

Crime – EC, KTL

EC: At the beginning of the Middle Ages, the spread of Christianity in western Europe led to the confusion between the idea of crime and the idea of sin. Any wrong committed by a Christian could be classified as a sin and/or as a crime. This confusion also created a confusion between two different concepts: penitence – which is what you deserve if you have committed a sin – and punishment – which is what you deserve if you have committed a crime. This also allowed the development of a particular idea of connecting what you have done with a kind of punishment. A second factor or influence in the construction of the concept of crime in Europe was a particular procedure which was introduced by the Roman Empire for every offence to the imperial majesty. This procedure very harshly punished every attempt on the emperor and started to consider every offence against the peace of society as an attempt on the emperor. This is an important precedent for introducing a basic concept, namely that for a crime you don't need an accusation from the offended party. The offended person doesn't need to accuse the offender of having committed a crime, because the public power will prosecute the offending party without any personal or private accusation. This changes everything. This starts to separate civil law procedure from criminal law procedure.

KTL: Exactly. We observe similar changes in common law. Before the end of the twelfth century, a lot of offences that we would consider to be crimes were considered as disputes between individuals. These offences were amendable through the payment of compensation to the victim or the kin without involving the ruler. Nevertheless, there may have been developments towards notions like crime. Some offences were considered to be too serious to be compensatable and would result in the punishment of offenders. The nature of prosecution changed in the twelfth century. The Anglo-Norman royal power was keen to bring an end to all the felonies considered to disrupt the king's peace, as they were seen as offences against the community. The turning point was in 1166 with the Assize of Clarendon, with the jury which had a duty to present – that is to say to accuse – all the suspected criminals on the basis of suspicion.

EC: Also the punishment had this kind of public nature. The punishment is death, which is displayed on a stage; the punishment is shame, inflicted on the condemned person; and the punishment is outlawry, expelling the person from the community.

KTL: Throughout the twelfth and thirteenth centuries, individual accusations, called appeal, remained a prevalent way of starting criminal cases. Then, as you said, the community got involved in punishment to a certain extent through the institution of the jury. Suspected criminals were gradually tried by jury, which delivered a verdict on the issue of innocence or guilt.