



Lecture 19: Crime and Punishment

Criminal Law in Rome

- Public Law (*ius publicum*) and private law (*ius privatum*). Public law protected the interests of the Roman state while private law should protect individuals.
- In the Roman law *ius privatum* included personal, property, civil and criminal law; judicial proceeding was private process (*iudicium privatum*)
- Crimes were part of private law (except the most severe ones that were prosecuted by the state)

Criminal Law in Rome

- In the Roman Republic cases affecting criminal law were presented to the **praetor**.
- A new administration of criminal law was, however, introduced with the imperial government. The senate was made the instrument of imperial power for the condemnation of criminals charged with offences against the state.

Criminal Law in Rome

- The ordinary magistrates became invested with powers which under the republic had been reserved to the people, either in the *comitia* or in the popular body of judices, who sat with the praetor.
- Any Roman citizen might be a public accuser and prosecute criminal actions, but it seems not to have been usual, except when some political object was sought, or where the accuser had some relationship to the injured party

Criminal Law in Rome

- It was a peculiarity of the Roman criminal law that, however mild it became in respect to free citizens, it was enforced against slaves and foreigners with all the stringency of its ancient severity.
- The operation of the courts depended to a considerable extent on the actions of private citizens in bringing complains. This might bring to professional blackmailers, the sycophants and *delatores* (informers), against whom steps are repeatedly taken by the authorities.

Punishment

- Punishment according to Roman Law was often designated to humiliate the condemned, for instance through the public degradation of the proscriptions or of crucifixion, a punishment reserved for non citizens) and to offer a shocking warning to those who observed their fates.
- Punishment was often associated with public spectacles.

Punishment

- Some of the condemned were kept in confinement in the mines, the quarries or the mills, but imprisonment was mainly an intermediate stage before the establishment of the guilt of the accused.

Mamertine Prison (*Carcere Mamertino*) or Tullianum



The Twelve Tables, c. 450 BCE

- Table VIII. 3. If one is slain while committing theft by night, he is rightly slain.
- 10. Any person who destroys by burning any building or heap of corn deposited alongside a house shall be bound, scourged, and put to death by burning at the stake provided that he has committed the said misdeed with malice aforethought; but if he shall have committed it by accident, that is, by negligence, it is ordained that he repair the damage or, if he be too poor to be competent for such punishment, he shall receive a lighter punishment.
- 12. If the theft has been done by night, if the owner kills the thief, the thief shall be held to be lawfully killed.
- 23. A person who had been found guilty of giving false witness shall be hurled down **from the Tarpeian Rock**.

Treatment of debtors in the Twelve Tablets

- III.1. One who has confessed a debt, or against whom judgment has been pronounced, shall have thirty days to pay it in. After that forcible seizure of his person is allowed. The creditor shall bring him before the magistrate. Unless he pays the amount of the judgment or some one in the presence of the magistrate interferes in his behalf as protector the creditor so shall take him home and fasten him in stocks or fetters. He shall fasten him with not less than fifteen pounds of weight or, if he choose, with more. If the prisoner choose, he may furnish his own food. If he does not, the creditor must give him a pound of meal daily; if he choose he may give him more.
- 2. On the third market day let them divide his body among them. If they cut more or less than each one's share it shall be no crime

Proscriptions and condemnations of citizens. Sulla and the Second Triumvirate. Plutarch, Life of Sulla

- 31. He also proscribed any one who harboured and saved a proscribed person, making death the punishment for such humanity, without exception of brother, son, or parents, but offering any one who slew a proscribed person two talents as a reward for this murderous deed, even though a slave should slay his master, or a son his father. And what seemed the greatest injustice of all, he took away the **civil rights from the sons and grandsons** of those who had been proscribed, and **confiscated the property** of all.
5 Moreover, proscriptions were made not only in Rome, but also in every city of Italy, and neither temple of God, nor hearth of hospitality, nor paternal home was free from the stain of bloodshed, but husbands were butchered in the embraces of their wedded wives, and sons in the arms of their mothers. Those who fell victims to political resentment and private hatred were as nothing compared with those who were butchered **for the sake of their property, nay, even the executioners were prompted to say that his great house killed this man, his garden that man, his warm baths another.**

Punishment: Martial, On the Spectacles

7. On brigands forced to play cruel mythological roles on the arena

Just as Prometheus, bound to the Scythian rock,
Fed the bird unceasingly with his over-bold breast,
So Laureolus, hanging on the cross, offered
His real innards to a Caledonian boar.
His torn limbs quivered while his body dripped blood
And there was no bodily shape anywhere in his body.
At last he suffered the punishment that someone who is guilty
(Of killing his patron) or of cutting the throat of his master
Deserves, or one who has insanely robbed temples of their ancient
gold
Or has set savage fire to you, Rome.
But that criminal had surpassed the crimes of ancient tales
Whose punishment was what had previously been a legend.

Punishment. Codex Theodosianus 9.18.1

AD 315

- The emperor Constantine Augustus to Domitius Celsus, Vicar of Africa. Kidnappers who inflict the pitiful loss of their living children on parents were previously liable to be sentenced **to the mines**, along with other recognised punishments. If however someone is brought forward as accused of such a crime, after his guilt is clearly established with respect to the charge, **is he is a slave or a freed man, he is to be thrown to the beasts at the first available games; if he is a free man, however, he is to be put into the gladiatorial games**, with his provision, that he should perish by the sword before he can do anything to defend himself. Besides, we have decided that those who have been sent to the mines because of this charge are never to be recalled. Delivered 1 August, when Constantine Augustus for the fourth time, Licinius for the fourth time were consuls.

A family affair in the court

- Here was a woman of high birth, the wife of a praetorian senator, disinherited by her 80 year old father 10 days after he had fallen in love and brought home a stepmother for his daughter, and now suing for her patrimony in the in the united Centriumval court. 180 jurors were sitting, the total of the four panels acting together. Both parties were fully represented and had a large number of seats filled with their supporters and a close packed ring of onlookers, several rows deep, lined the walls of the courtroom. The bench was also crowded, and even the galleries were full of men and women leaning over in their eagerness to see and also to hear, through hearing was rather more difficult. Fathers, daughters and stepmothers all anxiously awaited the verdict.
- Pliny *Letter* 33.

A runaway slave

- I am Asellus, slave of Praeiectus, who is an administrative officer in the Department of the Grain Supply. I have escaped from my post. Capture me for I have run away. Return me to the barber's shop near the Temple of Flora.
- ILS 8727 (inscription from a slave collar).

Tebtunis Papyri 330 (2nd c. AD). Official complain about Burglary

- To Bolanus (strategos or magistrate of the district) from Ptolemaeus, son of patron, of the town of Tebtunis: Upon my return from a trip out of town, I found that my house had been burglarized and the entire contents had been stolen. Therefore, since I cannot remain silent about such behaviour, I am filing with you this document of complaint, and I am requesting that it be deposited in the registry so that, if anyone is shown to be guilty, I may deal with this case.

Robbery according to Law

- Someone who takes another's property by violence is liable under (the law of) theft (***furtum***). For who handles another's property more against the owner's will than someone who robs with violence? Such a person has therefore rightly been called an outrageous thief (***fur improbus***). But the praetor has introduced a special action on this offence, called *vi bonorum raptorum*: it is an action for fourfold damages (if brought within) a year, and for simple damages after a year. This action is available even if the robbery is only of a single thing of insignificant value.
- Gaius *Institutes* 3.209.

Robbery according to law

- If a fuller has received clothes to be cleaned or furbished, or a tailor has received them to be mended, for an agreed fee, and the clothes are stolen, then the fuller/tailor can bring an action for theft, not the clothes owner, because the owner has no interest in their not being lost as he can recover damages from the fuller/tailor with an *actio locati*. If the fuller/tailor is insolvent, then the owner, not being able to recover damages from him, can bring an action for theft himself, because in this case he has interest in the safety of the clothes.
- Gaius *Institutes* 4.104.

Graffiti from Pompeii

- VIII (Street of the Theaters); 64: A copper pot went missing from my shop. Anyone who returns it to me will be given 65 bronze coins (*sestertii*). 20 more will be given for information leading to the capture of the thief.

A murdered wife and the emperor: Tacitus *Annals* 4.22 (AD24).

- “At about this time the praetor Plautius Silvanus, for some unknown reason, threw his wife Apronia out of a window. Called before the emperor by his father-in-law L. Apronius, he answered confusedly that he had been asleep and knew nothing, and his wife must have killed herself. Tiberius instantly proceeded to the house and inspected the bedroom. There signs of violence and resistance were detectable. So Tiberius referred the case to the Senate, and it was entered for trial...[Silvanus killed himself]...Soon afterwards his first wife Numantina was acquitted of driving her husband insane by incantations and philtres.”

A murder discovered: Cicero, In defence of Cluentius 179-180

- The story of Strato, a doctor that committed diverse thefts and murders.
- He was suspicious of having assassinated the husband of Sassia, a lady from Larinum.
- Three years later he also committed theft and murder at her house in the following circumstances. “There was a safe in the house which he knew to contain a quantity of cash and gold; so one night he killed two of his fellow-slaves as they slept, threw them into the fish-pond, and himself cut out the bottom of the safe, abstracting ... sesterces and five pounds weight of gold...”

A murder discovered: Cicero, In defence of Cluentius 179-180

- “The theft was discovered next day, and the entire suspicion fell on the two slaves who were not forthcoming. Then they noticed the cutting out of the bottom of the safe, and people began to wonder how it could have been done. One of Sassia’s friends recalled having recently seen among the odds and ends for sale at some auction a small curved saw with teeth all round and crooked, by which it seemed that this circular cut might have been made.”

A murder discovered: Cicero, In defence of Cluentius 179-180

- “To put it shortly, inquiries were made from the auctioneer’s agents, and it was discovered that the saw went to Strato. This roused suspicion against Strato; and when he was openly taxed with the crime, the boy, his accomplice, took fright and told the whole story to his mistress: the bodies were found in the fishpond, Strato was put in irons, and the coins, though by no means of all them, were actually found in his shop. An inquiry was held to investigate the theft. For what else but theft could anyone suspect?”