

Roman Criminal Law

Throughout most of the Roman Republic, the law treated criminal offenses as “civil wrongs” handled in lawsuits between the victim and the accused offender. For example, the Praetor’s Edict declared that if a thief caught in the act were convicted, he had to pay his victim four times the value of the stolen goods. Judexes decided the compensation a victim deserved for personal injuries, usually a sum of money.

Around 80 B.C., toward the end of the republic, the government created jury courts. Each of the six courts specialized in particular crimes:

1. Murder and poisoning
2. Forgery
3. Treason
4. Bribery during elections
5. Extortion in the provinces
6. Embezzlement of public funds

Later, Augustus added two more courts: one for adultery and another for crimes related to hoarding or speculating on food. Less serious offenses were handled by the praetor.

Each court had a presiding judge and up to 75 jury members, who were chosen by lot to decide a case. At first, only patrician senators could serve as jurors, but later, juries included men from other propertied classes.

Any male Roman citizen could accuse someone of a crime and seek to prosecute the person before a jury court. To bring a case, the accuser had to take an oath that his prosecution was in good faith. The accused person remained free while each side prepared for the trial. Both sides had the right to challenge jurors and demand that they be replaced.

At the trial, the accusers had to be present and often conducted their own prosecution. The defendants, who wore dark togas, could represent themselves or be represented by one or more advocates.

The trial procedure would be familiar to us today: opening speeches, examination and cross-examination of witnesses, introduction of other evidence such as documents, and closing speeches. The Romans considered important any evidence about the defendant’s character. The court could order the punishment of a witness who committed perjury. It was necessary for a majority of the jurors to find a defendant guilty. If the jury split evenly, the defendant would go free.

Under the jury court system, the law assigned penalties for crimes. The punishment depended on the class of the offender. Lower-class criminals suffered physical punishment and death much more frequently than upper-class offenders for the same crime.

Imperial Courts

Later in the empire, imperial court officers took over the job of prosecuting criminal defendants. A network of spies and investigators passed on evidence to imperial prosecutors. Torture became a common method for gathering evidence and securing confessions. The concept of a fair trial further suffered because the emperor could always dictate the verdict.

Capital punishment was common, and the usual method was crucifixion (“crux” is Latin for “cross”). But the Romans had many other methods. A convicted offender might be sent to fight as a gladiator against other condemned prisoners or against wild animals. Others were decapitated, impaled, burned or buried alive, or thrown off cliffs or into the sea. The Roman historian Tacitus described one emperor’s rampage against Christians: “Dressed in wild animal skins, they were torn to pieces by dogs, or crucified, or made into torches to be ignited after dark as substitutes for daylight.”

Other harsh penalties might be inflicted. They included scourging, hard labor in mines, exile, and fines. For some offenses, the emperor confiscated the convicted criminal’s property. In many cases, this impoverished the offender’s entire family.

Treason included anything from armed rebellion to cursing the emperor. Those found guilty would be banished or executed and have their property confiscated. Many private organizations were carefully controlled or outlawed because they provided opportunities for people to meet and conspire against the emperor. This was one reason why emperors banned the early Christian church.

Some changes occurred in criminal law when Christianity became the official religion of the Roman Empire about A.D. 400. Crucifixion and gladiator contests were outlawed, and the death penalty was less frequently imposed. The emperors also prosecuted new crimes such as heresy (dissent from the church), practicing a religion other than Christianity, and the seduction of women.

For Discussion

1. What were the differences in how crimes were prosecuted early in the republic, later in the republic, and in the later empire? Which do you think was the best process? Why?
2. What was the trial process in jury courts?
3. In the time of jury courts, if a person were charged with forgery and embezzlement of public funds, what problems might this pose?
4. What were the most common punishments during the empire?