

ROMAN LEGAL TRADITION AND THE COMPILATION OF JUSTINIAN

Law in Early Rome and the Republic

Long before the Roman Republic was established in 509 BCE, the early Romans lived by laws developed through centuries of custom. This customary law (*ius*, in Latin) was handed down through generations and was considered by the Romans to be an inherited aspect of their society as it had evolved from its earliest days. Integral to the notion that this customary law was part of the fabric of early Roman culture was the fact that this law only applied to Roman citizens and was thus *ius civile*, or civil law.

The citizens of Rome were divided into two classes: patricians, the elite class who ruled Roman society, and plebeians, the common people. One element of the patricians' elite status was that a group of patrician men called pontiffs were the ones who made decisions and ruled in questions of customary law.

Over time, plebeians came to see that because of the disparity between their positions, patricians tended to have some advantage in the legal decisions made by the pontiffs who were their equals in status and power, and dissatisfaction grew with what many perceived to be the arbitrariness of the decisions made. This dissatisfaction arose during a period in the early Republic of intense conflict within the social order, as plebeians agitated to gain more political and social equality and patricians attempted to keep a tight hold on their own power. The plebeians pressed for the law to be written down, so that they might better anticipate the decisions made by the patrician pontiffs and understand their basis in the established law.

Above: Lupa Capitolina (c. 500–480 BCE), bronze statue, Musei Capitolini, Rome. Legend holds that Rome was founded in 753 BCE by Romulus and Remus, twin brothers born to a human mother but fathered by Mars, the god of War in Roman mythology. Abandoned on the banks of the Tiber River, they were found by a she-wolf (*lupa*) who nursed and cared for them until they were rescued by a shepherd.

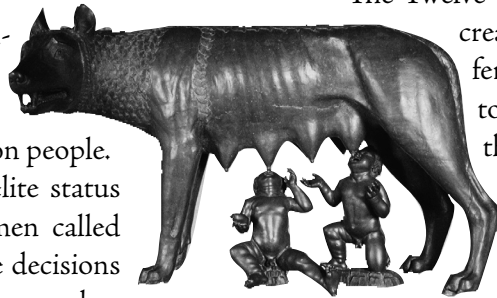
Right: The Temple of Saturn (498 BCE), one of the oldest structures in the Roman Forum, dates back to the earliest days of the Roman Republic. Adjacent to these columns in the Forum are the remnants of the rostra, the speakers' platform, on which the engraved tablets of the Twelve Tables were mounted for all to see.

The Twelve Tables

Thus a committee of ten men called the *decemvirs* was established in 451 BCE to write down the law for the first time. The work they produced in 449 BCE, the Twelve Tables, documented the centuries-old customary laws and became the foundation of Roman law as we know it. The Twelve Tables touched on many areas of law, not only the civil law that applied directly to citizens, but also areas such as public law and religious law, which applied to larger social constructs and institutions.

The Twelve Tables did not rewrite existing law or create new law. Rather, they simply transferred established customary law (*ius*) to a written form (*lex*). Neither did the Twelve Tables commit *all* existing law to written form. Instead, they focused on specific facets that had led or could lead to dispute or disagreement, and they addressed the technical aspects of legal procedure, so that a citizen had a guide to the proper ways to pursue legal action.

While the Twelve Tables were destroyed during the Celtic invasions of the fourth century BCE, their legacy was very strong and much of their content remained known—Cicero (106–43 BCE) the great statesman, jurist and orator of the late Republic, wrote that he was made to memorize and recite their provisions as a student.



Evolution of the Roman Legal System and Classical Roman Law

As the Roman republic grew and then transformed into an empire, its rulers faced the increasing challenge of governing an evermore diverse and far-flung population. Legal questions and disputes inevitably arose not only among Roman citizens, but with non-citizens living in or traveling through its territories, to whom the *ius civile* did not apply. This led to the development of the *ius gentium* (“law of nations”) and *ius naturale* (“natural law”). The *ius gentium*, or law of nations/peoples, was the body of laws that applied to all people, foreigners and non-citizens as well as citizens, and was based upon the common principles and reasoning that civilized societies and humankind were understood to live by and share. These laws common to all people were further understood to be rooted in the *ius naturale*, or natural law, a category of law based on the principles shared by all living creatures, humans as well as animals (such as laws pertaining to procreation, or physical defense against attack).

As these areas of law became more complex in tandem with the society that they governed, Roman rulers found themselves in need of a larger group of legal authorities to give order to the system of legal formulas and decisions. By the second half of the third century BCE, a new professional group of specialists trained in law, the jurists, emerged to meet this demand. The jurists did not participate in administering the law, but rather focused on interpreting and generating formal opinions on the law, as the pontiffs had done in earlier days. It was the work and scholarly writings of generations of great jurists that elevated Roman law to its apex during the first two and a half centuries CE, which is referred to as the classical period of Roman law.



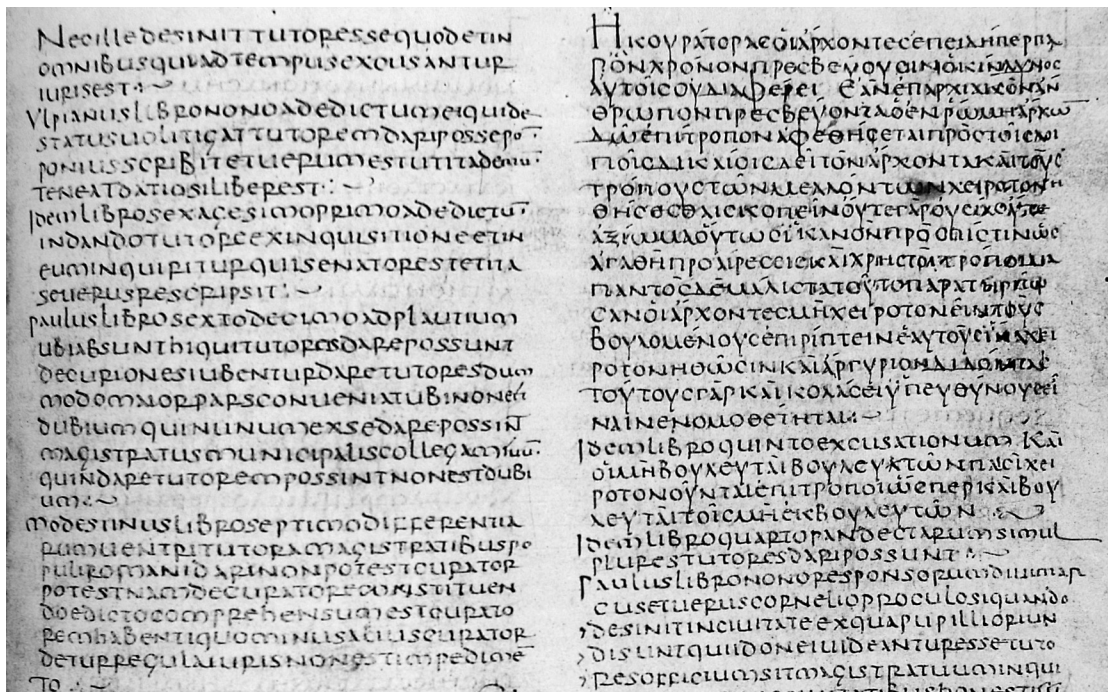
Above: Ulpian, Roman jurist, manuscript illumination (c. 1300 CE), Umbria, Italy. This illumination appears on a page from a medieval manuscript copy of Justinian's Digest. The seated judge in the tiny portrait is Domitius Ulpianus, or Ulpian, a Roman jurist and imperial official from the third century whose writings comprised nearly a third of the Digest. ©2007 The Robbins Collection.

Below: Relief of Justinian in the House chambers, US Capitol building.

Emperor Justinian and the *Corpus iuris civilis*

By the reign of the emperor Justinian I (ruled 527–565 CE), the vast territories of the Roman Empire in Europe, North Africa, and the East had for centuries been politically and culturally divided into the Western Empire and the Eastern, or Byzantine, Empire. The Western Empire had seen a series of Germanic invasions that led to its final collapse by 476 CE. So the Roman Empire under Justinian's rule was the East – though during his reign, the emperor waged a successful campaign to reconquer some of the Western territories that had been lost to Germanic invaders, such as Italy and parts of Spain. Like other Roman emperors





Left: Justinian I, *Pandectarum codex Florentinus* (Florence: L.S. Olschki, 1988). This is a page is from a facsimile edition of the *Pandectarum codex Florentinus*, the oldest extant edition of Justinian's Digest, copied just after its promulgation in the sixth century CE. As illustrated on this page, the manuscript is written in both Latin and Greek, reflecting its origins in the Byzantine Empire, or Eastern Roman Empire, which Justinian ruled from Constantinople and where Greek was the lingua franca.

before him, Justinian faced the challenge of maintaining control and creating a sense of unity among far-flung territories where other cultures and languages besides Latin (such as Greek) predominated.

One of the ways that Justinian sought to unify the empire was through law. Roman citizenship had been extended to the empire outside of Italy in the third century CE, making inhabitants far and wide “citizens of Rome” and subject to its civil law. He formed a commission of jurists to compile all existing Roman law into one body, which would serve to convey the historical tradition, culture, and language of Roman law throughout the empire. This compilation is sometimes referred to as “Justinian’s Code,” but in fact the Code was only one element. The compilation of Justinian actually consisted of three different original parts: the Digest (*Digesta*), the Code (*Codex*), and the Institutes (*Institutiones*). The Digest (533 CE) collected and summarized all of the classical jurists’ writings on law and justice. The Code (534 CE) outlined the actual laws of the empire, citing imperial constitutions, legislation and pronouncements. The Institutes (535 CE) were a smaller work that summarized the Digest, intended as a textbook for students of law. A fourth work, the Novella (*Novellae*), was not a part of Justinian’s project,

but was created separately by legal scholars in 556 CE to update the Code with new laws created after 534 CE and summarize Justinian’s own constitution.

The compilation of Justinian is widely considered to be the emperor’s greatest contribution to the history of Western society. Though largely forgotten for several centuries after the fall of the Western Empire, Roman law experienced a revival that began at the University of Bologna, Italy, in the eleventh century and spread throughout Europe. Surviving manuscript copies of Justinian’s compilation were rediscovered and systematically studied and reproduced. These new editions of the compilation, which were given the name *Corpus iuris civilis* (“body of civil law”), became the foundational source for Roman law in the Western tradition. All later systems of law in the West borrowed heavily from it, including the civil law systems of Western continental Europe, Latin America, and parts of Africa and to a lesser but still notable extent the English common law system, from which American law is principally derived.

Glossary

Civil law (*ius civile*) – in the Roman Republic/Empire, the body of law that applied to citizens.

Code – Part of the compilation of Justinian, or *Corpus iuris civilis*, that outlined the actual laws of the empire, citing imperial constitutions, legislation and pronouncements.

Compilation of Justinian – The multi-part compilation of Roman law ordered by Byzantine Emperor Justinian I in the sixth century CE. In the eleventh century, this compilation came to be known as the *Corpus iuris civilis*.

Decemvirs – A committee of ten Roman citizens formed in 451 BCE to write down Roman law for the first time in what was called the Twelve Tables

Digest – Part of the compilation of Justinian, or *Corpus iuris civilis*, that collected and summarized all of the classical jurists' writings on law and justice.

Institutes – Part of the compilation of Justinian, or *Corpus iuris civilis*, that summarized the Digest and was meant to be used as a textbook for students of law.

Jurists – A professional class of legal experts who interpreted the law and wrote scholarly opinions and treatises on law and justice in Ancient Rome.

Justinian I – Emperor who ruled the Eastern Roman Empire, or Byzantine Empire, from 527–565 CE and ordered all Roman law compiled into a multi-part work referred to as the compilation of Justinian and later named the *Corpus iuris civilis*.

Law of nations (*ius gentium*) – The body of laws that applied all people and was based upon the common principles and reasoning that civilized societies and humankind were understood to live by and share. In the Roman Empire, the *ius gentium* were the laws that applied to non-citizens and foreigners as well as Roman citizens.

Natural law (*ius naturale*) – A category of law based upon the principles shared by all living creatures, humans as well as animals.

Novella – Part of the *Corpus iuris civilis* that was not part of the original compilation of Justinian but was

created separately to update the Code with new laws created after 534 CE and to summarize Justinian's own constitution.

Patricians – An elite class of citizens in Ancient Rome who in its early days were exclusively eligible to hold the principle positions of power, such as senator or magistrate. The word derives from the term *pater* ("father"), as it was applied to the original 100 heads of family that formed the first Roman Senate. Patrician status was hereditary.

Plebeians – Non-patrician citizens of Rome who made up the greater part of the population. Plebeians did not enjoy privileged status and were unable to hold positions of power in early Rome.

Twelve Tables – The first written compilation of Roman laws. Produced in 449 BCE by the *decemvirs* and later lost/destroyed, the Twelve Tables and their legacy formed a foundation upon which the Roman legal system developed.

Select Bibliography/Further Reading

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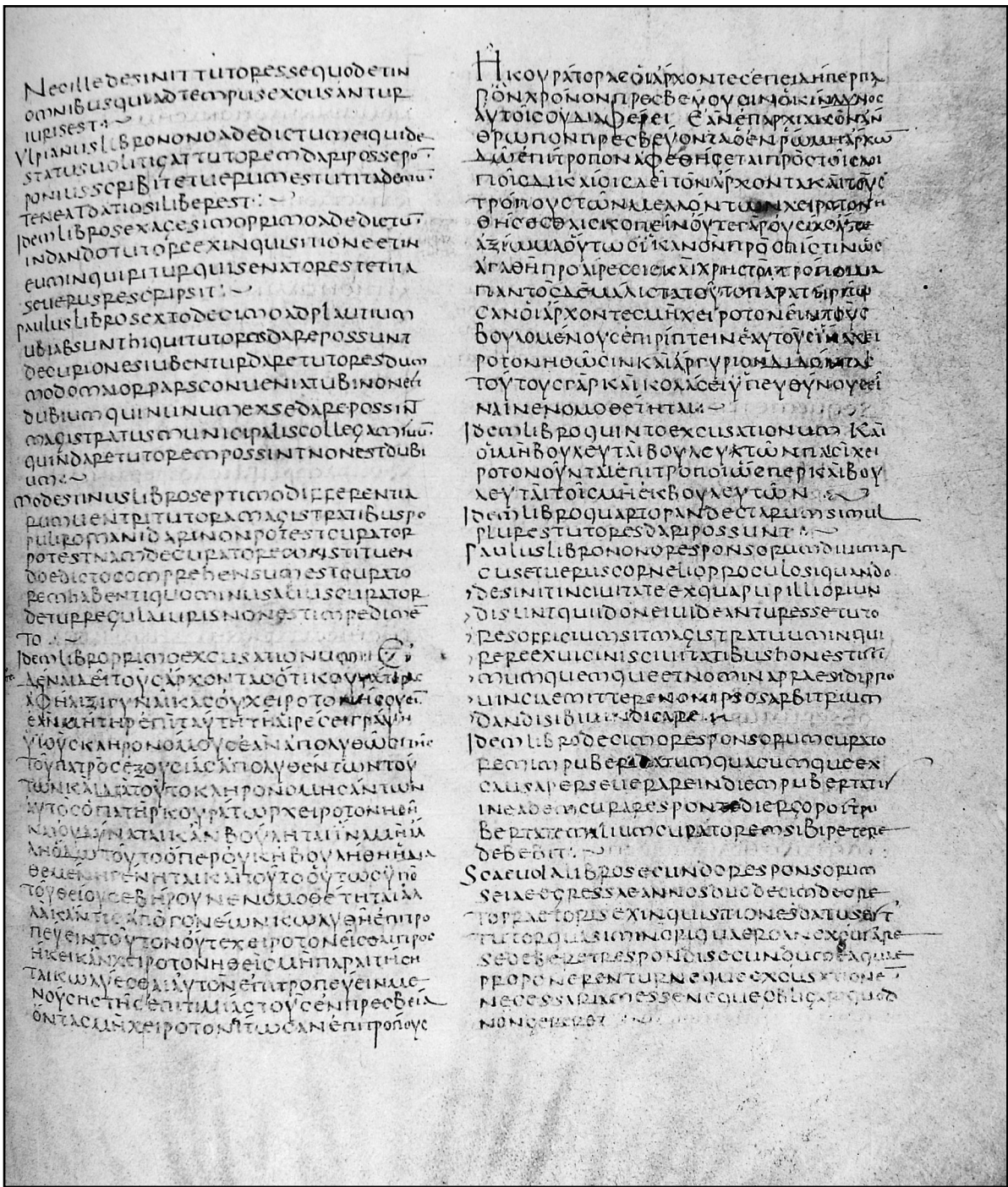
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Justinian I, *Pandectarum codex Florentinus* (Florence: L.S. Olschki, 1988). This is a page from a facsimile edition of the *Pandectarum codex Florentinus*, the oldest extant edition of Justinian's Digest, copied just after its promulgation in the sixth century CE. This manuscript contains both Latin and Greek text, reflecting its origins in the Byzantine Empire, or Eastern Roman Empire, which Justinian ruled from Constantinople and where Greek was the lingua franca.

Both languages are visible on the above page, switching from Latin to Greek in the bottom half of the left column, and switching back to Latin in the bottom half of the right column. The names of different jurists appear at the beginning of several of the paragraphs (Paulus, Ulpianus, Modestinus) and convey a sense of how the Digest was organized, with the commentaries of various jurists extracted and compiled into various sections, or "books," according to subject.

This page is from Book Twenty-Six, which concerns Tutors and Curators. In ancient Rome, the terms "tutor" and "pupil" referred not to teacher and student as they do today, but rather to guardian and ward. Tutors were responsible for the actions of their pupils until they reached the "age of reason" at puberty, after which time a "curator" was appointed as a protector and guardian of the fortune of the adolescent until the age of 25.

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Justinian I, Digest (Umbria, Italy, c.1300 CE), manuscript leaf. This is a page from a medieval manuscript copy of Justinian's Digest. The seated judge in the tiny portrait is Domitius Ulpianus, or Ulpian, a Roman jurist and imperial official from the third century whose writings comprised nearly a third of the Digest. The red text and illumination on this page mark the end of Book Nine of the Digest and the beginning of Book Ten, which deals with the regulation of estate boundaries and issues of property division and ownership. The text is formatted in a typical structure that scholarly manuscripts adopted over centuries, wherein the center block is the original text (in this case the Digest), and the surrounding text, usually in a smaller hand, is the gloss – notes and commentary on the original text written by later generations of scholars.

