

When Roman Law Ruled the Western World

Starting as a small kingdom, Rome grew to be republic and then an empire that lasted about 500 years in Western Europe and almost another thousand years in the eastern Mediterranean. During that time, the Romans introduced elements of civil and criminal law that provided the foundation for the legal systems of most nations in the Western world today.

Rome began as a small kingdom around 750 B.C. As in all ancient societies, Roman law began with custom. A custom is a way of doing things over time. Perhaps the most unique and far-reaching custom of the ancient Romans was the idea of *patria potestas*. This Latin term refers to the power of the Roman father over his wife, children, and other members of his family. His word was literally the law.

In early times, the father held life and death power over his children. He could leave an unwanted or deformed newborn infant in the forest to die of exposure. He could also sell his children into slavery.

A father's absolute power over his family lasted until he died. His children, even though they may have been adults, could not own property because the father legally owned all the possessions of family members. Nor could children marry without the father's consent.

Just because a father held the power of a dictator did not mean that every father acted like one. In practice, many fathers gladly gave up their rights over their adult children. When a daughter married, she usually left her father's control and came under the power of her husband. Fathers also legally emancipated or freed their sons to become independent.



The ruins of the Roman Forum. This was the heart of the Roman Empire, where judicial, civic, business, and religious activities took place. (Library of Congress)

Under *patria potestas*, the Roman father acted as a judge to settle legal matters within the family. When a conflict occurred between families, the fathers of each would negotiate a settlement.

Law in the Roman Republic

After the Romans established a republic in 509 B.C., they created several lawmaking bodies representing different classes of people. At first, only the upper-class patricians made the laws. But before long, the lower-class plebeians gained this right.

About 60 years after the founding of the Roman Republic, discontented plebeians demanded a written code of laws and legal rights. The plebeians complained that because the laws were not in writing, government authorities and creditors could easily abuse the people.

After some resistance from the patricians, a committee produced 12 bronze tablets that together contained Rome's first law code. Called the Twelve Tables, this code recorded important legal concepts such as:

- rules to settle boundary and other property disputes.
- formulas to make contracts and wills.
- protections for debtors.
- rights of citizens, such as the right to be represented by someone in a legal matter.

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Around 570 B.C., the Romans created the praetor system for settling conflicts. It largely replaced the role of families and fathers in the legal system. Under the new system, the praetor, a powerful government official, took written complaints from citizens and investigated them. The praetor decided whether to authorize a trial before a judge. The plaintiff, the one bringing the complaint, and the defendant then presented their evidence to the judge. Finally, the praetor decided the case and, if the plaintiff won, ordered a remedy or compensation of some type. The praetor system handled criminal offenses in the same way.

Appointed to one-year terms, the praetors became increasingly powerful judicial officials. They began the practice of issuing a written statement, called the Praetor's Edict, as their term of office began. This edict described the rights the praetor intended to enforce and what remedies he would recommend for wrongful acts. Eventually, the edict became a standard set of legal principles and rules passed from one praetor to another. Praetors used their edicts to interpret the Twelve Tables, as well as the laws passed by the assemblies of the Republic.

Family Law, Civil Wrongs, and Jury Courts

Family law in the Roman Republic set the minimum age for marriage at 14 for males and 12 for females. No formal ceremony, religious or otherwise, was necessary. The fathers of both families, however, still had to give consent. The male-dominated system also required the wife to bring a dowry (usually some kind of property) to her husband, who then controlled it. But either spouse could divorce the other without having to go through any legal formalities.

Slavery was common in ancient Rome. One became a slave by being captured in war, born to a slave mother, or convicted for certain offenses. Masters had near absolute power over their slaves during the republic, including the right to kill them. Masters could also free their slaves. When this happened, the slave automatically became a Roman citizen.

Throughout most of the long history of the Roman Republic, the law treated criminal offenses as "civil wrongs" that were handled in lawsuits between the victim and the accused offender. For example, the Praetor's Edict declared that if a judge found a person guilty of certain kinds of stealing, he had to pay his victim four times the value of the stolen goods. Judges

decided the compensation due a victim for personal injuries, usually a sum of money.

Around 80 B.C., toward the end of the republic, the government created jury courts that specialized in particular crimes. Each court had a presiding judge and up to 75 jury members, who were chosen by lot to decide a case. At first, only patrician senators could serve as jurors, but later, juries included men from other propertied classes.

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

Punishments included fines, flogging, loss of citizenship, banishment, forced labor in government mines, and death by crucifixion or by beasts in an arena, such as the famous Coliseum.

At the trial, the accusers had to be present and often conducted their own prosecution. The defendants could represent themselves or be represented by one or more advocates. These advocates were typically experienced public speakers rather than experts in the law. Lawyers did exist, but they offered their advice (for free) outside the court trial.

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

Under the jury court system, the law assigned penalties for crimes. Punishments included fines, flogging, loss of citizenship, banishment, forced labor in

government mines, and death by crucifixion or by beasts in an arena, such as the famous Coliseum. Lower-class criminals suffered physical punishment and death much more frequently than upper-class offenders for the same crime. Although there was no right of appeal, a lawmaking assembly could pardon a convicted criminal.

Imperial Law

After Caesar Augustus established the Roman Empire in 31 B.C., imperial officials and courts directly controlled by the emperor replaced the jury courts. The emperor also assumed the power to make and interpret the laws.

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

For some offenses, the emperor confiscated the convicted criminal's property. In many cases, this impoverished the offender's entire family. Augustus made adultery a crime, forcing a guilty wife to divorce her husband, surrender a portion of her dowry to him, and lose a third of her property. While a wife could not accuse her husband of adultery, she could divorce him. A wife, but not an unmarried woman, could be punished (usually by banishment) for abortion since the law considered that her husband had been deprived of an heir. The penalty for rape was death.

Treason could include a variety of acts from armed rebellion to cursing the emperor. Those found guilty would be banished or executed and would also have their property confiscated. Private organizations of all kinds were carefully controlled or outlawed because they provided opportunities for people to meet and conspire against the emperor. This was one reason why emperors banned the early Christian Church.

The Romans usually did not tamper with the local customs and laws of the peoples they conquered. After centuries of Roman rule, however, Roman law began to apply to citizens and foreigners alike throughout the empire. The *jus gentium* ("law of the nations") included trade laws, rulings by governors and judges in the provinces, as well as edicts by the emperors. The concept of a single law for all peoples became more of a



Caesar Augustus, the first Roman emperor, reformed Roman law. (University of Virginia)

reality in A.D. 212 when Emperor Caracalla extended Roman citizenship to nearly all free inhabitants of the empire.

Some changes occurred in Roman law when Christianity became the official religion of the Empire in A.D. 395. For example, a marriage was not legal unless the couple had received the blessing of a church priest. Divorce became much more difficult. The emperors also outlawed the old pagan religious cults.

After the collapse of the Roman Empire in Western Europe in A.D. 476, Roman law underwent a long decline. In the eastern part of the empire, however, the law of the Romans continued to flourish under emperors like Justinian.

In A.D. 534, Justinian published the final version of a new Roman law code. This monumental work preserved, clarified, and updated centuries of Roman law-making since the Twelve Tables codified early Roman law almost a thousand years earlier. Justinian's Code kept Roman law alive in the eastern empire for nearly another thousand years.

Although Roman law seemed to disappear entirely after the final conquest of the eastern empire by the Ottoman Turks in 1453, the Christian church preserved much of it in its own canon (religious) law. In addition, Roman law experienced a revival of interest by scholars during the Renaissance.

In modern times, Roman law became the basis for several Western European law codes including those of France (Napoleonic Code), Austria, and Germany. In turn, these codes influenced many other countries such as Spain, Egypt, Japan, and even the state of Louisiana.

In the Western world, only England, its colonies, and Scandinavian countries developed law systems different from ancient Rome's. But even these countries are indebted to the Romans for creating many legal concepts, principles, and rights that govern the lives of their citizens today.

For Discussion and Writing

1. How did the following contribute to the development of Roman law?
 - a. *patria potestas*
 - b. Praetor's Edict
 - c. jury courts
 - d. emperors
 - e. Christianity
2. List five Roman law ideas that are familiar to you as part of the American law system today.
3. Did the Romans believe in equality before the law? Support your answer with evidence from the article.

For Further Reading

Robinson, O. F. *The Criminal Law of Ancient Rome*. Baltimore, Md.: Johns Hopkins University Press, 1995.

Watson, Alan. *Roman Law & Comparative Law*. Athens, Ga.: University of Georgia Press, 1991.

Law of the Nations

For a while, Roman law became the law of the Western world. Is the idea of a "law of the nations" workable in the world today?

- A. Below are seven general topics. Form small groups to write an international law for each one of the topics. Try to write your laws so they would be acceptable to most nations and cultures in the world today. For example, a law for the environment might be:
No person will be permitted to destroy any endangered species.
- B. The groups should then discuss each topic, one at a time, giving reasons why they think their laws should apply to all the nations in the world today.
- C. Finally, the class should discuss whether or not a "law of the nations" is a good idea.

Topics for a Law of the Nations

1. marriage
2. religion
3. government
4. immigration
5. terrorism
6. environment
7. war