteenth century Niebuhr developed the hypothesis that *fenus unciarium* means interest of one-twelfth of the principal per year; a year being the old year of ten months.[74] This theory found many adherents among the German pandectists and continues to be widely supported albeit in a slightly adapted form after the rejection of the cyclical ten months year in favour of the year consisting of twelve months.[75] This produces an interest rate of ten percent in a year of twelve months.

[69] *Ab urbe condita* VI 14: "cum maior domi exorta moles coegit acciri Romam eum gliscente in dies seditione, quam solito magis metuendam auctor faciebat. non enim iam orationes modo M. Manli sed facta, popularia in speciem, tumultuosa eadem, qua mente fierent intuenda erant. centurionem, nobilem militaribus factis, iudicatum pecuniae cum duci vidisset, medio foro cum caterva sua accurrit et manum iniecit; vociferatusque de superbia patrum ac crudelitate feneratorum et miseriis plebis, virtutibus eius viri fortunaque, "tum vero ego" inquit "nequiquam hac dextra Capitolium arcemque servauerim, si civem commilitonemque meum tamquam Gallis victoribus captum in servitutem ac vincula duci videam". inde rem creditori palam populo solvit libraque et aere liberatum emittit, deos atque homines obtestantem ut M. Manlio, liberatori suo, parenti plebis Romanae, gratiam referant. acceptus extemplo in tumultuosam turbam et ipse tumultum augebat, cicatrices acceptas Veienti Gallico aliisque deinceps bellis ostentans: se militantem, se restituentem eversos penates, multiplici iam sorte exsoluta, mergentibus semper sortem usuris, obrutum fenore esse."

[70] Noodt (n 53) II 4 211.

[71] For *foenus* see: Festus *De Verbis Veteribus sv* Foenus; Aulus Gellius *Noctes Atticae* XVI 12; Nonius *De Indiscretis Generibus per Ordinem Litterarum* I; Varro *De Lingua Latina* IV;. Noodt (n 53) I 3 181 refers to Vossius' *Etymologicon* where it is held that the word derives from the ancient and obsolete word *feo*: hence, *fetus* and *fecundus* and *fenum* and *femen* and *femina*; in the same way as from φαω came φω, which later became *for, fari;* hence by a similar lengthening *fatum* was formed, as were *facundus* and *fanum*. Thus, the origin and the proper meaning of the word is that *fenus* is not the money which brings forth, but it is the offspring born from that money, although by common usage it became acceptable that it could also be used for money lent at interest.

[72] 2002 *RIDA* 165-183.

[73] Which was promoted by both Cujacius and Montesquieu and was widely held during the sixteenth and seventeenth centuries. Pikulska (n 72) 168 n 7.

[74] Pikulska (n 72) 169, where she refers to Niebuhr III *Römische Geschichte* (1832) 47-52.

[75] Pikulska (n 72) 169 ff where she mentions for example Mommsen *Römische Geschichte* I (1854) 151; Streuber *Zinsfuss bei den Römern* (1857) 60; Klingmüller *RE* VI (1909) *sv* Fenus 2187 ff; Rotondi "Vecchie e nuove tendenze per la repressione dell' usura" in III *Scritti Giuridici* (1922) 391; Cuq I *Les Institutions Juridiques des Romains* (1904) 116; Nicolau "Le problème de *fenus unciarium*" in *Mélanges Iorga* (1933) 925 ff, Wieacker "Zwölftafelprobleme" 1956 *RIDA* 478; Frank I *An Economic Survey of Ancient Rome* (1959) 28; Malloney "Usury in Greek, Roman and Rabbinic thought" 1971 *Traditio* 89; Urfus *Pravo Uver a Lichva v Minulosti* (1975) 9-22; Sondel *Dictionnaire Latin-polonias Pour les Juristes* (1997) and Wolodkiewicz and Zablocka *Prawo Rzymsie* (1996) 227.

However, an alternative interpretation agrees on an interest rate of one hundred percent *per annum*.[76] Accursius is mentioned as the originator of this hypothesis and Pikulska cites Appleton,[77] Scialoja,[78] Baloch[79] and Zehnacker[80] as the twentieth-century protagonists of this belief. The argument proffered is that one-twelfth is the monthly rate, which doubles the principal in twelve months.

The drastic difference between the various theories is based upon speculation concerning Roman society and economy during the fifth century BC. Although all authors view Rome as a primitive agricultural society with little trade or artisanship, their main point of difference appears to have revolved around the question whether cultivation or cattle farming was predominant; adherents of the first argue that farm income arrives only once a year after harvest;[81] the others reason that cattle farmers are not dependent on the seasons for sowing and reaping.[82] The latter authors are obviously ignorant of the fact that cows calve only once per year which is season-bound. In the last hypothesis loans would be only of short duration as animals, food, feed, and seeds were borrowed.

Pikulska reaches the same conclusion, namely that the Twelve Tables determined a maximum interest rate of one hundred percent per year, but bases her conclusion on Livius, socio-economic analysis and the works of Appleton, Scialoja and Zehnacker.[83]

In contrast this paper argues that the new interpretation of the Twelve Tables by Humbert[84] supports the hypothesis that no provision on interest was part of the Twelve Tables and that arguments for this hypothesis can be found in Livius, and more recently in the works of De Martino.

3.3 Titus Livius *Ab Urbe Condita*

It is clear that Livius viewed debt and in particular overwhelming debt resulting from excessive interest as one of the major socio-economic problems during the Roman republic. Thus many fragments in the sixth book depict in emotional manner the distress of the plebeians resulting from the cruelty of patrician moneylenders.[85] More to the point Livius, book VII chapter 16,[86] informs us that in 357 BC a measure was proposed by the tribunes of the people, Marcus Duilius and Lucius Menenius,

[76] *Cf* Kaser I *Das römische Privatrecht* (1971) 168.
[77] "Le taux de '*fenus unciarium*'" 1919 *NRHD passim*.
[78] "*Unciarium fenus*, T Liv VII 27 3, Tac VI 16" in II *Studi Giuridici* (1934) 287 f.
[79] "Adaptation of law to economic conditions according to Roman law" in *Atti del Congresso Internazionale di Diritto Romano e di Storia del Diritto* (1951) II 315.
[80] "Unciarium fenus" in *Mélanges Pierre Wuilleumier* (1980) 356.
[81] Pikulska (n 72) 169
[82] (n 72) 170 ff.
[83] (n 72) 170-178.
[84] Talamanca "Le Dodici Tavole ed i negozi obbligatori" in *Le Dodici Tavole* (2005) 331-375 addresses the question of juristic acts leading to obligations in the Twelve Tables. He researches the transmissibility and divisibility of the obligations belonging to an inheritance, *sponsio*, *vades* and *praedes*, *pignoris capio* and *mancipatio* and *nexum* and every topic leads him into the law of procedure, namely the *actio familiae erciscundae*, the *legisactio per iudicis arbitrive postulationem*, procedural guarantees, a legal remedy, the *actio auctoritatis*, *addictio* and *manus iniectio*. These findings are in harmony with the hypothesis proposed by Humbert that the Twelve Tables were the codification of the procedure and the procedural means and did not address substantive law.
[85] *Ab Urbe Condita* VI 11, VI 14, VI 34-37.
[86] VII 16: "*Haud* aeque laeta patribus insequenti anno C. Marcio Cn. Manlio consulibus de unciario fenore a M. Duillio L. Menenio tribunis plebis rogatio est perlata; et plebs aliquanto eam cupidius sciuit."

on interest of one-twelfth, which was not welcomed by the patricians, and that the people somewhat too covetously assented to and voted for it. He continues in book VII chapter 19 that in spite of the fact that the interest rate had been reduced to one-twelfth, the debtors continued to fall into slavery on account of the principal.[87] Book VII chapter 27 relates that in 347 B C the rate of interest was reduced by half (one twenty-fourth) and that payment of the principal was to be made in four equal instalments, the first at once, the remainder in three successive years. Though many plebeians were still in distress, the senate looked upon the maintenance of public credit as more important than the removal of individual hardships.[88]

Tacitus confirms in book VI chapter 16[89] that later as the result of a proposal by the tribunes, interest was reduced to one-twenty-fourth and continues that afterwards *versura* was forbidden. There is a difference of opinion on the meaning of *versura*,[90] which on the basis of Festus[91] is considered rolling over of debt.[92] Another possibility is that *versura* should read *usura* in which interpretation Tacitus would refer to the *lex Genucia* which Genucius, a tribune of the people, proposed to the people in 342 B C. Livius tells in book VII chapter 42[93] that L Genucius, a tribune of the plebs, proposed a measure declaring lending money at interest illegal. Livius shows caution stating: "If all these concessions were really made it is quite clear that the revolt possessed considerable strength."[94]

The version that the *lex Genucia* prohibited interest is confirmed by Appianus in book 1 of his *De Bellis Civilibus*[95] where he describes the murder of the *praetor*

87 VII 19: "Non eadem domi quae militiae fortuna erat plebi Romanae. Nam etsi unciario fenore facto leuata usura erat, sorte ipsa obruebantur inopes nexumque inibant."

88 VII 27: "Idem otium domi forisque mansit T. Manlio Torquato [L.f.] C. Plautio consulibus. Semunciarium tantum ex unciario fenus factum, et in pensiones aequas triennii, ita ut quarta praesens esset, solutio aeris alieni dispensata est; et sic quoque parte plebis adfecta fides tamen publica priuatis difficultatibus potior ad curam senatui fuit."

89 n 52.

90 Pikulska (n 72) 168 n 5.

91 Festus (n 71): "versuram facere, mutuam pecuniam sumere, ex eo dictum est, quod initio qui mutuabantur ab aliis, ut aliis solverent, velut verterent creditorem."

92 Whiston "*Fenus* (τόκος), interest of money" in Smith *A Dictionary of Greek and Roman Antiquities* (1875) 527.

93 VII 42: "Praeter haec invenio apud quosdam L. Genucium tribunum plebis tulisse ad plebem ne fenerare liceret; item aliis plebi scitis cautum ne quis eundem magistratum intra decem annos caperet neu duos magistratus uno anno gereret utique liceret consules ambos plebeios creari. Quae si omnia concessa sunt plebi, apparet haud parvas vires defectionem habuisse. Aliis annalibus proditum est neque dictatorem Valerium dictum sed per consules omnem rem actam neque antequam Romam veniretur sed Romae eam multitudinem coniuratorum ad arma consternatam esse nec in T. Quincti villam sed in aedes C. Manli nocte impetum factum eumque a coniuratis comprehensum ut dux fieret; inde ad quartum lapidem profectos loco munito consedisse; nec ab ducibus mentionem concordiae ortam sed repente, eum in aciem armati exercitus processissent, salutationem factam et permixtos dextras iungere ac complecti inter se lacrimantes milites coepisse coactosque consules, cum viderent aversos a dimicatione militum animos, rettulisse ad patres de concordia reconciliandа. Adeo nihil praeterquam seditionem fuisse eamque compositam inter antiquos rerum auctores constat."

94 *Quae si omnia concessa sunt plebi, apparet haud parvas vires defectionem habuisse*.

95 I 54: "About the same time dissensions arose in the city between debtors and creditors, since the latter exacted the money due to them with interest, although an old law distinctly forbade lending on interest and imposed a penalty on any one doing so. It seems that the ancient Romans, like the Greeks, abhorred the taking of interest on loans as something knavish, and hard on the poor, and leading to contention and enmity; ... But, since time had sanctioned the practice of taking interest, the creditors demanded it according to custom. The debtors, on the other hand, put off their payments on the plea of war and civil commotion. Some indeed threatened to exact the legal penalty from the interest-takers."

Asellio while offering sacrifice to Castor and Pollux in the forum in 89 BC. Appianus tells that although it had become custom to demand interest, an old law forbade lending at interest and penalised it. Debtors deferred payment on account of war and sedition and some threatened to invoke the statutory penalty. The *praetor* unsuccessfully tried to reconcile the opposing parties and then allowed the matter to go to court, at which the money lenders, exasperated that the old statute was revived, killed the *praetor*.

Livius returns to money lending when setting out the events of 193 BC. He relates in book XXXV chapter 7[96] that Roman citizens were exploited by money lenders although numerous statutes had been passed to curb this greed. However, this legislation was fraudulently circumvented by lending through Latin allies, who were not bound by these statutes. In this way debtors were ruined by interest. It was decided to fix a date, namely the next *Feralia*[97] and that all citizens of the allied states who had lent money to Roman citizens were required to declare so from that date, and that from that day the loan would be subject to those statutes which the debtor elected. From the declarations made the magnitude of the debts contracted under this fraudulent system was discovered, and M Sempronius, one of the tribunes of the *plebs*, with the consent of the senate proposed a measure which the *plebs* adopted, providing that debts contracted with members of the Latin and allied communities should come under the same laws as those contracted with Roman citizens. This confirms that the statutes dealing with lending money at interest among Roman citizens, were not binding on their Latin allies, but does not state unequivocally that demanding interest was prohibited.

Noodt believed that the *lex Sempronia* extended the *lex Genucia* to Latin allies, but that the law continued to be circumvented. He held that the moneylenders forced debtors to renounce the benefit of that statute in contracting *foenus* (since creditors were unwilling to lend them money unless they undertook not to invoke the *lex Genucia*) or because the *praetores* neglected the statute. According to him this is what Tacitus meant in *Annales* book 6 chapter 16, where he says that "while the frauds were met with numerous plebiscites, even after having been suppressed repeatedly they kept on cropping up again by means of extraordinary stratagems".[98]

4 *Lex Duilia Menenia*

Although Livius repeatedly refers to the socio-economic evil of lending money at interest he does not attribute any restrictions in this regard to the Twelve Tables. Nor is such reference found in Appianus, or any other author except Tacitus.

Pikulska mentions that during the twentieth century doubts regarding the validity of Tacitus' text have arisen.[99] The deciding factor is the *lex Duilia Menenia* of 357 BC mentioned by Livius in book VII chapter 16, which measure put the maximum

[96] XXXV 7: "Instabat enim cura alia, quod civitas faenore laborabat et quod, cum multis faenebribus legibus constricta avaritia esset, via fraudis inita erat ut in socios, qui non tenerentur iis legibus, nomina transcriberent; ita libero faenore obruebantur debitores. cuius coercendi cum ratio quaereretur, diem finiri placuit Feralia quae proxime fuissent, ut qui post eam diem socii civibus Romanis credidissent pecunias profiterentur, et ex ea die pecuniae creditae quibus debitor vellet legibus ius creditori diceretur. inde postquam professionibus detecta est magnitudo aeris alieni per hanc fraudem contracti, M. Sempronius tribunus plebis ex auctoritate patrum plebem rogavit plebesque scivit ut cum sociis ac nomine Latino creditae pecuniae ius idem quod cum civibus Romanis esset."

[97] The festival of the dead on 17 or 21 February.

[98] (n 53) II 4 211.

[99] (n 72) 179.

interest on one-twelfth. Although the predominant view[100] still holds that this statute merely re-affirmed the provision of the Twelve Tables, others concluded that prior to 357 BC no limit on interest had existed,[101] or that the provision of the Twelve Tables had been repealed during the interim period.[102] In particular two aspects deserve attention. First, the fact that Livius' description of the distress of the plebeians resulting from the cruelty of patrician moneylenders[103] are all situated in the context of the *lex Duilia Menenia*, which observation was made by Nicolau in 1933.[104] Although it is argued by Pikulska that this does not prove the absence of a provision regarding interest in the Twelve Tables[105] the balance shifts in favour of the belief that the first limitation of interest was introduced by the *lex Duilia Menenia* in 357 BC when certain aspects of the work of De Martino[106] are taken into consideration. This author relates the need to limit interest to the development of monetisation and the introduction of coined money.[107] The second point relates to the prosecution of moneylenders. Recently this aspect has been addressed by Revuelta,[108] who relies on Livius VII 28[109] as the first reference that public prosecution in this respect had taken place in 344 BC and on Plinius the elder,[110] who mentions that around 300 BC a temple dedicated to *Concordia* was built from the fines paid by condemned moneylenders.

5 *Roman money; interest on produce*

The oldest money used by the Roman people was the *as libralis*, or one pound of bronze, which was initially unstamped, but later imprinted as decreed by a statute of Servius Tullius.[111] Plinius the elder relates that this situation lasted until the first Punic war,[112] when it was officially decided that *asses sextantarii*, that is *asses* worth one-sixth of the old *as*, be coined.[113] De Martino reports that archaeological and numismatic research dates the appearance of coined money in Rome to not before 338 BC.[114] Thus before this date only the *as libralis* was in use and in consequence inter-

[100] Kaser (n 76) 167 f.
[101] Pikulska (n 72) 179 where she refers to Pais "A propositi delle leggi nell' usura" in IV *Ricerche sulla Storia* (1921) 33-47.
[102] *ibid*. References to Karlowa II *Römische Rechtsgeschichte* (1885) 557 and Billeter *Geschichte des Zinsfusses im griechischen, römischen Altertum bis auf Justinian* (1898) 116 ff.
[103] VI 11, VI 14, VI 34-37.
[104] (n 75) 937 ff.
[105] (n 72) 180. She argues that an interest rate of one hundred percent per year, as supported by her, would have been ruinous, but reintroduced by the *lex Duilia Menenia* after the economic disasters following the invasion by the Gauls.
[106] "Riforme del IV secolo a C" 1975 *BIDR* 27-70. He does not reject the fact that the Twelve Tables legislated on the topic, but holds that the *fenus unciarium* was introduced in 357 BC.
[107] (n 104) 49-62. *Storia Economica di Roma Antica* (1979) 45-57, 143-146.
[108] 2004 *Revista de Estudios Historico-juridicos* 85-111.
[109] "Iudicia eo Anno Populi Tristia in Feneratores Facta, quibus ab Aedilibus Dicta Dies esset, Traduntur." See also Livius X 23 (296 BC), XXXV 41 (192 BC). The latter follows directly upon the *lex Sempronia*.
[110] *Naturalis Historia* XXXIII 6: "Hoc actum P Sempronio L Sulpicio cos. Flavius vovit aedem Concordiae, si populo reconciliasset ordines, et, cum ad id pecunia publice non decerneretur, ex multaticia faeneratoribus condemnatis aediculam aeream fecit in Graecostasi, quae tunc supra comitium erat."
[111] Noodt (n 53) II 2 207.
[112] 264-241 BC.
[113] (n 110) XXXIII 13. However, Festus (n 71) on *sextantarii asses* holds that this was done during the second Punic war.
[114] Pikulska (n 72) 181.

est could not be stipulated in any other way than parts of an *as*, which explains why both the Twelve Tables and the *lex Duilia Menenia* use the term *fenus unciarium*.

Although the fact that coined money was introduced after promulgation of the *lex Duilia Menenia* weakens de Martino's argument to a degree, it remains more plausible that excesses of moneylending were addressed on the eve of the modernisation of the monetary system rather than one hundred years earlier. In consequence, the majority view that the *lex Duilia Menenia* did no more than repeat the Twelve Tables becomes questionable.

Pikulska argues that even before the introduction of coined money, lending and borrowing were common occurrences and that interest was payable in such instances. This argument is supported by Hieronymus in his commentary on *Ezekiel* where he holds:

> "Some people think that interest relates only to money, and foreseeing this error, Divine Scripture forbids any form of superabundance: so that you may not receive more than you have given. Interest is usually exacted in the case of lands of corn and cereals, of wine and olive oil, and of all similar types: or, as the Holy Word calls it 'abundance'. For example: were we to give ten measures of corn in winter-time, and at the time of harvest receive back fifteen measures, in other words 50% more, anyone who considers himself absolutely fair will take a quarter more, and normally their argument is: 'I gave one measure, which sown did produce ten measures: surely it is only fair that I receive 50% more from what is mine, since as a result of my generosity he receives nine and a half times from what is mine.'"[115]

This text confirms two important principles: first, it has always been accepted that if produce is borrowed, for example oil, wine or corn, an increase or interest can be asked. This has always been justified on account of the varying and uncertain value of such products,[116] which are often expensive when given on loan for consumption on account of scarcity; however, when they have to be returned, they sell cheaply on account of oversupply. The creditor therefore runs a high risk of suffering loss and in consequence interest charged on produce has been allowed.[117] Moreover, the rate of interest on agricultural produce was without restriction,[118] until the emperor Constantinus imposed a limit in *C Th* 2 33 1.[119] In this constitution it was determined

[115] *Commentarius in Ezechielem* VI 18: "Putant quidam usuram tantum esse in pecunia. Quod praevidens Scriptura divina, omnis rei aufert superabundantiam, ut plus non recipiat quam dedisti. Solent in agris frumenti et milii, vini, et olei, ceterarumque specierum usurae exigi, sive ut appellat sermo divinus, abundantiae: verbi gratia, ut hyemis tempore demus decem modios, et in messe recipiamus quindecim, hoc est, amplius partem mediam. Qui justissimum se putaverit, quartam plus accipiat portionem, et solent argumentari et dicere: Dedi unum modium, qui satus fecit decem modios. Nonne justum est, ut medium modium de meo plus accipiam, cum ille mea liberalitate, novem et semis de meo habeat."

[116] Plinius the elder (n 108) XXXIII 57 164: The prices of things that I have here and there given, as we all know, vary from place to place and almost every year, according to the fluctuation in the costs of shipping, or as each market differs, or some monopolist whips up the prices of commodities.

[117] *C* 4 32 23 "Impp Diocletianus et Maximianus Iasoni. Oleo quidem vel quibuscumque fructibus mutuo datis incerti pretii ratio additamenta usurarum eiusdem materiae suasit admitti; C 4 32 11 (12) Imp Alexander A Aurelio Tyranno. Frumenti vel hordei mutuo dati accessio etiam ex nudo pacto praestanda est."

[118] *C* 4 32 26 2 "Imp Iustinianus A Menae pp. (i)n traiecticiis autem contractibus vel specierum fenore dationibus ad centesimam tantummodo licere stipulari nec eam excedere, licet veteribus legibus hoc erat concessum."

[119] "Quicumque fruges (humidas vel arentes) indigentibus mutuas dederint, usurae nomine tertiam partem superfluam consequantur, id est, ut si summa crediti in duobus modiis fuerit, tertium modium amplius consequantur. Quod si conventus creditor, propter commodum usurarum, debitum recuperare noluerit, non solum usuris, sed etiam debiti quantitate privandus est. Quae lex ad solas fruges pertinet. nam pro pecunia ultra singulas centesimas creditor vetatur accipere."

that an additional third part could be demanded as interest. The emperor illustrated how this was to be understood with an example, namely if you have lent two bushels of corn you must receive back two bushels for the principal and furthermore a third bushel for the interest. This is a very high interest, since it is as high as half the principal or capital, therefore called *hemiolia*.[120]

The second principle of the text is found in "were we to give ten measures of corn in winter-time, and at the time of harvest receive back fifteen measures, in other words 50% more". From this statement can be deduced that interest on for example seed will be owed from seeding until harvest time and that interest on produce will be owed for varying periods and from case to case, as "all seeds sprout at their allotted time, and animals, too, bring forth their offspring at their predetermined time".[121] Thus, not only was interest on consumables other than money without limit, but in all probability the period of the loan was not calculated by year.

6 *Conclusion*

Humbert's theory that the Twelve Tables were no codification of substantive Roman law but a precursor of the edict of the *praetor* opens the door to questioning which verses were indeed included in the original text. One case in point is the prohibition on excessive interest. The Roman historians inform us that high interest rates and in particular compound interest had been a consistent social problem, both in the past as well as into their own times; the latter opens the possibility that inclusion of this provision in the Twelve Tables represents a back projection of a contemporary social problem into the distant past with the addition of an authoritative solution. The fact that only Tacitus makes mention of such prohibition, read in conjunction with Livius' impassioned information concerning the interest rate, has led to the hypothesis that a limit on interest was first introduced by the *lex Duilia Menenia*. This hypothesis finds support in the probable date of the introduction of coined money. Another important argument is found in the fact that a limit on interest on produce was introduced by emperor Constantinus. This means that the previous statutory limitations on the interest rate only applied to monetary loans, which argues in favour of the connection to the increased monetisation of the Roman economy. Thus, the answer to the question whether the Twelve Tables did indeed contain a verse prohibiting *fenus unciarium* is negative.

Whether the *fenus unciarium* of the Roman economy in the early stages of monetisation was calculated (and paid?) monthly, yearly or in another fashion remains an open question. Arguments in favour of a monthly rate could be the fact that in the early stages of the developing economy money was scarce and as a result of the law of supply and demand, expensive; that an interest rate of less than ten percent per year can hardly qualify as usurious and takes the sting out of most fragments of the historians; that workers were paid daily, weekly or monthly; that the Twelve Tables also used the month as a unit; and finally, that the Romans of later years calculated their interest monthly.

[120] Aulus Gellius (n 71) XIV where he wrote that a *hemiolios* is that which contains a certain number plus half of that number, as in three to two, fifteen to ten, thirty to twenty.

[121] Basilius *Homilia in Psalmum* 14 vol 1 p 139.

SAMEVATTING

BEVAT DIE TWAALF TAFELS ENIGE BEPERKENDE VOORSKRIFTE OOR RENTEHEFFING?

Resente navorsing betreffende die Twaalf Tafels het die aard en sisteem van hierdie kodifikasie bevraagteken. Hierdie artikel neem kennis van die bevindings van hierdie navorsing en stel gevolglik die vraag of Tafels 8 18 a en b, wat die beperking op rente bevat, in moderne rekonstruksies opgeneem moet word. Aan die hand van Livius asook die onlangse bevindings van Pikulska, Salazar Revuelta en De Martino word die hipotese aan die hand gedoen dat die eerste beperking op rente in die *lex Duilia Menenia* in 357 v C opgeneem is. Die vraag of rente in die eerste fase van monetisering maandeliks dan wel jaarliks betaalbaar was, is op basis van die huidige gegewens moeilik om te beantwoord.

Waarde(loosheid) van blote optel van sitasie

"I suggest here that ... [some] celebrated American Scholars in their best known works write either nonsense or at best as if they have not read the sources on which they depend ... [*y*]*et he is cited* almost always with complete approval in 309 articles *by professors who have not read his paper*" (Watson *The Shame of American Legal Education* (2005) 131). Die blote feit dat daar x-getal sitasies of verwysings in ander vakliteratuur na 'n bydrae is, verskaf geen waarborg oor die werklike kwaliteit van die tersake navorsing nie – 2007 *ZEuP (Zeitschrift für Europäisches Privatrecht*) 887.

Die bogemelde benadering kan kontrasteer word met die volgende:

"South Africa's share of world citations in this [ISI citation] database was 0.31 (just over 3 per very 1 000) for the period 1997-2001, while only 0.15% (1.5 per 1 000) of the 1% of top-cited articles had one or more South African addresses" – Gevers in § 1.1 van "Report on a strategic approach to research publishing in South Africa" ASSAF (2006) 1.

Laasgenoemde benadering wek die indruk van 'n blinde vertroue in die vermeende kwaliteitswaarborg vervat in blote verwysing sonder dat die inhoud van die verwysde bydrae vir werklike kwaliteit gelees word. Nóg 'n verwysing na 'n inherent swak bydrae of uitspraak verhoog nie die kwaliteit van die uitspraak of die bydrae nie.