Crime, Criminal Justice, and the Jury Courts in Late Republican Rome

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Abstract

During the early Roman Republican era, serious crimes came under the jurisdiction of the assemblies of the Roman people (comitia), which, when acting as popular courts, were referred to as iudicia populi. In the course of time, however, it became common for the assemblies to delegate their judicial powers to specially appointed commissions, which acted as extraordinary courts (quaestiones extraordinariae) charged with the investigation and punishment of certain crimes. During the period of Rome's expansion in the Mediterranean world, as the city's population increased and various forms of crime proliferated, standing jury courts (quaestiones perpetuae) began to be established for trying those accused of common offences. The present paper traces the development of the Roman standing court system in its social and political setting, presenting information on guiding principles, procedures and goals and identifying some of the problems hampering its operation. It is submitted that, despite its shortcomings, the system did achieve a more efficient dispensation of justice and introduced new elements that fundamentally affected the subsequent development of the criminal law.

Introduction: The Origins of Roman Criminal Justice

In the earliest period of Roman history,(1) criminal law did not exist as an ordered body of rules bolstered by sanctions and administered by regular courts of

justice. As in other primitive societies, many acts that are now treated as offences against the state and prosecuted by public authorities were regarded as private wrongs that presented the injured party with a rightful claim to seek vengeance on the wrongdoer. However, certain wrongful acts that directly threatened the state's existence and security, such as treason *(perduellio*: putting oneself in the position of an enemy to the state)(2) and homicide *(parricidium*: the unlawful killing of a free man)(3) were punished as offences against the general community from a very early period. These offences were too grave to be atoned for by pecuniary compensation or,

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（1） Roman legal history is traditionally divided into four periods: (i) the archaic period, from the formation of the city-state of Rome (eighth century BC) to the middle of the third century BC; (ii) the pre-classical period, from the middle of the third century BC to the early first century AD; (iii) the classical period, from the early first century AD to the middle of the third century AD; and (iv) the post-classical period, from the middle of the third century AD to the sixth century AD. The archaic period covers the Monarchy and the early Republic; the pre-classical period largely coincides with the later part of the Republic; the classical period covers most of the first part of the imperial era, known as the Principate; and the post-classical period embraces the final years of the Principate and the late Empire or Dominate, including the age of Justinian (AD 527-565).

（2） The crime of treason was committed when a Roman citizen acted in a way that rendered him an enemy of the Roman state. Its scope embraced acts such as assisting an enemy in time of war, inciting an enemy to attack the Roman state, delivering a Roman citizen to an enemy and inciting an internal rebellion. A less grievous crime with a similar nature consisted of acts tending to impair the power, dignity or honour of the Roman state (*crimen laesae maiestatis*). However, the dividing line between these two types of crime was not precisely delienated.

in fact, by any penalty short of death.

Besides the aforesaid wrongs, the early law regarded certain violations of religious norms as crimes liable to provoke the gods' wrath against the entire community; this was only averted by the appropriate punishment and atonement for the violations. As these crimes were primarily directed against divine law, the pontiffs as guardians and ministers of state religion exacted the penalty. As a rule, the punishment imposed entailed sacrificing the offender to the deity concerned (*consecratio capitis*) and the confiscation of his property for religious uses (*consecratio bonorum*).(4) Such punishment was expiatory in character; it served to restore the harmony between the community and its gods (*pax deorum*) by eliminating the state of collective impurity created by the commission of the offence. An array of individual behaviour constituted sins that were expiated in the same way: the patron who wronged the client whom he was bound to protect; the son who mistreated his father; the man who removed a neighbour's landmark or destroyed his

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（3） *Parricidium* originally meant the killing of a *par*, i.e., a member of a clan or a close relative. It seems that initially *parricidium* was as a rule treated merely as a private delict presenting the deceased's kin with the right to execute vengeance on the offender. Indeed, avenging the killing of a kinsman was regarded as a religious duty. In a law attributed to King Numa Pompilius, any premediated killing of of a free man was declared to be equivalent to *parricidium* and, in the course of time, *parricidium* acquired the significance of willful murder in general. The fact that *parricidium* was in archaic Rome a term used to denote any murder of which the state took cognizance is also evidenced by the early office of *quaestores parricidii*, officials appointed by the king to investigate and handle cases of murder. In the later period of the Republic, *parricidium* was understood to refer to the murder of near relations (*parentes*). It retained this meaning in the classical sources as well as in the codification of Justinian, which precisely defines the circle of persons regarded as near relatives.

（4） However, with reference to the situation in primitive times, it is impossible to draw a clear distinction between secular and religious crimes. Treason, for example, may be regarded also as an offence against the gods protecting the community, and the execution of the offender as a sacrifice to them.

corn by night; the thief of sacred objects dedicated to the gods; the witness who gave false testimony; and the person who used witchcraft and incantations. Soon after the establishment of the Republic, if not earlier, the sacrifice of the offender was replaced by the milder penalty of outlawry and the confiscation of goods. As this penalty involved the exclusion of the offender (referred to as *sacer homo*) from the community and from the protection of human and divine law, anyone could kill the offender with impunity; his killing was regarded as a sacrifice to the deity he had sinned against.

As state organization evolved, especially after the enactment of the Law of the Twelve Tables (ca. 450 B.C.),(5) private vengeance was supplanted by retaliation through orderly state-supervised procedures. All injurious acts committed against private persons (*delicta privata*), except the most serious offences, were redressed at the injured party's initiative by means of a civil action (*actio poenalis*) that endeavoured to obtain compensation from the perpetrator as expiation of the act.(6) At the same time, an increasing number of secular offences were classified as public crimes (*crimina publica*) but some offences also exhibited religious influences.(7)

（5） The Law of the Twelve Tables embodied the first written record of the rules and procedures for the attainment of justice, and it entailed a new source of law in addition to the unwritten customary law. In the years following the enactment of the Law of the Twelve Tables, legal development was based largely on the interpretation of its text, a task carried out by the priests (pontiffs) and, in later times, by secular jurists.

（6） The category of *delicta privata* encompassed, for example, offences such as theft (*furtum*), bodily injury (*iniuria*), robbery (*rapina*), defamation of character and, since the enactment of the *lex Aquilia* in 286 BC, unlawful damage to another person's property (*damnum iniuria datum*). The *delicta privata* were regarded as existing within the domain of private law.

（7） A religious element is evident, for example, in the punishments imposed on the patron who wronged his client (XII Tables 8. 21.), on the witness who refused to testify at a trial (XII Tables 8. 22.) and on the person who depastured or cut down a neighbour's crop by stealth in the night (XII Tables 8. 9.).

However, the list of recognized public crimes only started to resemble a modern system of criminal law in the later Republican age.

According to Roman tradition, in the Monarchy era (753-509 BC) the king, who possessed all jurisdiction in principle, was accustomed to delegating his criminal jurisdiction in cases of treason to a pair of judges (*duumviri perduellionis*) who were specially appointed for each occasion, and in cases of murder to a pair of standing judges called *quaestores parricidii*. Regarding the capital sentences pronounced by either of these pairs of judges, the king had the discretion to allow an appeal to the people (*provocatio ad populum*) and could endorse their judgment on whether the offender should be killed or released.(8) However, it is impossible to ascertain the entire truth in the traditional account.(9)

After the establishment of the Republic, jurisdiction over the major secular crimes was vested in the consuls.(10) The authority to adjudicate (*cognitio*) derived from their right of supreme coercion (*coercitio maior*) included in their *imperium* or

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（8） The notion of *provocatio ad populum* first appears in the sources that elaborate the case of Horatius in connection with the crime of *perduellio*. See Livy 1. 26.

（9） Scholars have expressed doubts as to whether the *duumviri perduellionis* and the *quaestores parricidii* originated from the time of the kings, and there is evidence suggesting that the right of appealing to the assembly was first granted by a *lex Valeria* after the establishment of the Republic. See J. L. Strachan-Davidson, *Problems of Roman Criminal Law* (Clarendon Press, Oxford, 1912, repr. Rodopi, Amsterdam, 1969), 1, 126, 144, note 1; T. Mommsen, *Römisches Staatsrecht* I (Duncker & Humblot, Leipzig, 1887, repr. Akademische Druck- und Verlaganstalt, Graz, 1971), 2, 523; *Römisches Strafrecht* (Duncker & Humblot, Leipzig, 1899, repr. Akademische Druck- und Verlaganstalt, Graz, 1955 and Wissenschaftliche Buchgesellschaft, Darmstadt, 1961), 155.

（10） The consuls (*consules*) were the highest executive officers of the state. Their functions were very broad and included the administration of the state, leadership of the army and holding supreme command in war. Before the introduction of the praetorship in 367 BC, they also governed the administration of justice in relation to both civil and criminal matters.

supreme command.[11] If a case of treason (*perduellio*) arose, the consuls nominated two judges (*duoviri perduellionis*) to conduct the inquiry and pronounce the sentence.[12] In cases of murder (*parricidium*) the two quaestors acted as judges and in this capacity were designated *quaestores parricidii.* [13] The jurisdiction of the curule and plebeian aediles encompassed cases involving offences against the public order or public morals, and contraventions of statutory enactments. Originally, only a magistrate could instigate a charge against an individual and criminal proceedings had an entirely inquisitorial nature. From the third century BC, jurisdiction in cases involving persons belonging to the lower classes and slaves was assigned to the *tresviri capitales*, lower magistrates who exercised police functions in Rome.

A criminal prosecution could be based on a statutory enactment (such as the Law of the Twelve Tables), an established customary norm or an order of a state organ. Originally, criminal proceedings had an entirely inquisitorial nature. As soon as the commission of a crime captured a magistrate's notice, he had the responsibility to initiate such investigation of the case as he deemed necessary. There was no such thing as a third party participating formally in the proceedings as prosecutor or accuser and producing evidence to establish the accused's guilt. It was the duty of the magistrate to both instigate a charge against an individual and take steps to procure

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（11） Only a magistrate with *imperium* had the full power of *iurisdictio*, i.e., the power of prescribing the legal principles for determining legal disputes and could impose severe penalties for violations of their orders, including capital punishments (*coercitio maior*). Religious offences, on the other hand, were dealt with by the pontiffs.

（12） However, since the middle of the third century BC cases of *perduellio* were usually tackled by the *tribuni plebis* and the appointment of *duoviri perduellionis* became virtually obsolete.

（13） The original title of the quaestors seems to have been *quaestores parricidii*, which indicates that their duties in the administration of criminal justice came first in order of time. As their financial duties assumed increasing prominence, they were designated as *quaestores parricidii et aerarii*, and finally as *quaestores* simply. This, at any rate, is a possible explanation for an obscure matter.

the necessary evidence and thus, in a sense, he acted as prosecutor as well as judge.

According to Roman tradition, the *lex Valeria*, a statute passed in the first year of the Republic, stipulated that a Roman citizen could not be slain pursuant to a magistrate's sentence without a right of appeal to the people (*provocatio ad populum*). The Law of the Twelve Tables and subsequent legislation confirmed this rule that a capital sentence[(14)] pronounced by a magistrate could not be executed unless on appeal it had been ratified by the people.[(15)] A provision of the Law of the Twelve Tables (T. 9. 4.) rendered the assembly of the centuries (*comitia centuriata*, therein referred to as *comitiatus maximus*)[(16)] uniquely competent to deal with appeals against capital sentences. On the other hand, appeals against pecuniary sentences were tackled by the assembly of the tribes (*comitia tributa*) or the plebeian assembly (*concilum plebis*),[(17)] depending on whether the relevant sentence was pronounced by a magistrate of the *civitas* or the *plebs*.[(18)] However, we may observe after the enactment of the Law of the Twelve Tables the invariable practice of magistrates *cum imperio* to refrain from pronouncing a sentence that could be challenged on appeal to the people. The reason is that only the assembly of the centuries had authority to

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(14) The term *poena capitalis* denoted not only the sentence of death, but also a penalty entailing the loss of liberty or citizenship.

(15) Cicero, *De Re Publica* 2. 31; Livy 2. 8; 3. 55; 10. 9; Val. Max. 4. 1. 1; Dionysius 5. 19; D. 1. 2. 2. 16. (Pomponius). And see T. Mommsen, *Römisches Staatsrecht* I (Duncker & Humblot, Leipzig, 1887, repr. Akademische Druck- und Verlaganstalt, Graz, 1971), 163-4; *Römisches Strafrecht* (Duncker & Humblot, Leipzig, 1899, repr. Akademische Druck- und Verlaganstalt, Graz, 1955 and Wissenschaftliche Buchgesellschaft, Darmstadt, 1961), 56-57; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), 1-39.

(16) The *comitia centuriata*, the greatest of all Roman assemblies, consisted of the citizens organized on a timocratic basis into classes and centuries (*centuriae*). This assembly originally consisted of the citizens in military array. As time went on, however, its military basis was deprived of all reality and the century became merely a voting group that might be of any size, the literal significance thereof, as a body of a hundred men, being entirely lost.

impose a death sentence once a person was declared guilty of a capital offence.[19] Accordingly, criminal jurisdiction was exercised by magistrates alone only in cases involving less serious offences.[20]

（17） The *comitia tributa* was the assembly of the citizens organized into groups according to their place of residence. The *concilium plebis* was the assembly of the plebeians alone, and the voting unit therein was the tribe. From the time of the *lex Hortensia* (287 BC) onwards, this assembly, sitting under the presidency of a *tribunus plebis*, was by far the most active legislative organ of the state, and the great majority of the laws of which we have record were, strictly speaking, *plebiscita*. Although the formal distinction between the *concilum plebis* and the *comitia tributa* was retained until the close of the Republic, the differences between the two bodies, regarding their composition and the laws they enacted, gradually faded away. This mainly emanated from the elimination of the political division between the patricians and the plebeians and the rapid increase of the plebeian population.

（18） The right of appeal was re-confirmed and extended by the *lex Valeria Horatia* of 449 BC, the *lex Valeria* of 300 BC and the *leges Porciae* (first half of the second century BC). The *lex Valeria* is declared to have extended this right to corporal punishment, while under the *leges Porciae* an appeal could be raised against capital sentences and sentences of scourging (*verberatio, castigatio*) pronounced on Roman citizens anywhere (originally, the right of appeal lay only against sentences pronounced within the city of Rome or a radius of one mile therefrom). By the latter legislation, the magistrate who refused the *provocatio* was probably rendered liable to a charge of treason. The question of whether the right of appeal was available to citizens serving as soldiers has been a source of difficulty to historians. Although in theory it appears that under one of the *leges Porciae* every citizen soldier had this right, in practice it is unlikely that a military commander would allow an appeal where the exigencies of military discipine called for an immediate execution of the sentence.

（19） See B. Santalucia, *Diritto e processo penale nell' antica Roma*, 2nd ed. (Giuffrè, Milan, 1989), 31-89. Also consider J. L. Strachan-Davidson, *Problems of Roman Criminal Law* (Clarendon Press, Oxford, 1912, repr. Rodopi, Amsterdam, 1969), 138-40.

（20） As early as the middle of the fifth century BC, a series of legislative enactments (*lex Aternia Tarpeia, lex Menenia Sextia*) established the maximum limits for fines imposed by magistrates. See Aulus Gellius, *Noctes Atticae* 11. 1; Dionysius 10. 50; Cicero, *De Re Publica* 2. 35. As regards imprisonment, it should be noted that in Republican times this was normally regarded as a means of preventing escape and not as a form of punishment.

The rules concerning appeals and the restrictions imposed on the magistrates' judicial powers by legislation entailed the exercise of criminal jurisdiction by the Roman people in important cases during most of the Republican period.[21] The procedure adopted in trials before the people (*iudicia populi*) is only discoverable in the descriptions of writers from a later date and a great part remains obscure. Sources reveal that the magistrate who resolved to impeach a citizen, after duly summoning the accused, held a trial (*anquisitio*) in (at least) three successive *contiones* (informal public meetings). During these meetings he investigated the case and determined matters of fact and law based on the produced evidence.[22] If the accused was found guilty, the magistrate issued an order summoning the appropriate assembly to meet on the expiry of the regular interval of three market days (*trinum nundinum*).[23] When the assembly congregated on the appointed day, the magistrate presented a motion in the form of a bill (*rogatio*) for confirmation of the verdict and sentence. In response to this motion and without any preliminary debate, those in favour of confirmation voted '*condemno*' while those against it voted '*absolvo*'.[24] If the majority in the assembly was in favour of condemnation, the presiding magistrate pronounced the sentence.[25] A notable feature of Roman legal procedure was the right of the accused to flee Rome as a voluntary exile at any time before the assembly's final vote.

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(21) The jurisdiction of the popular assemblies embraced only political crimes or offences that affected the interests of the state.

(22) The magistrate might include more than one charge in the same accusation and could withdraw or amend the charge (or a charge) at any stage of the trial. Although he was not allowed to leave the penalty open, he could alter the punishment he initially proposed at a later stage of the proceedings.

(23) During this period (three market days amounted to twenty-four days) the citizens would have ample opportunities to discuss with one another the case and the issues it involved.

(24) The voting procedure was governed by the same rules as those applicable when the assembly had to decide on a legislative proposal.

Selection of this option entailed the enactment of a decree of outlawry, or interdiction from water and fire (*aquae et ignis interdictio*). This practically meant banishment accompanied by loss of citizenship and property. The individual declared an *interdictus* was deprived of legal protection and, if he returned to Rome without permission, could be killed by anyone with impunity.(26)

The Development of Criminal Justice in the Late Republican Age

As previously noted, during the early Republic, the prosecution and punishment of crimes against the state (*crimina publica*) fell within the jurisdiction of the magistrates and the assemblies of the people (*comitia*). On the other hand, retaliation for offences against private persons and their property (*delicta privata*) was left to the injured person. The authority of the magistrates to adjudicate criminal acts (*cognitio*) emanated from their right of supreme coercion (*coercitio maior*) attached to their *imperium*. Originally, acts of magisterial *coercitio* were not preceded

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（25） If the assembly was prevented from meeting at all (e.g., because of a tribunician veto) or proceedings were halted before the voting was completed (e.g., because of the appearance of an ill omen), the accused was released, as if he had been found not guilty.

（26） On the *iudicia populi* and the institution of the *provocatio ad populum* see A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), ch. 1; J. L. Strachan-Davidson, *Problems of Roman Criminal Law* (Clarendon Press, Oxford, 1912, repr. Rodopi, Amsterdam, 1969), 127 ff; W. Kunkel, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit* (Verl. der Bayer. Akad. der Wissenschaften, Munich, 1962), 9 ff; J. Martin, "Die Provokation in der klassischen und spaten Republik", (1970) 98 *Hermes*, 72; R. A. Bauman, *Crime and Punishment in Ancient Rome* (Routledge, London & New York, 1996), ch. 2; "The lex Valeria de provocatione of 300 BC", (1973) 22 *Hist*., 34-47; E. Staveley, "Provocatio during the fifth and fourth centuries BC", (1954) 3 *Hist*., 413; B. Santalucia, *Diritto e processo penale nell' antica Roma* , 2nd ed. (Giuffrè, Milan, 1989), ch. 2; V. Giuffré, *La repressione criminale nell' esperienza romana*, 4th ed. (Jovene, Naples, 1998), 24 ff.

by a formal procedure and the punishments imposed were determined by the magistrates at their discretion. However, a rule established in an early period declared that citizens could appeal to the centuriate assembly against capital sentences imposed by magistrates (*provocatio ad populum, ius provocationis*). When a citizen could appeal to the *comitia* against a sentence imposed by a magistrate, the original sentence was always appealed against and eventually it became a mere preliminary to the real trial before the *comitia.* [(27)] The magistrates still attended to minor infractions by engaging police measures, such as attachment of property, monetary fines, and even corporal punishment. However, by the middle of the second century BC all offences of a serious nature fell within the jurisdiction of the *comitia centuriata* and the *comitia tributa*. Cases involving offences against the property of private citizens were never submitted to the assemblies. Redress of such wrongdoings was sought in private proceedings and the state's role was confined to prescribing the rules for averting excessive retaliation towards the offender.

Adjudication of public crimes by the people may have been efficacious in the context of a small city-state composed of conservative farmers and middle-class citizens. However, as socio-economic and political conditions became more complex, especially in the period following Rome's wars of expansion, comitial trials proved increasingly inadequate to deal with the complicated issues that criminal prosecutions frequently invoked. Quite aside from the fact that trials by the people were cumbersome and time-consuming, the escalating number of cases made adjudication of public crimes by the assemblies very difficult.[(28)] Inevitably, popular criminal justice eventually had to be replaced by a new and more functional court system. The gradual evolution commenced in the early second century BC with the creation, by

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(27) Only a magistrate had the right to institute a charge against a citizen (as well as to summon the assembly), thus it was necessary for an accuser to appeal to a magistrate so that a formal accusation could be lodged against a person suspected of a crime.

decision of the people or the senate, of special or *ad hoc* tribunals (*quaestiones extraordinariae*) for the investigation of certain offences of a serious nature. These embraced offences such as abuse of power or dereliction of duty by magistrates and provincial officials, and conspiracies against public order and the existence of the state. Moreover, the senate, on occasions of emergency, assumed (or usurped) the power of setting up, by its own authority alone and without the sanction of the people, special courts from which there was no appeal.(29) A tribunal of this kind consisted invariably of a magistrate *cum imperio* (a consul or a praetor) surrounded by a body of assessors (*consilium*) selected by the magistrate or the senate.(30) The court's decision was determined by the majority of the assessors and no appeal against it was allowed as the court was regarded to represent the people. An early illustration of a special *quaestio* was the commission established by the senate in 186 BC to investigate and punish the crimes committed by members of the Bacchanalian societies.(31)

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(28) The immense concentration of impoverished citizens in Rome during this period was accompanied by a rapid increase in crime, especially violent crime. At the same time, the lure for money tempted the greedy and malfeasance in office gained appeal with its anticipated high rewards. As no regular police force existed in Rome, the detection of criminals was usually relegated to the injured parties or common informers, and this made the prosecution of offenders very difficult. In response to the escalating threat against public order, responsibility for the prosecution and punishment of certain offences, especially offences committed by slaves, foreigners, and citizens from the lower classes of society, was assigned to the *tresviri capitales*, low-ranking magistrates elected by the *comitia tributa*. See Cicero, *De Legibus* 3. 6; Sallust, *Catiline* 55; Aulus Gellius, *Noctes Atticae* 3. 3. 15; Livy 39. 14. 10; Pliny, *Naturalis Historia* 21. 8; Val. Max. 5. 4. 7; 6. 1. 10; 8. 4. 2; Varro 50. 50. 5. 81; D. 1. 2. 2. 30.

(29) However, in 123 BC a statute passed on the initiative of C. Gracchus (*lex Sempronia de capite civis*) reaffirmed the principle that no citizen could be punished for a capital crime without the sanction of the assembly.

(30) Until the passing of the *lex Sempronia iudiciaria* in 123 BC, the *consilium* was composed exclusively of members from the senatorial class.

In the transformed socio-political conditions of the later Republic, the *quaestiones extraordinariae* provided a more efficient means of dealing with public crimes than the *iudicia populi* whose role in the administration of justice gradually diminished. However, as the number of offences, especially those of a political nature, increased, the practice of setting up extraordinary tribunals became increasingly inconvenient and inefficient.(32) To address the situation, two measures were introduced: first, besides the *praetor urbanus*, responsibility for the prosecution and punishment of offences against public order, especially those committed by slaves, foreigners and citizens from the lower classes, was assigned to the *tresviri capitales*, low-ranking magistrates elected by the *comitia tributa*;(33) secondly, permanent courts of justice, (*quaestiones perpetuae*) began to be established for the investigation and punishment of offences of a serious nature, especially crimes threatening the security of the state. It was only with the introduction of these courts that a more efficient regulation of criminal procedure was finally realized.

The Rise and Development of the Standing Jury Courts

In the social and political life of later Repubican Rome, being a member of a

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（31） The adherents of this cult, which was based on the worship of the wine-god Bacchus, had formed secret associations and were engaged in orgiastic religious rites. After a number of cult members had been found guilty of criminal and immoral conduct, the senate issued the *senatus consultum de Bacchanalibus* declaring membership of the Bacchanalian cult to be a capital offence and instructing the consuls to hold an investigation *extra ordinem*. During the persecutions that followed more than four thousand people were put to death. The senate's action seems to have been motivated by genuine aversion to conduct that was taken to offend public morals and reflected a policy against religious associations operating in secret (the worshipping of Bacchus and other deities was permitted if done in the open and under official supervision). For the text of the *senatus consultum de Bacchanalibus* see A. C. Johnson, P. R. Coleman-Norton, F. C. Bourne (eds), *Ancient Roman Statutes* (University of Texas Press, Austin 1961), No. 28.

family with an illustrious ancestral lineage was a condition of success. A family's prestige and political influence turned on the number of important military commands and elections to the higher magistracies of the state attained by its members and on having a strong voice in Rome's popular assemblies. In a political environment predominated by factional strife, senatorial families sought to secure and reinforce their power by increasing the numbers of their followers and political friends through adoptions and marriage alliances and, perhaps as importantly, by utilizing the machinery of Roman law. In the turbulent period following the Roman conquest of the Mediterranean, the courts of justice were regarded as one of the principal fora for political contest and statesmanship and greatness in politics came to depend as much

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(32) Those who suffered most as a result of the inadequacy of the existing system of criminal justice were foreigners and members of allied communities in Italy (*socii*). For example, the historian Livy reports that in 171 BC envoys from Spain were introduced into the Roman Senate where they lodged formal complaints of extortion at the hands of the Roman magistrates in the province. A commission of five judges (*recuperatores*), chosen from the Senate, was appointed to hear charges against the Roman officials involved and to assess the damages. According to long-established custom, the provincials could not argue the case themselves but had to choose Roman citizens (*patroni*) to represent them in the proceedings. But the representatives, being under political pressure from the defendants' senatorial friends, were unwilling to turn all the incriminating evidence to the provincials' advantage. Finally, after several adjournments of the trial, one of the accused was absolved and the other two opted for voluntary exile in the nearby Latium. No substantial compensation was received by the injured parties as the culprits avoided paying damages by leaving Rome before the completion of the proceedings. In this case taking the matter to the people's assembly, the only body acting as a permanent court at the time, was deemed unacceptable by the senatorial oligarchy who felt that her control over the provincial administration would be threatened if jurisdiction in such cases was transferred to the people. See Livy 43. 2.

(33) See Cicero, *De Legibus* 3. 6; Sallust, *Catiline* 55; Aulus Gellius, *Noctes Atticae* 3. 3. 15; Livy 39. 14. 10; Pliny, *Naturalis Historia* 21. 8; Val. Max. 5. 4. 7; 6. 1. 10; 8. 4. 2; Varro 50. 50. 5. 81; D. 1. 2. 2. 30. And see W. Kunkel, *An Introduction to Roman Legal and Constitutional History*, 2nd ed. (Clarendon Press, Oxford, 1973), 64 ff.

in military victories as in successful criminal prosecutions of political opponents. Criminal trials served to settle personal scores, as political enemies sought to undermine each other's position by securing their opponents' condemnation in the courts. In some cases, criminal prosecutions were relied on as a means of aiding one's political friends, e.g., by bringing one's friend to trial before his enemies did so and then procuring the accused person's exoneration by deliberately mishandling the case. Although it was not uncommon that important legal and constitutional issues depended on the outcome of a court case, the criminal trial was often used as a vehicle for settling political conflicts within the senatorial aristocracy, as well as a favourable means of challenging the senate's grip on power by rival political groups. It will thus come as no surprise that the first permanent court in Rome was introduced partly as a result of political pressures.[34]

In 149 BC the tribune L. Calpurnius Piso initiated the *lex Calpurnia repetundarum*, a statute by which prosecutions for extortion (*crimen repetundarum*) – an offence frequently committed by provincial magistrates against the people of their

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(34) The triggering event was an outrage committed in 150 BC, during the Spanish wars, by the pro-praetor of Further Spain Servius Sulpicius Galba (see Appian, *Hispanica* 55-60). The victims were the Lusitanians, one of the tribes which had revolted against the Roman rule. The Lusitanians, after their defeat in battle, sued for peace. Galba, who was in charge of the negotiations, enticed the Lusitanians by treacherous promises away from their bases and, having thus isolated them, put a large number of them to death and enslaved the rest. This conduct was denounced in Rome as disgraceful and the tribune L. Scribonius Libo proposed a bill before the assembly providing for the establishment of a special tribunal to deal with Galba's case. In this hearing Galba's main accuser was Cato the censor, an eminent orator and probably one of the accused's main political opponents. On the side of the defence stood the pro-consul Q. Fulvius Nobilior, an influential politician, who spoke against the bill, although he was probably bribed to do so. In the end Galba succeeded to defeat his accusers in the assembly by playing on the people's emotions. The failed attempt to bring Galba to justice made the weakness of the existing system manifest and accentuated the need to revise the method of prosecuting similar cases.

provinces – were transferred from the *comitia* to a permanent tribunal (*quaestio de repetundis* or *repetundarum*) composed exclusively of members of the senatorial class (*ordo senatorius*).(35) The proceedings in this court bore a strong resemblance in form to a civil action,(36) and a defeated defendant was obliged to return the illicit gain to those affected.(37) No appeal from this court to the *comitia* (*provocatio ad populum*) was allowed, nor could its decisions be suspended by tribunician veto.(38) A standing list of jurors (*album iudicum*), as already noted all members of the *ordo senatorius*, was instituted from which a designated magistrate selected jurors for hearing future cases. This mitigated to some extent the effect that personal friendships or enmities had on the outcome of criminal prosecutions. However, the exclusive control of the

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(35) See on this Cicero, *Brutus* 27. 106; *De Officiis* 2. 21. 75; II *In Verrem* 3. 84. 195; 4. 25. 56. The money and other effects that were allegedly extorted, and would be restored if the prosecution proved successful, were known as *pecuniae* or *res repetundae*, or simply *repetundae*. One should note that a charge of extortion could only be instituted against a provincial magistrate after he had demitted office.

(36) As in civil actions, proceedings were initiated by the injured party who in this were case the aggrieved provincials.

(37) In later years, the person found guilty of extortion was condemned to pay twice the value of the illegally appropriated property; other penalties that could be imposed included the expulsion of the offender from the senate and the declaration that he was an *infamis*.

(38) On the nature of the *quaestio de repetundis* see W. Kunkel, *Kleine Schriften* (Hermann Böhlaus Nachfolger, Weimar, 1974), 49-50; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), 48-9; H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law*, 3rd ed. (Cambridge Universiy Press, Cambridge, 1972), 308; J. S. Richardson, "The purpose of the lex Calpurnia de repetundis", (1987) 77 *JRS*, 1-12; R. A. Bauman, *Crime and Punishment in Ancient Rome* (Routledge, London & New York, 1996), 22-23; A. M. Riggsby, *Crime and Community in Ciceronian Rome* (University of Texas Press, Austin, 1999), ch. 5; A. Lintott, *Judicial Reform and Land Reform in the Roman Republic* (Cambridge University Press, Cambridge, 1992), ch. 2; B. Santalucia, *Diritto e processo penale nell' antica Roma*, 2nd ed. (Giuffrè, Milan, 1989), 65 ff; V. Giuffré, *La repressione criminale nell' esperienza romana*, 4th ed. (Jovene, Naples, 1998), 42 ff.

senate over the new court meant that juries were often predisposed in favour of prominent members of the senatorial nobility brought before them for investigation. In 137 BC the tribune L. Cassius Longinus Ravina carried a measure (*lex Cassia tabellaria*) introducing the secret ballot for all trials, except for those for high treason.(39) After the passing of this law convictions of senators were made easier to obtain procedurally. At the same time, however, the divisions between different factions in the senate became wider and senators continued to use the courts as a field for resolving their own internal political conflicts.

In the years that followed the passing of the *lex Cassia* no major changes in the judicial system were attempted. However, in 123 BC, with Gaius Gracchus's election to the tribuneship, a new round of judicial reforms began as part of a political programme whose main objective was to curb the power of the senatorial nobility in the interest of Rome's lower classes. Among Gaius's earliest legislative initiatives was to pass a bill aiming to guarantee protection for the people against the constitutionally questionable practice of the senate to issue decrees setting up special tribunals with the power to impose grave penalties, including death, for largely political offences.(40) Although Gaius's statute did not put an end to the long-established practice of instituting special tribunals, it provided that such tribunals could no longer be

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（39） This exception was repealed thirty years later, under the *lex Caelia* of 107 BC.

（40） Such a tribunal was, e.g., established by the consul P. Popilius Laenas in 132 BC to punish the political supporters of Tiberius Gracchus, Gaius's older brother and predecessor in the leadership of the popular party. See Livy 42. 7-10. 21-22. The Greek biographer Plutarch tells us that Gaius's law (*lex Sempronia*) forbade any magistrate from banishing a Roman citizen without proper trial. See Plutarch, *C. Gracchus* 4. According to Cicero, this law provided that no citizen could be tried for a capital crime (*crimen capitale*) without the sanction of the *comitia*. See Cicero, *Pro Rabirio* 12.; *Catiline* 4. 10. One should note here that the terms *crimen capitale, iudicium capitis*, and *poena capitalis* do not necessarily refer to a crime, trial or penalty respectively in which a person's life was at stake but also to one which entailed the forfeiture of a person's personal freedom or his rights as a Roman citizen.

lawfully set up by senatorial decree alone and without the approval of the people. But as Gaius's legislation was part of a political programme strongly opposed by the majority of senators, it did not remain unanswered for long. In 121 BC, following the breaking out of violent disturbances in Rome, the senate passed a decree authorizing the consuls to apply any extraordinary measures deemed necessary to avert an imminent threat to the state. This motion, which became known as *senatus consultum ultimum*, guaranteed the support of the senate to magistrates employing summary proceedings against anyone seen as threatening the established political order. In the politically turbulent years of the late Republic, the *senatus consultum ultimum* was often employed by the senatorial nobility as a weapon against their political opponents (known as *populares*). Although the latter strongly denounced this practice, they did not hesitate to resort to it themselves when there were in a position to coerce the senate.

Gracchus's law was shortly afterwards supplemented by another measure known as *lex ne quis iudicio circumveniretur*. Although very little could be said with certainty due to the scarcity of information in the sources, this legislation seems to have been aimed at checking judicial corruption. Under this law, which applied only to the *ordo senatorius*, from which both judges and jurors were then drawn, the bribery of jurors was made a criminal offence.(41) The introduction of this law was precipitated by a series of scandalous acquittals by senatorial courts that cast doubt to the senate's involvement in the administration of justice.(42) These ‘perverse’ acquittals manifested the unwillingness of senatorial juries to convict fellow-senators who, after serving as provincial governors, were charged with extortion and other abuses of power before the extortion court (*quaestio de rebus repetundis*). It was these

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（41） Consider on this U. Ewins, “Ne Quis Iudicio Circumveniatur”, (1960) 50 *Journal of Roman Studies*, 94-107.

（42） See e.g., Appian, *Bellum Civile* 1. 22.

miscarriages of justice that provided the justification for the passing of the famous *lex Acilia de repetundis* (also referred to as *lex Sempronia iudiciaria*), Gaius's most significant judicial statute, by his colleague Acilius in 122 BC. By this measure the senatorial juries were altogether abolished and the court *de rebus repetundis*, after its reorganization, was transferred into the hands of the equestrian class (*ordo equester*).(43) At the same time, it became the normal practice that the jurors of this court were drawn from the equestrians, although the special tribunals (*quaestiones extraordinariae*) continued to be staffed by members of the senatorial class.(44) As a result of these developments, the equestrian class began to play a more important role in Rome's political life. Their involvement in the administration of justice opened new political avenues and gave the equestrians the opportunity to promote the interests of their own class. Gaius's move to pass the control of the juries to the equestrians appears to have been a major departure from traditional factional politics, for it brought into the political arena a class whose political role was largely neglected in the past. But the opening of the judicial system to the *equites*, at the expense of the senate, did not eliminate the pervasive effect of factional politics on the administration of justice; it simply allowed extra-senatorial elements to begin playing a part in what was in the past seen as an 'in-house' affair.(45)

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(43) During the late Republic, the equestrian class was composed of all kinds of monied men, including tax farmers and other contractors of public revenues (*publicani*), large estate owners, various civil magistrates and members of leading provincial families.

(44) See on this matter Vell. Pat. 2. 6. 3, 2. 13, 2, 32; Tacitus, *Annales*. 12. 60.; Diod. 35. 25.; Appian, *Bellum Civile* 1.2.; Florus, 2. 1. 6.; Pliny, *Naturalis Historia* 33. 34. And see E. G. Hardy, *Roman Laws and Charters* (Clarendon Press, Oxford, 1912), 1 ff; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), ch. 2.

(45) Consider e.g., the way in which the case of Q. Metellus, involving charges of extortion, was dealt with by the equestrian jurors. Cicero, *Epistulae ad Atticum* 1. 16. 4.; *Pro Balbo* 11.; Val. Max. 2. 10. 1.

Among the important new measures introduced in the period that followed the death of Gaius Gracchus was the *lex Mamilia* of 109 BC, passed by the tribune C. Mamilius Limetanus. The introduction of this law was prompted by popular resentment against the senatorial nobility following the bitter defeat of a Roman expeditionary force in the course of the Jugurthine war (112–106 BC) – a defeat that was seen as a further manifestation of senatorial incompetence in managing affairs both at home and abroad. Under the *lex Mamilia* a special tribunal was set up to investigate cases involving allegations of corruption of senators by King Jugurtha of Numidia. It was provided that this and all other special tribunals were to be presided over by three judges (*quaestores*) and the jurymen were to be drawn from the annual lists of the *equites*. With the passing of the *lex Mamilia* the senate's political position had never been weaker.(46)

An attempt to restore the senatorial nobility to its former privileges was made in 106 BC, when the consul Q. Servilius Caepio carried a law (*lex Servilia iudiciaria* or *lex Servilia Caepionis*) altering the composition of the courts in favour of the *ordo senatorius*.(47) This legislation drew support from some of the most eminent representatives of the aristocracy, such as L. Lucinius Crassus, a friend of the powerful Metelli faction. Under the *lex Servilia iudiciaria* the composition of the *album* of the *iudices* was to be changed to include both senators and equestrians. From this revised list were to be selected not only the jurors needed for the standing courts but those employed in special tribunals as well. However, Caepio's attempt was met with little success. After a new round of military defeats – this time by the

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（46） On the *Lex Mamilia* see T. R. S. Broughton, *The Magistrates of the Roman Republic* (American Philological Association, New York, 1951-52), 546; R. A. Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (Witwatersrand University Press, Johannesburg, 1967), 36-37.

（47） Cicero, *De Inventione* 1. 92; Tacitus, *Annales* 12. 60.

Germanic tribes of Cimbri and Teutones – which were followed by accusations of treason against the senatorial nobility, the tribune Cn. Servilius Glaucia passed a law (*lex Servilia Glauciae*, ca. 104 BC) putting the court *de rebus repetundis* back under the exclusive control of the *equites*, thus rendering Caepio's earlier law ineffective.[48] Under the same enactment certain changes to the rules governing criminal procedure were introduced, such as the division of the trial in cases of extortion into two parts (*comperendinatio*). In addition to that, those who aided and abetted criminals were made liable to prosecution.

Another important enactment of this period was the *lex Appuleia de maiestate*, passed between 102 and 100 BC by the tribune of the people L. Appuleius Saturninus. This statute was introduced as a response to difficulties relating to the way in which the *comitia*, acting as *iudicia populi*, handled criminal prosecutions. Rather than leaving prosecutions to the volatile opinion of the people, who were often manipulated by the tribunes, or put under pressure by powerful senators, it was thought to be more practical and efficient if a permanent tribunal was established to deal with any act which impaired or degraded the power and dignity of the Roman state (*crimen maiestatis minutae*). Like the extortion court, the new permanent court created to deal with cases of *maiestas* (*quaestio de maiestate*) employed juries drawn from the equestrian class.[49] One might say that the *lex Appuleia* reestablished, now on a permanent basis, the temporary tribunal instituted by the *lex Mamilia* in 109 BC.

Besides the permanent courts concerned with cases of misgovernment or oppression by provincial administrators (*quaestio de rebus repetundis*) and with violations of the dignity and security of the state (*quaestio de maiestate*), two further standing courts were instituted by special laws before the close of the second century

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（48） Cicero, *Pro Scauro* in Asconius 21; *Brutus* 224.

（49） Consider Cicero, *De Inventione* 2. 17. 18; *De Oratore* 2. 48. 199.

BC: the embezzlement court (*quaestio de peculatu*)[50] and the bribery court (*quaestio de ambitu*),[51] also manned by jurors drawn from the equestrian order. Each court was created by a special law which also set out the rules of procedure governing its operation, but these rules could be modified or altogether changed under subsequent statutes. Although these were permanent courts, they were regulated by principles similar to those regulating the earlier *quaestiones extraordinariae* and, like the temporary courts, were regarded as operating under the authority of the Roman people. Indeed, the supreme jurisdiction of the *comitia centuriata* remained unaffected in principle. The assemblies of the people could be called together, like before, to hear certain important cases or to appoint special commissions to investigate offences falling outside the sphere of jurisdiction of the existing permanent courts.[52] Furthermore, magistrates could deal summarily with offences threatening the public order according to the provisions of the *senatus consultum ultimum*.

（50） The crime of *peculatus* was distinguished from the theft of private property, termed *furtum*. The punishment for embezzlement of public funds was normally a fine that usually amounted to four times the value of the stolen property. Similar in some respects to *peculatus* was the *sacrilegium*, the theft of sacred objects (*res religiosae*). This offence entailed the death penalty, but the culprit was allowed to go into exile before the sentence was pronounced. In that event, he became subject to an *aquae et ignis interdictio*.

（51） *Ambitus* has traditionally been defined in Roman Republican scholarship as electoral bribery, an illegal and corrupt practice in which candidates gave money to voters in exchange for electoral support and votes. See A. Lintott, “Electoral Bribery in the Roman Republic”, (1990) *JRS* 80, 1-16.; E. Gruen, “The Exercise of Power in the Roman Republic” in A. Molho, K. Raaflaub & J. Emlen (eds) *City States in Classical Antiquity and Medieval Italy* (Franz Steiner Verlag, Stuttgart, 1991), 251 at 255-257; A. M. Riggsby, *Crime and Community in Ciceronian Rome* (University of Texas Press, Austin, 1999), 26-27.

（52） It should be noted here that the Romans neither shared the modern reluctance to create extraordinary or special tribunals nor did they espouse the principle enshrined in many contemporary legal systems against retroactive legislation.

The transference of the standing court system into the hands of the equestrians was received with great discontent by members of the senatorial nobility who found it increasingly frustrating that they could no longer use the courts as their stronghold and as a field for settling their own political contests. The antagonism between the senatorial politicians and the equestrians came to a head in 92 BC, after a judicial scandal involving the extortion court (*quaestio de rebus repetundis*). The rich eastern province of Asia was an important source of weatlh for members of the equestrian class who, as investors and profiteers, took full advantage of the opportunities opened up by Rome's conquests in the area. As long as the equestrians were in control of the extortion court, the governors (*proconsules*) of Asia were reluctant to take measures against the agents of the Roman tax-farming companies and the money lenders, all members of the *ordo equester*, who were blatantly exploiting the local populations. The abuses of the equestrians arouse the provincials' hostility against the Roman administration and played in the hands of Rome's enemies in the region, such as king Mithradates of Pontus, who were scheming the overthrow of the Roman rule. In view of the growing political instability and the possibility of a general uprising in the East the senate resolved upon taking the necessary steps to avert the oncoming crisis. Thus, in 95 or 94 BC it entrusted the new governor of Asia Q. Mucius Scaevola with the task of reforming the provincial administration and putting an end to the abuses of the equestrian tax-farmers in the province. Scaevola, aided by his legate P. Rutilius Rufus, a man known for his honesty and incorruptibility, suppressed with uncompromising severity the abuses of the equestrians, restoring Rome's image among the provincials and preventing a costly war.[53] But the equestrians were greatly disappointed for lucrative business operations were stifled and profits dropped. As a

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（53） The model code of administrative procedure introduced by Scaevola provided, in later years, a pilot scheme for the government of the Empire.

warning against future governors and to discourage any further interference in the activities of the tax-farming companies, they resolved to use Rutilius who, as a *novus homo*,(54) lacked political protection, as a scapegoat. So, upon his return to Rome in 92 BC Rutilius found himself accused before the extortion court of abuses against the people of the province of Asia. Although there was nothing to support this accusation Rutilius was found guilty of the crime by the equestrian jurors.

The unwarranted conviction of Rutilius made it clear that Gracchus's move to transfer the extortion court from the senate to the *equites* did not eradicate the ills of prejudice and partiality by which the Roman system of justice was for so long dogged. In 91 BC the senators' fear of an impending political crisis roused them to action. The senate's programme for judicial reform was sponsored by the powerful Metelli faction and its implementation was entrusted to the tribune M. Livius Drusus, Rutilius's nephew, who acted as the senate's agent in this matter. In order to win the acquiescence of an otherwise uninterested populace Drusus first introduced measures providing for the setting up of new colonies, the distribution of public lands in Italy and the giving out of cheap corn (*lex frumentaria*). He then proceeded to the introduction of a law (*lex Livia iudiciaria*) whose aim was to srtike a compromise between the *ordo senatorius* and the *ordo equester* by dividing the courts between the two classes. In addition to that, Drusus also introduced a measure under which jurors of both orders could be subject to prosecution for judicial corruption, especially for conspiracy to convict innocent citizens. By applying this latter measure retroactively Drusus was able to set up a special tribunal which would prosecute those equestrian jurors who had convicted his uncle a year earlier. But the tribune's reform programme drew fierce criticism from both equestrians and senators alike. For the former the

(54) In the late Republic, the term *novus homo* ('new man') was used to describe the first man of a family to join the senate, where he was normally regarded as a 'minor senator'; the same term was also used to refer to the first man of a senatorial family to reach the office of consul.

proposed judicial reform was from the beginning unacceptable; many of the latter, although they agreed with the curbing of the equestrians' control of the courts, strongly objected to incorporating into the senate such a large number of *equestrian novi homines*. Moreover, Drusus's proposal to open up the Roman popular assemblies to members of enfranchised allied communities was received with no less disapproval by the bulk of Rome's populace. But the tribune was not without support, especially from among the Italian allies, who saw in him a champion of their interests. One of the tribune's most fierce opponents in the senate was the consul L. Marcius Philippus. Under the latter's influence and despite the tribune's initial success in passing his proposed legislation in the assembly, his measures were finally declared null and void, as unconstitutional, by the senate.(55) Drusus's failure, which was stamped with his own assassination, allowed the equestrians to maintain their control of the court system.(56) But, not long after their champion's death, the Italian allies, having lost all hope for their enfranchisement, took up arms against Rome. The so called Italian or Social War (*bellum sociale*) dragged on for more than three years (90-88 BC) and, at times, seemed that it would break up the Roman power.

In the first year of the Social War (90 BC), the tribune Q. Varius Hybrida, prompted by public outrage at the allies' revolt against Rome, carried a bill (*lex Varia de maiestate*) providing that those who 'by help and advice' (*ope et consilio*) induced an allied community to revolt against Rome were guilty of treason – a crime punishable by death.(57) The chief target of this measure were those who had supported

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(55) The legality of Drusus's law was called into quaestion under the *lex Caecilia-Didia* of 98 BC. This law forbade incorporation of dissimilar provisions into one omnibus bill. Furthermore, the same law prescribed that there had to be a regular interval between the promulgation of a bill and its voting in the *comitia*.

(56) So bitter was the popular sentiment against Drusus that no investigation was ordered to clear up the circumstances of his death. See Cicero, Pro *Milone* 16.

Drusus and his programme. But the persecutions of Drusus's political allies gradually came to an end, for the equestrian juries, unwilling to become mere instruments in the conflicts between different senatorial factions, preferred to forget their earlier grievances. However, the unwillingnes of the equestrian courts to condemn persons accused of treason triggered a new movement in the senate for judicial reform. This development was not unrelated to the weakening of the financial position of the *ordo senatorius* during the Social War.(58) In 89 BC the *praetor urbanus* A. Sempronius Asellio revived earlier legislation against usury in an attempt to ease those owing money of their financial burdens.(59) Most of those indebted were senatorial landowners who were forced to borrow money, at heavy interest, from equestrian money lenders following the destruction of their rural estates during the war. The equestrians, whose interests were hard hit by Asellio's action, responded by killing the praetor while he was performing a sacrifice in the Forum.(60) Despite the senate's efforts to bring the murderers to justice, no trial was held as no informants came forward. In the eyes of many senators the Asellio incident demonstrated, once more, the weakness of the existing system and highlighted the need for judicial reform. Thus, under pressure by the senate, the tribune M. Plautius Silvanus proposed a new method for the selection of those acting as jurors in criminal trials. Under his *lex Plautia* of 89 BC the tribal assembly (*comitia tributa*) was to nominate, on an annual basis, fifteen jurors out of each of the thirty-five tribes in which the people of Rome

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（57） Ironically, Varius himself fell victim to his own *maiestas* law in 89 BC, when he was found guilty of treason and put to death. See Cicero, *De Natura Deorum* 3. 81. For more on Varius's law see E. Badian, *"Quaestiones Variae"*, (1969) *Historia* 18, 447 ff.

（58） During the war, as Rome's resources were greatly depleted, an inflationary readjustment of the currency was made which resulted in grave financial losses for the senatorial nobility. See Pliny, *Naturalis Historia* 33. 46.

（59） These included the *lex Genucia* of 342 BC and other enactments.

（60） See Appian, *Bellum Civile* 1. 54.; Livy, *Periochae* 74.; Val. Max. 9. 7. 4.

were divided without any reference to the class or status of the candidates. This meant that the juries could now include senators, members of the equestrian order or even mere plebeians.(61) As the senatorial class exercised strong influence on the assembly's vote, it was expected that the new system would guarantee for the senate a stronger voice in the courts (esp. in the *quaestio de rebus repetundis*) at the expense of the equestrians. But this legislation was never fully implemented, and the courts remained for the most part in the hands of the *ordo equester* until the reorganization of the judicial system by Sulla in 81 BC.

In the period following the conclusion of the Social War (88 BC) factional political strife intensified. For more than five years Rome was in a state of chaos, the formal rules and procedures of Roman justice were suspended, and thousands perished in a bloodbath of political executions carried out without formal charges or trials. Stable government was restored, although only temporarily, after L. Cornelius Sulla, acting as a defender of the nobility, defeated his political opponents and took control of the state in 83 BC. Sulla, who assumed the title of Dictator 'for the regulation of the commonwealth' (*rei publicae constituendae*), embarked upon a programme of reforms aiming at restoring the senatorial aristocracy to power and at securing political stability by repressing popular discontent. As an important part of his programme Sulla restored full control of the courts to the senate. At the same time, he strove to minimise the effect of factional politics on the administration of justice. The transference of the *iudicia* back to the *ordo senatorius* necessitated a substantial enlargement of the senate whose membership had been depleted as a result of the civil wars and political persecutions. Thus, Sulla increased the number of the senators from three hundred to six hundred by enrolling friendly equestrians, soldiers and distinguished members of Italian communities.(62) By this move Sulla in

(61)　See inter alia Tacitus *Annales* XII. 60; Velleius I2. 13.; Cicero, *Pro Scauro* 1.2.

effect carried out Drusus's programme of a partial integration of the senatorial and the equestrian orders but with one important diffence: only members of long-established senatorial families could have access to the highest magistacies of the state. By these measures Sulla ensured the allegiance of the senate and, at the same time, placed the courts back in the hands of the aristocracy without alienating those classes whose loyalty was essential for securing political stability.

As far as the courts themselves were concerned, Sulla reorganized and expanded the system of *quaestiones perpetuae* so that from that time until the establishment of the Principate almost all criminal prosecutions were conducted by standing courts. The extortion court (*quaestio de rebus repetundis*) was reorganized by the *lex Cornelia de repetundis*, and the *quaestio de maiestate* instituted by Saturninus in ca. 103 BC was recognised as the principal court for high treason by the *lex Cornelia de maiestate* of 81 BC. Before the enactment of this law the tribunes could still convene the *comitia* to hear charges of treason. Sulla terminated this practice by restricting the powers of the tribunes. At the same time, he broadened the definition of the *crimen maiestatis* to encompass any act performed by a Roman citizen that impaired the safety and dignity of the state. The scope of this crime then embraced wrongdoings that were previously treated as *perduellio* or *proditio*, such as sedition, unlawful attacks against magistrates, desertion and the like. The *crimen maiestatis* was punishable by death, although the person charged with the offence was usually allowed to go into exile before the court pronounced the sentence (in such a case, he was subject to an *aqua et ignis interdictio*). [63]

Furthermore, the court dealing with electoral corruption (*de ambitu*) was also retained, while Sulla's own *lex Cornelia de ambitu* introduced heavier penalties for

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（62） Appian, *Bellum Civile* 1. 100; Dionysius 5. 77. See also Velleius 2. 32; Tacitus, *Annales* 11. 22.

this crime. [64] As regards homicide, a court for hearing cases of poisoning (*quaestio de veneficis*) was apparently established before the time of Sulla. [65] A court attending to cases of assassination (*quaestio de sicariis*) had been created as early as 142 BC, but it appears to have operated only as a *quaestio extraordinaria*. Trials for parricide (*parricidium*) were usually held before the *comitia*. All three forms of homicide were encompassed by Sulla's *lex Cornelia de sicariis et veneficis* of 81 BC, which also stipulated the punishment of those who attempted to procure the unlawful conviction of a person under this enactment.[66] Moreover, under Sulla's *lex Cornelia be iniuriis* a permanent court was established to deal with certain forms of injury caused by acts of violence, such as beating (*pulsare*) and striking (*verberare*), and the forcible invasion of another person's house (*domum introire*).[67] Sulla also introduced a *quaestio de falsis* that functioned as a court dealing with cases involving the forgery of official documents, wills and the counterfeiting of money.[68]

（63） In the closing years of the first century BC, two further statutes on the crime of *maiestas* were enacted: the *lex Iulia maiestatis* of Julius Caesar (46 BC) and the *lex Iulia maiestatis* of Augustus (8 BC). Several later imperial laws were based upon these statutes. See Cicero, *Orationes Philippicae* 1. 21-3; D. 48. 4; C. 9. 8. On the crime of treason see R. A. Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (Witwatersrand University Press, Johannesburg, 1967).

（64） A series of laws devised to repress corrupt electoral practices were introduced during the second and first centuries BC, such as the *lex Cornelia Baebia* (181 BC); the *lex Cornelia Fulvia* (159 BC); the *lex Maria* (119 BC); the *lex Acilia Calpurnia* (67 BC); the *lex Tullia* (63 BC); the *lex Licinia* (55 BC); and the *lex Pompeia* (52 BC). The last law on *ambitus* was the *lex Iulia de ambitu* passed by Augustus in 18 BC.

（65） An inscription attributed to C. Claudius Pulcher, consul in 92 BC, refers to his position as *iudex quaestionis veneficis*. See H. Dessau, *Inscriptiones Latinae Selectae*, (Berlin 1892-1916), 45.

（66） Cicero, *Pro Cluentio* 148-9. 151. 154; D. 48. 8. 1. (Marcianus); C. 9. 16.

（67） Of course, *iniuria* was also a delict, and the criminal and delictual procedures operated side by side. See Cicero, *Pro Caecina* 12. 35; D. 3. 3. 42. 1. (Paulus); D. 47. 10. 5. pr. (Ulpianus).

As the above description suggests, Sulla was not so much an innovator as a reformer and systematizer of the Roman system of justice. As a result of his reforms, criminal offences were more clearly defined and similar wrongdoings were subsumed under general offence categories for purposes of procedural convenience and efficiency. Furthermore, criminal liability was now imposed for certain types of wrongful conduct, such as assault and fraud, traditionally regarded as falling in the sphere of private law. Criminal procedure was also greatly facilitated by the curtailment of the judicial role of the *comitia* and the abolition of the *iudicium populi* as the final court of appeal. The once fragmentary system of *quaestiones perpetuae* was now firmly established and much of the confusion surrounding their operation was eliminated. Sulla's reforms furnished the basis for the subsequent development of Roman criminal law and some of the laws he enacted, such as the *lex Cornelia de falsis* and the *lex Cornelia de sicariis et veneficis* were still in force in the time of Justinian.

After Sulla's era more *quaestiones perpetuae* were implemented, such as the *quaestio de vi* for crimes of violence;[(69)] the *quaestio de plagiariis* for kidnapping, treating a free man as a slave and inciting a slave to leave his master;[(70)] the *quaestio*

（68） This was instituted by the *lex Cornelia testamentaria* or *de falsis* of 81 BC.

（69） This court was established by the *lex Lutatia de vi* in 78 BC; that law was supplemented by the *lex Plautia de vi* passed around 63 BC. There were two kinds of violent crime, the *vis publica* and the *vis privata*. The former covered various forms of seditious conduct that fell outside the scope of the *crimen maiestatis*, as well as the organisation and arming of gangs for the purpose of obstructing the activities of state organs. The punishment for such offences was banishment. On the other hand, the *vis privata* covered acts of violence against individuals and, like theft, was considered a private offence (*delictum*). The distinction between the two forms of violent crime was confirmed by two laws of Augustus, the *lex Iulia de vi publica* and the *lex Iulia de vi privata*. See D. 48. 6 and 7; C. 9. 12.

（70） This court was instituted by the *lex Fabia de plagiariis* (of unknown date, but probably first century BC). D. 48. 15; C. 9. 20.

de sodaliciis for electoral conspiracy;[71] and the *quaestio de adulteriis* for adultery and the seduction of unmarried women.[72] Generally, the permanent courts were governed by rules similar to those governing the extraordinary courts and, like the latter, were regarded as operating under the authority of the people.[73] It is germane to mention that the supreme jurisdiction of the *comitia* remained unaffected, in principle, by the establishment of the standing court system. However, in practice, the old comitial procedure was seldom engaged when trial by a *quaestio perpetua* was available. The exception to this pattern was when special circumstances existed, such as where an important political issue was at stake. As the system of the *quaestiones perpetuae* approached completion, the role of the assemblies in the administration of criminal justice thus ceased.[74]

However, the issue of membership within the standing courts persisted as a prominent apple of discord and the subject matter of various legislative measures throughout the last century of the Republic. Sulla's short-lived reform restored the senate's control of the court system, which was expected in view of his general policy trends. A few years after the end of Sulla's dictatorship (79 BC), the *lex Aurelia* of 70 BC established a more equitable balance in the composition of the juror lists. This law provided that each *quaestio perpetua* was to consist by one-third of senators, one-third of *equites* and one-third of *tribuni aerarii* (the latter are commonly understood to have been *equites* but with a lesser property qualification). In the last decades of the Republic, when the internecine strife between the senatorial factions peaked, it may appear that the equestrians had the upper hand in the standing courts.[75]

（71） Established by the *lex Licinia de sodaliciis* of Crassus in 55 BC.

（72） Installed by the l*ex Iulia de adulteriis* of Augustus in 18 BC. See D. 48. 5; C. 9. 9.

（73） In the last century of the Republic, *quaestiones extraordinariae* were still occasionally created by special statutes to deal with certain offences falling outside the jurisdiction of the permanent courts.

Criminal Procedure in the Standing Courts

As previously noted, each *quaestio perpetua* was competent to deal only with a particular category of offence. The nature of this category was defined in the statutory enactment establishing the *quaestio*, as amended possibly by subsequent legislation. A court of this type embodied a considerable number of non-official members and was chaired by a president referred to as *quaesitor*. According to the system finally adopted, the president was normally a praetor. However, any other magistrate or even a private citizen (usually an ex-magistrate) invested with

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（74） On the development of the system of the *quaestiones perpetuae* see in general T. Mommsen, *Römisches Strafrecht* (Duncker & Humblot, Leipzig, 1899, repr. Akademische Druck- und Verlaganstalt, Graz, 1955 and Wissenschaftliche Buchgesellschaft, Darmstadt, 1961); E. S. Gruen, *Roman Politics and the Criminal Courts, 149-78 BC* (Harvard University Press, Cambridge. Mass., 1968); J. A. C. Thomas, "The development of Roman criminal law", (1963) 79 *LQR*, 224-37; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), ch. 2; H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law*, 3rd ed. (Cambridge University Press, Cambridge, 1972), ch. 18; B. Santalucia, *Diritto e processo penale nell' antica Roma*, 2nd ed. (Giuffrè, Milan, 1989), ch. 5; *Studi di diritto penale romano* (L'"Erma" di Bretschneider, Rome, 1994), 185 ff, 205 ff, 238 ff; O. F. Robinson, *The Criminal Law of Ancient Rome* (Duckworth, London, 1995), 1-6; R. A. Bauman, *Crime and Punishment in Ancient Rome* (Routledge, London and New York, 1996), 21 ff; W. Kunkel, *Kleine Schriften* (Hermann Böhlaus Nachfolger, Weimar, 1974), 56 ff; M. C. Alexander, *Trials in the Late Roman Republic, 149 BC to 50 BC* (University of Toronto Press, Toronto, 1990); V. Giuffré, *La repressione criminale nell' esperienza romana*, 4th ed. (Jovene, Naples, 1998), chs 3 & 4; A. Burdese, *Manuale di diritto pubblico romano*, 3rd edn (UTET, Turin, 1987, repr. 1994), 249 ff.

（75） Under the *lex Pompeia* of 55 BC, the jurors were still chosen from the three groups mentioned in the *lex Aurelia* but only the richest men within each group were eligible. The *lex Iulia iudiciorum* of Caesar, passed probably in 46 BC, excluded the *tribuni aerarii* from the lists of jurors. Finally, Augustus restored the three classes of the Aurelian law and added a fourth that represented the lower classes of the community.

magisterial powers could be appointed as president.[76] The members of the court were not the president's nominees but were chosen in accordance with the provisions of the statute establishing the particular *quaestio*. Generally, a large body of qualified citizens was summoned and a complicated process involving challenges on both sides reduced this body to the prescribed number.

The form of the proceedings in the permanent courts was essentially accusatorial, as opposed to inquisitorial. This meant that no action could be initiated unless a citizen laid a formal accusation against another and thereby undertook to prosecute at the trial.[77] The sole function of the court was to hear and assess the evidence and arguments presented by the prosecution and the defence respectively, and thereafter to convict or acquit. The president publicly announced the verdict, which was thus nominally his verdict. Nevertheless, he was bound to decide the case in accordance with the opinion of the majority of the members as ascertained by ballot. Hence, it was the members who constituted the actual adjudicators. Note that

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(76) After the enactment of the *lex Calpurnia* (149 BC) that established the court of *repetundae*, the duty of presiding over the relevant proceedings was assigned to the *praetor peregrinus* as most claimants were foreigners. As the caseload increased and new standing courts were created, the number of praetors was later enlarged to eight and six of these presided over the courts. The praetors were assigned to the different courts by lot after the senate decided which courts should be presided over by a praetor. Usually, praetors were allocated to courts dealing with offences of a political nature, such as extortion, electoral corruption, conspiracy against the state, treason and embezzlement. Aediles were usually assigned (also by lot) to courts addressing murder, violence and fraud. The presiding magistrate had to swear that he would abide by the statute that installed the court and could be liable to punishment if found guilty of corruption.

(77) Initially only the aggrieved party or his closest relatives were entitled to initiate an indictment, but in later times almost every citizen of good repute had the right to launch an indictment and conduct a prosecution. However, accusers motivated by the prospect of personal gain often abused the indictment procedure. Despite the possibility of a suit of slander against false accusers, some people even carved a profession from accusing wealthy fellow-citizens.

no sentence was pronounced as the penalty for the offence was stipulated by the statute that established the *quaestio,* and liability to this penalty ensued automatically from the conviction. A person found guilty by a *quaestio perpetua* could not appeal to the people against the court's decision.

The first step in a criminal prosecution was the *postulatio*, which constituted an application by a citizen to the magistrate directing a particular *quaestio* for permission to instigate charges.(78) This was an essential preliminary requirement, as the applicant might be precluded by law from laying charges against any person, or against the particular person he intended to prosecute.(79) After permission to prosecute was granted, the accuser stated the name of the accused and the offence committed (*nominis et criminis delatio*) in a formal and written manner while the accused was present.(80) The document containing the accusation (*inscriptio*) was then signed by the accuser and by all those supporting his claim (*subscriptores*). Moreover, the accuser had to swear an oath that he did not issue a false accusation out of malice (*calumnia*) or in collusion with the accused (*praevaricatio*).(81) After the magistrate had formally accepted the indictment (*nominis receptio*), the accused became technically a defendant (*reus*) and the trial date was set. The accuser was granted sufficient time to prepare his case (*inquisitio*) – in most cases, ten days

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(78) *Inst*. 4. 18. 1.

(79) Where two or more persons applied at the same time for leave to institute an indictment against the same individual, a panel of jurors determined who had priority by considering the cases of all those seeking permission to prosecute (*divinatio*).

(80) D. 48. 2. 3. pr. (Paulus).

(81) *Calumnia* (*crimen calumniae*) was committed when a person launched charges against another knowing that the latter was innocent. False accusers were liable to severe penalties that entailed infamy and exclusion from public office. *Praevaricatio* referred to the collusion between the accuser and the accused in a criminal trial for the purpose of obtaining the latter's acquittal. A person found guilty of *prevaricatio* was harshly punished and branded with infamy. See Cicero, *Epistulae ad Familiares* 8. 8. 3.

appears as the minimum period but in certain cases (especially when evidence had to be gathered from overseas) a longer period might be allowed. The accuser might also request the summoning of witnesses (a maximum of forty-eight) by the magistrate, although the latter was free to summon as many as he thought fit (*testimonium denuntiare*). The next step in the process was the selection of the members of the court designated to try the case.[82] These were chosen by lot (*iudicium sortitio*) from the annual list of jurors *(album iudicum*) prepared by the praetor at the beginning of each year.[83] After the required number of jurors was selected in this way (fifty and seventy-five were typical), both the accuser and the defendant had an opportunity to disallow a specified number of jurors (*iudicum reiectio*).[84] The presiding magistrate then replaced the disqualified jurors by drawing more names from the *album iudicum* (*iudicum subsortitio*).[85]

During the trial, the accuser and the defendant dominated the scene, with their advocates and witnesses engaged in cross-examinations that were often rancorous.[86] The jurors listened in silence, while the presiding magistrate was mainly responsible for the orderly progress of the proceedings.[87] Both oral and documentary evidence was admissible.[88] Witnesses (*testes*) testified under oath and were examined by their own side and cross-examined by the other.[89] After all the evidence was presented and

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（82） Under the *lex Acilia* the jury had to be empanelled immediately after the *nominis delatio*. But this exposed the jurors to the dangers of intimidation and corruption. Thus, subsequent to Sulla's judicial reforms, juries were empanelled after the *inquisitio* and shortly before trial day.

（83） Under the *lex Acilia* (123/122 BC) the *album iudicum* comprised 450 persons, but in later years the number was increased (probably to 900). The praetor was required to publicize the list of jurors and to swear an oath that only the best men had been chosen.

（84） Roman legal procedure was governed by the principle that a person could not be appointed as a juror without the consent of the parties concerned. The rules governing the *iudicum reiectio* were settled by the *lex Vatinia* of 59 BC.

（85） On the selection the *iudices* see A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), 66 ff.

the closing speeches delivered, the magistrate convened the jury (*mittere iudices in consilium*) and placed the question of the defendant's guilt or innocence to the vote. In early times the vote was open, but the enactment of the *lex Cassia* in 137 BC entailed the use of a secret ballot (*per tabellas*) to determine the court's decision. Each juror was given a small tablet marked on one side 'A' (*absolvo*) and on the other 'C' (*condemno*). He then erased one or the other and cast the tablet into an urn (*sitella*). Jurors also had the third choice of 'NL' (*non liquet*: not proven) if they were unable to reach a decision.(90) The verdict was determined by the majority of the votes: if there was a majority of 'C's the accused was pronounced guilty by the presiding magistrate; if the 'A's predominated or if there was an equality of votes, he was

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（86） The accused stood in a particularly strong position, as he was entitled to as many as six advocates and was granted twice the total speaking time allocated to the prosecution. It should be noted that if the accuser failed to appear in court on the day of the trial his case was dismissed. On the other hand, the absence of the accused did not preclude the proceedings. However, in such a case it was required (under a law of Augustus) that a condemnatory verdict be unanimous. See Cassius Dio 54. 3.

（87） The magistrate's role was largely formal – he did not decide points of law, summarise the evidence and so on in the manner of a modern judge sitting with a jury.

（88） The category of documentary evidence comprised records of various kinds, such as account books (*tabulae accepti et expensi*), letters (*epistolae*), written notices (*libelli*) and, in some cases, the account books of those entrusted with the collection of public revenues (*publicani, tabulae publicanorum*). The written evidence also included the statements of witnesses who were unable to appear in court in person for various reasons (ill health, old age, absence from Rome and so on). It also incorporated certain public statements relating to the case issued by state organs (*testimonia publica*).

（89） Witnesses for the defence were often invited to speak not only about facts but also about the accused's character – those who testified to the good character of the accused were referred to as *laudatores*. Character evidence carried special weight and the absence of *laudatores* was regarded as in itself damning.

（90） In such a case, jurors probably had to erase both 'A' and 'C' and scratch in the letters 'NL'. Just to erase 'A' and 'C' counted as no vote.

pronounced not guilty. If the majority of the jurors voted '*non liquet*' the presiding magistrate announced the necessity for a more thorough investigation into the case and fixed a day for a new hearing (*ampliatio*).[91]

As previously stated, the penalties imposed by the standing courts were specified in the statutes that instituted these courts, and liability to these penalties routinely followed upon conviction. There existed two kinds of penalties: capital and monetary.[92] In theory, most crimes of a serious nature were capital, but it was practically unknown to inflict the death penalty (*poena mortis*) on a Roman citizen deriving from a condemnation on a criminal charge in normal circumstances. The reason is that persons tried by these tribunals enjoyed a statutory right of fleeing into exile before the court pronounced its final sentence.[93] When, as invariably happened, a condemned person invoked this right, a resolution passed by the vote of the people declared his legal status as an exile and interdicted him accordingly from using water and fire (*aquae et ignis interdictio*).[94] The normal effect of this interdiction rendered the culprit liable to summary execution if discovered on Roman territory, which after

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（91） After the enactment of the *lex Servilia Glauciae* (ca. 101 BC), proceedings in trials for extortion (*de rebus repetundis*) were divided into two distinct parts (*comperendinatio*). In the first part (*actio prima*), the parties elaborated their arguments and witnesses on both sides were called upon to testify. The second part (*actio secunda*) occurred after a day's interval and the parties were granted the opportunity to comment on the evidence presented and provide additional information. After this second hearing the jurors issued their verdict, which now only assumed the form of 'guilty' or 'innocent' (the 'not proven' option was not available).

（92） As previously noted, the term *poena capitalis* (or *poena capitis*) did not refer only to the death penalty but to any penalty involving the loss of a citizen's *caput*, i.e., his personal freedom or rights as a Roman citizen. Imprisonment was not recognized as a form of punishment in the Roman criminal justice system.

（93） Naturally, in times of unrest persons regarded as dangerous were ruthlessly put to death. It may have been routine practice to eliminate malefactors from the lower classes by irregular means. Moreover, it should be noted that no immunity from the death penalty was ever enjoyed by non-citizens.

the Social War (91-88 BC) covered the whole of Italy.[95] Hence, condemnation by a standing court on a capital charge virtually amounted to a sentence of banishment. It is feasible that some late Republican statutes expressly substituted interdiction from fire and water with death as the penalty for certain crimes.

The Decline of the Jury Court System in the Principate Era

At the end of the Republican period, the jurisdiction of the assemblies in capital crimes had entirely disappeared. The ordinary mode of criminal trial for serious offences featured a prosecution before a standing court (*quaestio perpetua*) at Rome. Less serious offences were dealt with in a summary fashion by lower-grade magistrates, the *tresviri capitales*. Shortly after the establishment of the Principate, the tasks of the *tresviri capitales* were assumed by imperial officials (*vigiles*) acting under the supervision of the *praefectus vigilum.* [96] On the other hand, the standing jury-courts remained in operation for quite a long time after they were reorganized by the *lex Iulia iudiciorum publicorum* of Augustus (17 BC). This enactment drastically revised the composition of the jury-courts in the spirit of broadening the socio-economic basis of public participation and prescribed the rules of procedure governing the conduct of trials. A general list of jurors was established comprising four categories based on status and property qualifications: senatorials; equestrians; the *tribuni aerarii* (closely akin to the equestrians but possessing a slighter property

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（94） The phrase *aquae et ignis interdictio* implies a denial of the necessaries of life to the individual in question.

（95） The relevant resolution might, however, specify an extended area within which the interdiction was operative.

（96） Offences falling within the jurisdiction of the *praefectus vigilum* included arson, robbery, burglary and theft. The most serious cases were tackled by the p*raefectus urbi*. See D. 1. 15; C. 1. 45.

qualification); and finally, a new class formed by the owners of property worth 200,000 sesterces (*duocentenarii*) who would be summoned in cases of minor importance. Moreover, the minimum age for jury service was lowered from thirty to twenty-five, so that there always existed sufficient citizens to serve as jurors. In 18 BC, Augustus completed the system of *quaestiones perpetuae* by creating two new tribunals of this kind: the *quaestio de adulteriis*[97] and the *quaestio de annona*. The jurisdiction of the first court encompassed cases of adultery (*adulterium*), extra-marital relationships involving women of a high social standing, and procurement.[98] The second court dealt with accusations against merchants who endeavoured to raise the market prices of foodstuffs, or who engaged in unfair practices relating to the supply or transportation of food.[99]

However, trial by jury-courts was not readily amenable to official control and thus contradicted the spirit of the new imperial regime. Apart from this fact, the system of the *quaestiones perpetuae* had several deficiencies that were not adequately addressed by the Augustan legislation and subsequent senatorial resolutions. Firstly, each *quaestio* was constituted in a specific manner according to the statute that originally established it (or possibly according to some subsequent statute) and could only tackle a particular offence category as specified in such statute. Hence, frequently a wrongful act that merited punishment as a crime was not punished as it did not precisely fulfill the definitional requirements of any of those offence categories for which *quaestiones* had been instituted. Secondly, the statutory enactment establishing a *quaestio* prescribed the punishment for the specific category of offence in question, and this punishment automatically attached on conviction. Thus, the tribunal had no power to either increase or mitigate such punishment to

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（97） Suetonius, *Divus Augustus* 34. 1; Cassius Dio 54. 30. 4.

（98） D. 48. 5; C. 9. 9.

（99） D. 48. 12.

address the circumstances of the individual case. In general, the penalties imposed for offences captured by the jurisdiction of the jury-courts were often regarded as too mild and therefore disproportionate to the gravity of the offences committed. In addition, proceedings in the jury-courts were expensive, laborious and even protracted as the cases were often heard more than once. Thus, since the early years of the Principate the work of the jury-courts was supplemented by the new extraordinary jurisdiction of the emperor and those officials to whom he delegated his judicial powers. At the same time, the *princeps*-emperor sanctioned the senate's assumption of an extraordinary criminal jurisdiction.(100) In a sense, the senate may be construed to have replaced the popular assemblies' jurisdiction and this body was resorted to mainly in cases involving offences with a political nature or any case where the accused was a senator.(101) In principle, these two jurisdictions were concurrent, but reality exposes the more extensive nature of the emperor's jurisdiction from the start. As more offences fell within the sphere of the new tribunals' jurisdiction over time, the *quaestiones perpetuae* faded into the background and finally disappeared in the early years of the third century AD.(102)

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(100) During the Republic the senate did not have independent criminal jurisdiction. Its role in the administration of justice was limited to instituting, under certain circumstances, temporary courts of inquiry (*quaestiones extraordinariae*) and introducing in times of emergency any measures deemed necessary for the security of the state.

(101) Initially, the senate dealt with cases connected with the *crimen laesae maiestatis*, wrongful conduct that diminished the majesty of the emperor and the people of Rome. It also addressed cases involving abuse of power perpetrated by provincial governors. In the time of Emperor Tiberius (AD 14-37), the senate's jurisdiction was enlarged to encompass not only crimes against the security of the state (such as treason) but also a wide range of serious crimes (including adultery, murder and forgery) committed by members of the senatorial order. In this way, the senate by the end of the first century AD had developed into a *forum privilegiatum* with exclusive jurisdiction over the crimes of senators.

Concuding Remarks

The modern observer can hardly fail to form an unfavourable appraisal of the Roman administration of criminal justice. A survey of civil law and procedure would fare better as this field early displayed logical categorization and generally produced adequate results. Roman criminal justice appears as haphazard, capricious, opportunistic and remote from the contemporary standards of equal protection of the laws. Proceedings in the standing courts were cumbersome and trials could be protracted as cases were often heard more than once. Although a jury of less than a hundred members could grasp complicated evidence and assess the parties' credibility better than a crowd of thousands, jurors were often as susceptible to corruption and bribery as the people in the turbulent *iudicia populi*. A less unfavourable appraisal of the Roman criminal justice system is formed if one contemplates the immense pressures of a rapidly expanding empire. Further, the adverse circumstances of a largely haphazard evolution engendered many new concepts and categories of criminal wrongdoing (such as crimes against public order and the security of the state, various types of fraud, corruption and abuse of office) that furnished the framework for the subsequent development of the criminal law.

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(102) No doubt the rules governing the *quaestiones perpetuae* were still used as guides by magistrates exercising extraordinary jurisdiction, even though many rules were quite inadequate to serve as a basis for a mature system of criminal law. For a closer look at the development of the criminal justice system in the Principate age see B. Santalucia, *Diritto e processo penale nell'anctica Roma*, 2nd ed. (Giuffrè, Milan, 1989), ch. 6; S*tudi di diritto penale romano* (L'"Erma" di Bretschneider, Rome, 1994), 211 ff, 223 ff; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Blackwell, Oxford, 1972), ch. 3; R. A. Bauman, *Crime and Punishment in Ancient Rome* (Routledge, London & New York, 1996), ch. 5; O. F. Robinson, *The Criminal Law of Ancient Rome* (Duckworth, London, 1995), 6 ff; W. Kunkel, *An Introduction to Roman Legal and Constitutional History*, 2nd ed. (Clarendon Press, Oxford, 1973), 69 ff; V. Giuffré, *La repressione criminale nell' esperienza romana*, 4th ed. (Jovene, Naples, 1998), chs. 4 & 5.