

The quaestio Statutes and the Criminal Procedure in the Severan Period

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Abstract

In the 2nd century C.E according to the Severan jurists in the Digest, some of the statutes of the republican criminal court were still in effect and had an important place in the interpretation of criminal law. The praetor, the republican magistrate in charge of the law courts had a surprising role to play in the court for murder and adultery as evidenced by the jurists Papinian and Ulpian. It can be estimated that the republican framework thrived well in to the 2nd century B.C. and the emperor did not possess complete control over the criminal court. Therefore the structural and functional breakdown of republican criminal law remained incomplete.

Keywords: Severan, criminal law, republican, jurists

I. INTRODUCTION

The quaestiones perpetuae were the standing courts for criminal trials in republican Rome, with the fall of the republic in 27 BCE and the assumption of supreme imperium by Augustus, the fate of the republic as the Romans had known was facing a great uncertainty. The courts were perhaps the one institution that outlived the respublica and the many emperors that followed. This paper will delve into the quaestio statutes and the functionality of the jury courts and the republican magistrates during the Severan dynasty. It is a widely held estimation that the republican version of the courts ceased to exist at this point in history. Many scholars are of the view the jury courts came to an end by the time of the Severans. Garnsey¹ is a strong proponent of this theory, and believes cognitio² replaced jurisdictions and procedures extant from the republican period. Whilst Jones³ states that most of the jurisdiction of the iudicia publica (public law) went to the prefects, and suggests the consuls and praetors implemented jurisdiction through decrees, and exercised cognitio with the aid of a consilium (council). Bauman⁴ believes the quaestiones survived to an extent, but is a firm believer that cognitio and extra ordinem were

the standard practices of the day. Jolcowicz and Barry⁵ state it was necessary to supplement the work of the quaestiones with other tribunals, most notably those in *extra ordinem*⁶. Strachan-Davidson⁷ contends that magisterial cognitio becomes the predominant practice of the Principate, yet admits no definition can be found in the primary sources for *crimina extraordinaria*. Schulz⁸ agrees there was a procedure apart from the quaestiones that fell under imperial jurisdiction and the two procedures may have existed together. He believes the imperial procedure to be 'arbitrary, authoritarian and the juristic construction of concepts devoid of any significance.' However, he does not give an idea of the extent of the republican procedure prevalent in the Principate.

This research will place the Severan jurist in a foremost position, and their work as collated in the Digesta seu Pandectae, Mosaicarum et Romanorum Legum Collatio, and Sententiae/Decreta are important resources for this research. Cassius Dio will be significant as a contemporary historian of the period in question. The secondary sources will be equally important and will be implemented throughout the research.

The paper will address the inconsistencies in the Digest and consider the disagreements raised by scholars to the existence of jury courts and republican practices in the Severan period.

II. THE REPUBLICAN CRIMINAL STATUTES IN THE 2ND CENTURY C.E

The majority of the jurists quoted in the Digest came from the Severan period; this gives a good opportunity to understand the criminal procedures of the late second and early third century. Two-fifths of the Digests' writings are attributed to Ulpian, and one-sixth of it belongs to Paulus, there was also Papinian, Callistratus, Marcianus and Macer amongst the most prominent Severan contributors.

¹Peter Garnsey, Social status and legal privilege in the Roman Empire (Oxford: Clarendon, 1970), 92.

²Examination of a case before a single judge or senate.

³A.H.M Jones, The criminal courts of the Roman republic and Principate (Oxford: B. Blackwell, 1996), 101

⁴Richard Bauman, Crime and Punishment in ancient Rome, (London; New York: Routledge, 1996)

⁵H.F Jolcowicz, Historical introduction to the study of Roman law (New York: Cambridge 1952), 412.

⁶Criminal offences that fell outside of the known statutes

⁷Strachan-Davidson, J. L. Problems of the Roman criminal law. (Oxford: The Clarendon press, 1912), 162.

⁸Fritz Schulz, History of Roman Legal Science. (Oxford: Clarendon Press, 1946), 158.

Their work and interpretations are discussed to support that elements of the republican court were consequential to the Severan period and the Principate.

Book XLVIII assigned to criminal jurisdiction is paltry compared to the body of work contained within the *corpus juris civilis*. A scarcity of sources that detail the conduct of criminal trials presents a problem in understanding procedural differences of the principate from the republic. Legal procedure in imperial Rome is further complicated, as it tried to re-organise and adapt established republican practices. The Digest, a compilation of non-statute law extracted the work of the jurists; these manuals of law are based on practice, and not to cultivate legal theory. The section on criminal law provides commentaries on criminal prosecutions, and legislation including *leges Juliae*, *leges Corneliae*, *lex Pompeia* on patricide and *lex Fabia*.

An example of the differences between republican statutes and imperial practice the *lex Cornelia* on assassins and poisoners can be considered. The original statute reads as follows:⁹

Hold a capital trial of any man who was or will have “been with weapon” for the sake of killing a person or of committing theft, or who has killed or shall have killed a man, or by whose malicious intent this has been or shall have been done.

Cicero’s speech in defence of Cluentius reads in similar way rhetoric aside¹⁰

Marcianus¹¹ in the Digest interpret in the following manner; his work comes after the death of Septimius Severus.

anyone who kills a man; or through whose malice a fire has originated; or who has gone about armed for the purpose of killing someone or committing theft; or who, being a magistrate, or presiding a criminal case, enables false testimony to be given by which an innocent person may be prosecuted, or convicted is liable.

This extract corresponds with the most significant details of the statute, where the main offence lies with the intent to kill and harbouring a weapon to do so. There is more clarification by the jurists on the actions and intent that may prove the crime. Marcianus includes giving false witness,

which relates with Cicero’s recitation of the statute of the late republic.

Paulus in the *Collatio* states:¹²

The Cornelian law inflicts the punishment of deportation on someone who kills a person, or who has a weapon for the purpose of murder or of committing a theft, or who has possession of, sells, or prepares poison for the purpose of killing a person, or who gives false testimony by which someone dies, or is responsible for any cause of death.

Further additions include:

It is reasoned that all these crimes are to be punished by capital punishment for *honestiores*, *humiliores* on the other hand are to be killed either by crucifixion or by being thrown to wild beasts.

Whilst his interpretation agrees with that of Marcianus, he delineates the different punishments, based on social standing. This is associated with imperial penal policy, and is not reflective of the traditional punishments rendered in the republican statute.

Taken from Ulpian’s 7th book of ‘Concerning the office of pro-consul’ under the title ‘of assassins and poisoners’, the *Collatio* states:¹³

It is prescribed that he who is praetor or the judge of the court to whom has been allotted the investigation concerning assassins which have been committed in the city of Rome or within one mile should investigate (together with the judges allotted to him according to the law concerning capital cases) anyone who walks with a weapon for the purpose of killing a person or who does this with malice after thought.

And in the next passage he is quoted to be examining the actions and intent that constitutes the crime. This section by Ulpian, if taken at his word, suggests the possibility of a jury; he alludes to the praetor and a jury of ‘judges.’ From the extant interpretations of *lex Cornelia*, Ulpian is the sole imperial jurists who implies on procedural matters.

The republican statute for murder was similar in its interpretation by the Severan jurists.

⁹ Andrew Riggsby, *Crime and community in Ciceronian Rome* (Austin University of Texas Press, 1999), 51.

¹⁰ *Pro Cluentio*, tr. Hodge, lines, 148-157.

¹¹ D, tr. Scott, 48,8.1.

¹² *Coll*, tr. Hyamson, lines 1.2.1.

¹³ *Coll*, tr. Hyamson, lines 1.3.1.

Where the statute differed was in the forms of punishment, this reflected contemporary social hierarchy. If we are to consider several other republican statutes and its practice in the Severan period the *lex Julia de repetundae*, dealt with the improper hoarding of wealth. Cicero states the offences as restricting the governor from levying money for a fleet and controlling the amount of resources for themselves and their staff.¹⁴ Yet such clauses are not stated in the Digest.¹⁵ The offence under Augustus expanded to non-lucrative abuse of office and viewed illegal gain as procurement contrary to statute. The jury court for *repetundae* was the first to be defunct with *maiestas*. In the Caesarean version the penalty was interdiction from fire and water, meaning exile;¹⁶ and the penalties and charges laid out by the statute remained the basis for trials of *repetundae* throughout the Principate.¹⁷

Lex Fabia de plagiariis on kidnapping had its own jury court, Apuleius states that there had been a *lex Cornelia* dealing with the sale of citizen as a slave.¹⁸ What is seen of the *lex* in the Digest¹⁹ and *Collatio*²⁰ is closer to the original.²¹ Under the *lex Fabia* during the Severan period the law applied to anyone who hid, sold, chained or bought a free-born Roman citizen, a freedman, or another's slave. The original penalty in the republican court was a pecuniary one but in the Severan period it carried a capital sentence as stated by Ulpian.²² Under Severus, an imperial constitution granted crimes of the *lex Fabia* within Rome to the urban prefect, and beyond this 100-mile radius from the city the praetorian prefect claimed authority of the crime.

The penalty for *lex Fabia* changed from pecuniary to *relegatio* for *honestiores* and the mines and crucifixion for the *humiliores*.²³ Papinian exercised this new right, with the trial of Bulla the bandit.²⁴ The imperial constitution under the *lex Fabia* is the only republican statute where the jurisdiction of the urban prefect and the praetorian prefect is determined and stated in definitive terms, thus depriving the praetor of his former jurisdiction.

Lex Pompeia de parricidiis, enacted by Pompey in 55-52 B.C.E, is described by Marcianus.²⁵

He states any such person who kills his parents, maternal or paternal grand-parents, his siblings, are to be tried under the Cornelian laws relating to poisoners and assassins. Modestinus²⁶ refers to the *poena cullei*, 'where the culprit is beaten with rods stained with his blood, and then shall be sewn up in a sack with a dog, a cock, a viper and an ape and then cast into the sea.' Paulus, states that the *poena cullei* was not in use, but in his day the punishment was to be burnt alive.²⁷

Three different penalties are described by three jurists. Marcianus and Paulus are near contemporary, whilst Modestinus, considered the last of the great jurists was active in 250 A.D. The purpose of the *lex parricidium* by Pompey was to eliminate the *poena cullei*, in favour of capital punishment under the *lex Cornelia* for assassins.²⁸ The penalty may have referred to the *Lex Cornelia* during the time of Marcianus and by the time Paulus was active, the penalty changed yet again. According to Robinson, the return of the sack and the inclusion of animals was an invention of the Christian empire.²⁹

The interpretation of republican statutes in the Principate was commonplace; but penalties based on social hierarchy created divergence from the republican rendering. The *quaestio* statutes formed the basis of the *iudicia publica* in the Severan period according to the Digest, and the integration of the death sentence and severity of punishment is characteristic of the imperial penal system.³⁰

Marcianus makes an indication of current practices when he states:

Slaves cannot, under any circumstance, appear against their masters in court, as they are not considered by either civil, the praetorian law, or in the extraordinary proceedings.³¹

The extraordinary measures as the name implied existed outside of the standard measures and practices. As stated in the *Collatio*, Ulpian's indication of praetors holding court for murder strikes a chord with Marcianus' observation of praetorian action being relevant for criminal trials.

¹⁴Cic, Ad Atti, 5.16 .3. Cic, pro. Rab, post 20.

¹⁵Riggsby, 123.

¹⁶D, 48.7.3.

¹⁷Olivia F. Robinson, *Penal practice and penal policy in ancient Rome*. (New York: Routledge, 2006.), 79.

¹⁸Apu. Met. 8.24.

¹⁹D, 48, 15.6.2, Marcianus, 48.11.1, Macer, 48, 11.5 and Papinian, 48, 11.9.

²⁰Coll, 9, 4-5.

²¹Michael Crawford, "Roman Statutes vol ii," *Bulletin of the Institute of Classical Studies*. Supplement, no. 64, (1996):75. <http://www.jstor.org/stable/43768004> (accessed July 7, 2016).

²²D, 48, 15.1, Coll, 14.3.4-6.

²³Coll, 14.3.4-6.

²⁴Dio, 77.10.

²⁵D, 48.9.1.

²⁶D, tr. Scott, 48.9.9.

²⁷PS, 5.24.

²⁸Cic, Rosc. 70, Riggsby, 52.

²⁹Robinson, *Criminal law of ancient Rome*, 47.

³⁰Ramsay McMullen, *Changes in the Roman Empire* (Princeton, N.J: Princeton University Press 1990), 65.

³¹D, tr. Scott, lines 48.10.7.

The Severan epistle on the *lex Fabia* granted the urban prefect with jurisdiction over kidnapping and assigned the majority of the crimes (*omnia omnia crimina*)³² to be tried under him. This highlights the question whether all crimes per se fell under his jurisdiction? As juristic writings reveal, the rescripts of the emperor added more crimes to existing republican statutes. The *lex Cornelia* formurder becomes a blanket statute for convictions that did not correspond with its definition, abortion,³³ arson, castration³⁴, and human sacrifice are few of the crimes that came to be included.³⁵ Perhaps it was these crimes the epistle alluded to, as ruling bodies began to take initiative in denouncing new acts as criminal convictions.³⁶

Marcianus includes extra-ordinary proceedings as one of the available methods of prosecution. This differentiation calls in to question the possibility that certain actions warranted extra-ordinary proceedings. As more diverse crimes came to be named in legal writings they stood outside of the known statutes. According to legal history 'ordo iudiciorum publicorum' of Augustus included the republican statutes, and under republican tradition the courts came under the patronage of the curule magistrates. The crimes that did not fall in line with this ordo were outside of this traditional jurisdiction. They were new and different crimes, thus warranting more special proceedings, and labelled as *crimina extraordinaria*.³⁷ This would explain the lack of frequency associating the prefects with crimes contained within the ordo, as majority of the traditional statutes fell under the *iudicia publica*.

Why the jurists reverted to traditional republican statutes is questionable, was this out of convenience and familiarity or were they alluding to current practices? It seems wiser to rest with the latter, as this appears to be a pattern affecting most jurists, who are not at pains to write their work under the heading of *iudicia publica*. The jurists devoting themselves to accuracy in points of law erring to such great proportions seems incongruous with their objective. The confusion associated with the depiction of the law courts reflects the law procedures of the day. It cannot be defined in specific terms, as it contained remnants of the old procedure, whilst new additions were taking place. Law is mutable and practical and best understood by relating to practice over theoretical assumptions. Any change came through imperial constitutions and amendments, which sanctioned the emperors'

legislative amendments.³⁸ But traditions played an important part in law, and Paulus states problems of interpretation should be in relation to practice, 'for custom is the best interpreter of statutes.'³⁹ Within the Severan criminal court the *quaestio* statutes held a firm place, and the frame-work of that criminal court was based on a republican foundation.

A. The Jury Courts of the Severan Age

Mommsen states the final disappearance of the jury courts was during the time of Papinian, during the latter years of the second century, based on a reference by the jurist in his work *iudicium publicum*.⁴⁰ But, Paulus writes thirty years later, under Caracalla or Alexander, and states 'public prosecutions for capital offences are no longer in use'⁴¹ This statement is contradicted by Dio who states there were over 3000 cases pending in the jury courts, for forgery, homicide and adultery.⁴² A review of the courts purported to have existed is necessary to determine how the criminal court of the period may have functioned.

Papinian, Paulus and Dio were near contemporaries, and their disparity on the fall of the jury court is puzzling. Dio's statement will be considered first to understand the extent of their activity within the Severan period.

In the jury court for homicide the scenario becomes complicated with Ulpian's statement,⁴³ which might be valuable evidence to support Dio's claim. Ulpian's reference to the praetor and a possible jury of judges suggests he is alluding to the possibility of republican styled *quaestiones*.

capite primo legis Corneliae de sicariis cauetur ut is praetor iudexue quaestionis cui sorte obuenerit quaestio de sicariis, eius quod in urbe Roma propius(ue) mille passus factum sit, uti quaerat cum iudicibus, qui ei ex lege sorte obuenerint, de capite eius, qui cum telo ambulauerit hominis necandi furtiue faciendi causa hominem occiderit cuiusue id dolo malo factum erit, et reliqua. relatis uerbis legis, modo ipse loquitur Ulpianus.

A closer look at the wording of the sentence shows that, Praetor.... factum erit, was part of the original text, and Ulpian had taken it from a source that has changed the word *quaerito* to *uti quaerat*. Ulpian has added a further *cauetur ut* where his

³²D,1.12.1.

³³PS, 33, 14.

³⁴PS, 33, 13.

³⁵PS, 33 i,16.

³⁶D, 47,11.

³⁷William Turpin, "Formula, *Cognitio* and Proceedings *Extra Ordinem*" *Revue Internationale Des Droits De L'antiquité*46, no 3. (1999):552.

³⁸D,4.1.1.

³⁹D, tr. Scott, lines 1.37.

⁴⁰D, 48, 13.1.

⁴¹D, tr. Scott, lines 48, 1.8.

⁴²Dio,76.16.4.

⁴³Coll,1.3.1, Ulpian, de officio proconsulis, 1.7.

wording begins. He has possibly added *is before praetor*, but has omitted *hac in ex hac lege* and *eis in cum eis iudicibus* from the original wording.⁴⁴

Garnsey,⁴⁵ states that Ulpian is quoting directly from the original *lex Cornelia*, but his rendition shows he has edited the text. If Ulpian made minor omissions and additions to the text, would he be careless to not edit the most important clause of the statute? It is questionable why he neglected relevant additions to a manual on contemporary legal practices if the procedure differed from what he knew. It seems a convenient assumption to accuse Ulpian of such an error being one of the foremost jurists of his day.

Bauman bases the error on confusion, as the 'ironing out process'⁴⁶ from the *iudicia publica* to *cognitio* was not complete. But *cognitio* was not the definitive legal procedure of the period. The measure had a republican precedent, and associated with the investigation of a crime by a single judge. The judge delivers the verdict through his own cognition, so to speak. However Macer, who lived during the time of Severus Alexander states public prosecutions were valid for crimes found in the *iudicia publica*. Thus the emperor, prefects and the *curule* magistrates held court in public⁴⁷ with a *consilium* and crimes dealt apart from the *leges* were those of *extra ordinem*, where *cognitio* might be the proceedings undertaken to conduct the investigation.

Papinian mentions of a murder trial tried by a praetor through a senatorial decree.⁴⁸ If the praetors held jurisdiction over the murder court, would authority be granted through a senatorial decree? The senate had a history of being involved in court matters from Tiberius onwards. They had jurisdiction over *res repetundae*,⁴⁹ and their *senatus consulta* carried mandate at their own initiative and of the emperor.⁵⁰ Schillar, states such decrees fell under *ius novum*, meaning new law,⁵¹ and were unlikely to be carried out by the praetor, as murder fell within the known laws, the decree poses a quandary.

Building on from that idea, if we look at the Dio's 'speech of Maecenas to Agrippa' he states:⁵²

Let these magistrates conduct...and let them sit as judges in all kinds of cases except homicide during their tenure of office in Rome. Court should be established, to be sure, with the other senators and knights as members, but final authority should rest with these magistrates...but in general to be at all times in charge of the affairs of the city, and to decide the cases which come to him from all the other magistrates I have mentioned, whether on appeal or for review, together with those which involve the death penalty.

When Dio speaks of the magistrates in plural he probably meant the praetor and the consuls. The 'magistrate' of whom Maecenas speaks was the urban prefect. In this context, he had no authority over cases of homicide, but final decision rests with him. That leaves the consul and the praetors as possible contenders for trying cases of murder. The consul had some jurisdiction over criminal law in the late republic and exerted *cognitio* on certain occasions. Cicero reports of the consul Gabinius relegating a man in 58 B.C.⁵³ Millar suggests the consuls gained semi-judicial power in the late republic⁵⁴ and Dio as consul may have tried a few cases himself.⁵⁵ Furthermore, Ulpian's work 'On the office of the consul' seems incoherent if the consuls did not have authority over the law courts.

Going back to the relevance of the speech, it is considered a manifesto by Millar and addressed to Caracalla in 214 and not Severus Alexander. The speech reflected conservative views revolutionary to contemporary practices⁵⁶ and Maecenas favouring monarchy is seen to reflect Dio's own political views.⁵⁷ The speech can be taken as a premise to consider the political and legal situation of the day or as an idealisation of the current state of affairs as opposed to the democratic republican institutions of

⁴⁴Crawford, 749.

⁴⁵ Peter Garnsey, "Trials and the survival of the quaestiones in the Severan Age." *The Journal of Roman Studies*, 57, no1/2 (1967):57 note 6.

⁴⁶ Richard Bauman, *Crime and Punishment in ancient Rome*, (London; New York: Routledge, 1996): 193.

⁴⁷ Dio states that Turbo was holding trials within the environs of the imperial palace.

⁴⁸ D,1.21.1.

⁴⁹ Robinson, *Penal practice and Policy*,86. Andrew Riggsby, *Roman law and the legal world of the Romans* (Cambridge: Cambridge University Press, 2010),203.

⁵⁰ Schillar,1972,491-508.

⁵¹ Arthur Schillar, 'Senatus consulta in the Principate.' *Tulane L. Review* no33 (1959):493.

⁵²Roman History, tr. Cary, lines 52.21.2.

⁵³Cic, *Ad. Fam.* xi, 16, 2.

⁵⁴ Millar, *Emperor in the Roman world*, 519.

⁵⁵Garnsey, "Trials and the survival of the quaestiones in the Severan Age," 57.

⁵⁶ Fergus Millar, *A study of Cassius Dio*. (Oxford: Clarendon Press, 1964),102- 105.

⁵⁷Eric Adler "Cassius Dio's Agrippa-Maecenas Debate: An Operational Code Analysis"*American Journal of Philology* 133 (2012):477-520.
https://www.academia.edu/1527458/_Cassius_Dios_Agrippa-Maecenas_Debate_An_Operational_Code_Analysis_
Accessed 28.07.2016.

Agrippa. Thus the facts contained are allusion or suggestions.

In accordance with Dio's speech, Papinians' reference to the praetor trying murder sounds probable. If the consul and the praetor shared jurisdiction, it was a matter of delegating to one of them and a senatorial decree transferring authority more plausible.⁵⁸ But if Dio is touting a political pamphlet to Caracalla, the speech is not a realistic picture of the period, and thus should be understood with caution. In that context there is the prospect that praetors and prefects shared murder proceedings or the praetor exercised sole jurisdiction.⁵⁹ Sharing jurisdiction was possible, as the republic saw division in the administration of offences, and there are references to two murder courts occurring in the year 66 B.C under de sicariis et de veneficiis.⁶⁰ Thus delegation of criminal jurisdiction between the two magistracies may help to explain the senates' decree and the possible state of affairs at the time. However, there are no references to the prefect having exclusive authority over murder, and according to Dio's speech of Maecenas he was not allowed to.⁶¹

The adultery court was unique as it was an imperial legislation but adopted a republican style quaestio, and many scholars believe the quaestio de adulteriis was the last to survive.⁶²

In a passage Paulus⁶³ is presenting a libellus inscriptionis, which serve as a model for anyone who wished to bring forth an accusation. The text as presented by Paulus contained the specific information needed to do this; name of the magistrate in charge, date, accusers and the place where it occurred etc. In the statement Paulus names the presiding magistrate as the praetor or proconsul. Garnsey⁶⁴ has suggested the implausibility of this occurrence, as this pairs a praetor and a proconsul in judgement together. He believes this to be an error on Paulus' part because a libellus inscriptionis does not call for accuracy as long as it contains the relevant information, which this does.

The words 'praetorem vel proconsulem' denote a choice, a case brought before the 'praetor or pro-consul.' Praetors assumed chairmanship over adultery in Rome, and the pro-consul in the province. Paulus' description was in likelihood to explain how the written accusation needed to be addressed on both

occasions. The wording does not mean the praetor, and the pro-consul were judging together.

Garnsey⁶⁵ further implies he copied from the lex Iulia iudicorum publicorum, but another reference in the Digest alludes to the praetor with the court of adultery.

Papinian states in his work 'on adultery':⁶⁶

in reference to female slaves, recourse can easily be had to the action authorized by the Aquilian Law, and that for injury will also lie, and the Praetorian action for the corruption of the slave will not be refused; so that the guilty person of this crime will not escape on account of multiple actions.

According to Papinian, praetorian action was still valid and warranted for the crime of adultery. Thus from Papinian and Paul there is an indication the praetors were in charge of the jury courts. Ulpian states in his Book on Adultery:⁶⁷ 'A father cannot kill his son without his having been heard; but he should accuse him before the Prefect or the Governor of the province.'

It is probable that Ulpian was implying on the importance on giving notice to the nominal magistrate in charge of legal matters: meaning the urban prefect in Rome and the governor in a province. Ulpian does not imply the magistrate in charge of jurisdiction as he is not precise on who heard the case but stresses on the importance of giving notice of the crime.

The court for falsum (forgery) however remains unanswered for, given there were separate courts for adultery and murder or perhaps even multiple courts shared by the magistrates. Dio's claim on the functionality for the court of forgery is difficult to prove. In the Digest the lex is applied to crimes not included in the statute and incorporated through senatusconsulta.⁶⁸ The emperor could also pass judgement and consider the actions worthy of being charged under this crime.⁶⁹ Furthermore a judge who neglects the imperial constitutions was liable under falsum.⁷⁰ In the republic the court dealt with the forging of wills as Paulus contrasts this with the tampering of other legal documents.⁷¹ Evidence suggests the urban prefects subsumed the courts of falsum by the late second century.⁷²

⁵⁸CJ, 4.44.2-8.

⁵⁹D.1.12.1, The prefect as he held jurisdiction to try all crimes.

⁶⁰Harriet Dale- Johnson, *The Roman Tribunal*, (Baltimore, 1927), 41. Robinson, *Criminal law of ancient Rome*, 43.

⁶¹Dio, 52.21.2.

⁶²Bauman, *Crime and punishment*, 24.

⁶³D.48, 2, 3 pr.

⁶⁴Garnsey, *Social status and legal privilege in the Roman empire*, 56.

⁶⁵ Ibid.

⁶⁶ D, tr. Scott, lines 48.6.5.

⁶⁷ D, tr. Scott, lines 48.8.2.

⁶⁸ D, 48.10.1.1pr. Adolf Berger, *Encyclopaedic dictionary of Roman law* (Philadelphia: American philosophical Society, 1953), 467.

⁶⁹ D.48.10.1.4pr.

⁷⁰ Robinson, *Criminal law of ancient Rome*, 38.

⁷¹ PS, 7.1.

⁷² D.48.10.24.

The emperor and the senate tried cases of maiestas (treason) and repetundae (provincial extortion). As for crimes concerning vis, (public violence) there appears to be no mention of a jury court. It is probable the urban prefect was in charge as he could discipline troublesome citizens.⁷³ And some crimes became obsolete such as ambitus (bribery in elections). The exact decline of the courts is indeed problematic, as jurists and scholars depict varying views. According to Paulus this occurred in the early part of the third century, whilst scholars vary in their time frame from the late second century to the end of the Dominate itself.⁷⁴

The quaestio statutes seemed to be in effect in accordance with the Severan jurists as their work gives prominence to the public law of the republic. There is further evidence to suggest the court for murder and adultery may have been active in practice, though not with the exact republican procedure intact, but the praetors had a certain role in the judicial system. The most possible explanation remains that the curule magistrates and prefects' tribunals shared criminal jurisdiction amongst them. The republican magistrates functioning within the iudicia publica with imperial magistracies indicates the criminal court veered towards the republican frame-work, as it retained key magistrates, laws and consilia.⁷⁵ The public's role was equally important, criminal law of the period continued to require the presence of an accuser which the defendant had the right to confront, and the mandatory lodging of a libellus inscription is⁷⁶ signed by the accuser. Furthermore, it is important to remember iudicia publica as mentioned in the imperial sources upheld its public role as it did in the republic by holding court proceedings before the masses true to republican practice.⁷⁷

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⁷⁴ Lowenstein, *Governance of Rome*, 298.

⁷⁵ A council that voted on judicial matters

⁷⁶ D, 48.2.3.2.

⁷⁷ D, 48.5.1.3.

