



ROMAN LAW: THE ART OF THE GOOD AND THE FAIR?

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Claire: In the centre of every Roman town was the Basilica, where law was dispensed to all. The Roman law code is the basis of the legal system of many modern countries. It is one of Rome's most enduring achievements.

The Roman jurist Ulpian writes, *ius est ars boni et aequi* - 'the law is the art of the good and the fair'. But how 'good' and 'fair' was this law code? And who did it protect and benefit?

In the eyes of the law only the dead, the mad, and children under seven years old were relieved from responsibility. Equality before the law was not a Roman concept. In the Republic, the main factor determining legal status was Roman citizenship.

Unlike today, Roman laws and edicts were put up publicly and this is one of the few ways in which we can explore this distinction between citizen and non-citizen in the eyes of the law. Now I've come here to University of Warwick to meet Professor Alison Cooley, and to learn more about this written evidence for Roman law.

Here we have a painted notice from Herculaneum. So what does this particular notice say?

Alison: It is a painted notice set up by a local magistrate at Herculaneum called an aedile. It belongs on the wall of a water tower, it threatens penalties if any individual dumps either animal manure or - even worse - human excrement in the vicinity of the water tower, for obvious hygiene reasons. So in this particular instance if you were a citizen, you had to pay a fine if you were discovered dumping waste, but if you were a slave you were to be beaten, and it specifically says 'on your bottom', so very, very painful flogging was going to be in place for a slave.

Claire: So did this distinction between citizen and non-citizen continue?

Alison: Increasingly more and more people became Roman citizens, but what this meant is that the Romans had to invent new ways of distinguishing between the wealthy and the not so wealthy. So in the course of the 2nd and the 3rd century AD, new categories of citizen were invented; so you get those called the *honestiores* who are 'the more honourable', so in other words the wealthy, the magistrates, the senators,

the equestrians; and then the *humiliores*, they would have less protection under law, fewer privileges than the *honestiores*.

Claire:

This new distinction was ultimately based on wealth. Those who were able paid monetary fines to avoid corporal punishment. These were not seen as bribes, but paid for a separate treatment within the legal system for those who could afford it.

The Roman law code developed over hundreds of years. In many cases custom and tradition were indistinguishable from law, and they held the same weight.

In AD 61 the urban prefect Pedanius Secundus was murdered by one of his own slaves. According to ancient law and custom all four hundred slaves of his household should be executed. There were protests in the street about this mass execution of innocent men, women and children. There was no trial, and the case was decided solely by the Senate. Tacitus tells us that one senator, Gaius Cassius, spoke out in favour of the measure, justifying the executions as the only way to ensure the safety of the free people of Rome:

[quoting] *Every punishment that is used to provide a negative example contains some element of injustice, but the individual injustices are outweighed by the advantages to the community as a whole.*

The Senate did vote for execution, and there was such an uproar that the Emperor had to send in troops to restore order in the city. What this story tells us is that Roman punishments were designed to act as deterrents rather than corrective measures. Cassius admits that in this case innocent people would suffer, but society as a whole would benefit.

Alison:

So in the Roman world, it depended on your social status what exact penalty you would suffer for a particular crime. In the Roman law code it specifies for instance that if you are accused and convicted of political troublemaking and stirring up a mob you would either be exiled to an island in the case that you are a citizen, or you would be subject to the terrible penalty of being thrown to the beasts in the arena, or being hanged on the gallows.

Claire:

The system of privilege within the Roman legal code favoured those with money and power. The law applied to all, but those who were rich and influential could expect special treatment. Can a law code which does not measure people on equal standing ever really be 'good' and 'fair'? Can the murder of innocent people ever be justified for the good of the majority?