THE ROMAN DEATH PENALTY

BY BOBBY KELLY

THE USE OF THE death penalty as a punishment for crime began with the ancient laws of China; the Babylonian Code of Hammurabi continued it in the eighteenth century B.C., as did the Egyptians in the sixteenth century, the Torah in the fifteenth century, and the Hittite Code in the fourteenth century. The seventh-century Draconian Code of Athens, named for Draco, the Athenian statesman and lawmaker, prescribed death for most every offense, including stealing cabbage. According to Herodotus, the Greek historian, the Persians employed the death penalty. Some historians believe the Persians were the first to utilize crucifixion. In about 520 B.C., Persia’s Emperor Darius destroyed the walls of Babylon and crucified 3,000 men. About 200 years later, Alexander the Great taught the inhabitants of Tyre a lesson for their resistance by butchering 6,000 men and “after that the king’s [Alexander] wrath furnished the victors with an awful spectacle; 2,000 men...hung nailed to crosses along a great stretch of the shore.”

Given this history, we should not be surprised that the Roman Law of the Twelve Tablets in the fifth century B.C. followed suit by delineating and indexing guidelines related to implementing the death penalty.

Warranting the Death Penalty

Nailing down with precision what crimes were punishable by death and which ones might have received a less severe punishment, such as flogging, in the first-century Roman Empire is difficult. The Twelve Tables, a code of laws the Romans established in 450 B.C., formed the basis for their legal system. In any culture, however, laws exist on the books that one generation enforces, but not another. I am aware that transporting an ice cream cone in your pocket is illegal in Kentucky. A friend of mine swears that in Texas shooting a buffalo from the second story of a hotel is against the law. But even in the occurrence of crimes punishable by death in the first century, the Romans adjudicated the death penalty differently according to class, whether nobility, freeman, or slave.

Roman law at times employed the death penalty for everything from printing slander, destroying a farmer’s crops, burning a house or a stack of corn near a house, a patron cheating his client, committing robbery, perjury, raising disturbances at night, to the willful murder of a freeman or a parent.

The upper classes (senatorial or equestrian class), however, controlled the criminal courts and typically received lenient treatment. As a result, officials rarely imposed the death penalty on them. The most common penalty for the nobility...
in the case of a capital crime was exile, which existed in two forms. A person could be expelled from Rome for a period or, in more severe cases, deported, which involved loss of citizenship and expulsion to some remote location. For the lower classes hard labor was the more likely alternative to the death penalty. The least severe version involved a temporary sentence to the public works or mines. The more ruthless version involved sentence to gladiatorial school where the convicted would receive training in how to fight well and, if defeated, how to offer his body for the most gripping death blow. Beyond these possibilities, however, lay the death penalty.6

By the time of Jesus, the death penalty for most Roman citizens was limited to “massive violations of the public order,” such as “treason” or “grave acts of disobedience against magistrates.”7 For non-citizens such as foreigners, freedmen, and slaves, however, the government could prescribe the death penalty for any number of crimes. Above all, Rome was concerned with order, loyalty, and taxes. If a non-citizen stirred up the populace, acted in a disloyal manner, or challenged payment of Roman taxes, the death penalty would surely result.

Pronouncing the Death Penalty

The central question is who wielded the power to punish criminals and, most importantly, who could impose the death penalty? Certainly the emperor had the absolute right of life or death over all inhabitants of Rome. However, from the time of Augustus, the government delegated these powers to the regional governors, procurators, and prefects.8

The governors tended to come from the aristocracy. The procurators and prefects, however, served smaller and more challenging provinces and were not from the nobility. Pilate himself, as prefect, would have come from the equestrian rank. These Roman administrators had two basic responsibilities: to collect taxes and keep the peace. The emperor typically had little concern for how the procurators and prefects carried out these responsibilities. In the name of keeping the peace, the provincial ruler exercised the power of life and death. If a gathering of subversives threatened to revolt, he could send out the troops. If several hundred died in the process, this would serve as a lesson to others who might disturb the peace. If someone charged that an individual was a rabble rouser, particularly if the accused was a non-citizen, the local governor could listen to the charges and free him on the spot. On the other hand, the governor could decide the person presented a genuine threat and have him executed. If execution was the verdict, it would be carried out immediately.9 Persons in Rome set punishments according to a compilation of statutes. In the provinces, however, local governors exercised exclusive authority concerning charges, procedures, penalties, and punishments.10

Knowing that the emperor had the authority to impose the death penalty and could, by extension, grant that authority to one of his governmental appointees (such as Pontius Pilate), and knowing that Jesus was a
The executioner, the veiling of the head, and the very word “cross” should be far removed not only from the person of a Roman citizen but from his thoughts, his eyes and his ears. For it is not only the actual occurrence of these things or the endurance of them, but liability to them, the expectation, nay, the mere mention of them, that is unworthy of a Roman citizen.

Compiling information from the meager sources available, we know crucifixion would have looked something like the following. The victim, in conjunction with the pronouncement of the sentence, endured scourging or flogging (Mark 15:15; John 19:1). Then, the person carried the beam to the place of execution, a custom Plutarch and the Gospels mentioned (Luke 23:26; John 19:16-17). In the case of heinous acts of treason by a Roman citizen, or for crimes by a foreigner, freedman, or slave, they carried it out in the most brutal and vicious manner. Methods of execution included strangulation; beating to death; impalement; decapitation with the sword; burning; throwing the victim to the beasts; “bleeding,” which consisted of the guilty party cutting his or her wrists; and crucifixion. The Romans had a curious punishment for murdering a parent: they submersed the condemned person in water in a cloth sack that also contained a dog, a rooster, a viper, and an ape. For Romans as well as Greeks and Jews, however, no method of execution caused offense like crucifixion. It was “an utterly offensive affair, ‘obscene’ in the original sense of the word.” Cicero, the first-century Roman philosopher and politician, asserted that crucifixion was a “cruel and disgusting penalty.” In fact, citizens did not even like to speak about the act. Cicero stated explicitly:

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Carrying Out the Death Penalty

The lack of information Roman authors gave about the details of crucifixion seems surprising on the surface. Historically, though, persons and nations who have tortured or executed others have not left behind copious details about their actions. When Romans prescribed the death penalty, non-Roman citizen from the peasant class, the account of Jesus’ death in the Gospels gains credibility. The charges the Sanhedrin brought against Jesus were well designed to bring about Jesus’ death given Rome’s concerns in a province like Judea: “We found this man subverting our nation, opposing payment of taxes to Caesar, and saying that He Himself is the Messiah, a King” (Luke 23:2, HCSB). Some 30 years later Paul would have more options due to his Roman citizenship. As a citizen he had the right of due process and ultimately the right to appeal to the emperor (Acts 24–25, especially 25:10-12).
that might last a number of days. The gradual nature of the death satisfied the primal hunger for revenge. Seneca captured the chilling nature of crucifixion as follows:

Can anyone be found who would prefer wasting away in pain, dying limb by limb, or letting out his life drop by drop, rather than expiring once for all? Can any man be found willing to be fastened to the accursed tree, long sickly, already deformed, swelling with ugly tumours on chest and shoulders, and draw the breath of life amid long-drawn-out agony? I think he would have many excuses for dying even before mounting the cross!\(^\text{20}\)

Furthermore, death by crucifixion served as a deterrent to those who would threaten Roman rule or peace. It did so by the physical deprivation and psychological shame the offender experienced. In the case of a Jew, the shame was further heightened by the belief that “anyone hung on a tree is under God’s curse” (Deut. 21:23, HCSB), a curse Paul cited in relation to Jesus’ crucifixion (Gal. 3:13). In order to enhance the event as deterrent, crucifixions did not take place in isolated areas but on well-traveled routes. Pseudo-Quintillian asserts that “when we [Romans] crucify criminals the most frequented roads are chosen, where the greatest number of people can look and be seized by this fear.”\(^\text{21}\)

The public display of the naked victim was all about pain and shame. This is the death Jesus died, the death of God’s own Son on a tree of shame. Sobering indeed. Is there any wonder that Paul spoke of the foolishness of the message of a crucified Messiah (1 Cor. 1:23)?


\(^{2}\)Herodotus, The Persian Wars 3.159.


\(^{6}\)Crook, Law and Life of Rome, 272-73.


\(^{10}\)Wansink, “Roman Law,” 986.

\(^{11}\)Laurence, A History of Capital Punishment, 3.


\(^{16}\)Hengel, Crucifixion, 25.

\(^{17}\)See the Apocrypha Acts of Peter 37.

\(^{18}\)According to tradition dating from the 7th century, Andrew died on a cross of this form.

\(^{19}\)Seneca, Moral Essays: To Marcia on Consolation 30.3.


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