

As someone who has had his house broken into twice in the last five years, I began to interest myself in Roman ways of handling theft and burglary. To begin with, the earliest Roman law on the matter, the Twelve Tables of 450 BC, broaches the subject in surprisingly liberal terms. You may not kill thieves because they are stealing from you; only if they are armed and threatening may you use deadly force. In fact, thieves condemned in Rome were neither hanged nor shipped off to penal colonies as they were in 18th century England. The worst that could happen to a thief was condemnation to the mines (*ad metalla*) if lower class, and dishonourable exile from Rome if upper class.

Around 80 BC the dictator Sulla re-organized the high criminal courts of Rome into seven separate *quaestiones* to deal with different categories of serious criminal offenses. Oddly enough there was no court for regular theft at all, though there was a "*Quaestio de Peculatu*" which tried men accused of stealing from the state. I suppose ordinary theft was not considered an upper class crime. No senator would wish to risk his reputation by simple peculation because, when one was found guilty of theft, the censor would put a note of censure by one's name and one would become *infamis*, dishonest, in an official way. A Roman's name and his *dignitas* were too precious to risk by being caught ripping someone off for a few denarii.

During most of the Republic you have, in fact, a situation quite alien to our own world: the Roman Republic was a world devoid of police. After a theft in our society, the first thing we do is inform the police, and then the insurance company. Neither are Roman recourses. In Rome you had to rely on friends, kinfolk, fellow tribesmen, neighbours and patrons to help you protect your property. If being robbed or burgled you must "call out". This system operated for centuries so it must have worked, though I myself have difficulty imagining it. Once robbed, however, your course was as a rule through the civil law and not the criminal system.

During the republic there were junior magistrates, the *Tresviri Capiales*, three in number and drawn from young aristocrats who had not yet entered into their formal senatorial career which began at approximately 30 years of age. You could proceed against a thief in their court in a number of different ways: first, by an *Actio Furti* to get the fellow tagged with his crime and then by a possible *Condictio Furtiva* which acted to recover the stolen object. Unfortunately the law called on the thief to pay double damages on the value of the stolen object, quadruple damages if violence was used. Thieves, however, usually are penniless so this was not likely to be of much comfort. However, if you couldn't pay, you might be reduced to debt bondage until the judgement was fulfilled, and if the man who stole was a slave, the slave's ownership could be conveyed to the victim. By the end of the Republic, simple damages and return of the stolen object were the normal goal.

In the Empire it was probably the Prefect of the Night Watch, the *Praefectus Vigilum*, who disposed of most of these strange proceedings. Before one pities the Romans for the lack of criminal court action against thieves and an effective investigative police force, I have to tell you that the buzzards who robbed me are still uncaught and unpunished—at least as far as I know.