***Roman law***

**Roman law**, the law of [ancient Rome](https://www.britannica.com/place/ancient-Rome) from the time of the founding of the city in 753 BCE until the fall of the Western Empire in the 5th century CE. It remained in use in the Eastern, or [Byzantine](https://www.merriam-webster.com/dictionary/Byzantine), Empire until 1453. As a legal system, Roman law has affected the development of law in most of Western civilization as well as in parts of the East. It forms the basis for the law codes of most countries of continental [Europe](https://www.britannica.com/place/Europe) and derivative systems elsewhere.

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The term Roman law today often refers to more than the laws of Roman society. The legal institutions evolved by the Romans had influence on the laws of other peoples in times long after the disappearance of the Roman Empire and in countries that were never subject to Roman rule. To take the most striking example, in a large part of [Germany](https://www.britannica.com/place/Germany), until the adoption of a common code for the whole empire in 1900, the Roman law was in force as “subsidiary law”; that is, it was applied unless excluded by contrary local provisions. This law, however, which was in force in parts of Europe long after the fall of the Roman Empire, was not the Roman law in its original form. Although its basis was indeed the Corpus Juris Civilis—the codifying legislation of the emperor Justinian I—this legislation had been interpreted, developed, and adapted to later conditions by generations of jurists from the 11th century onward and had received additions from non-Roman sources.

## Development Of The Jus Civile And Jus Gentium

In the great span of time during which the [Roman Republic](https://www.britannica.com/place/Roman-Republic) and Empire existed, there were many phases of legalistic development. During the period of the republic (753–31 BCE), the [jus civile](https://www.britannica.com/topic/jus-civile) (civil law) developed. Based on custom or legislation, it applied exclusively to Roman citizens. By the middle of the 3rd century BCE, however, another type of law, [jus gentium](https://www.britannica.com/topic/jus-gentium-Roman-law) (law of nations), was developed by the Romans to be applied both to themselves and to foreigners. Jus gentium was not the result of legislation, but was, instead, a development of the magistrates and governors who were responsible for administering [justice](https://www.britannica.com/topic/justice-social-concept) in cases in which foreigners were involved. The jus gentium became, to a large extent, part of the massive body of law that was applied by magistrates to citizens, as well as to foreigners, as a flexible [alternative](https://www.merriam-webster.com/dictionary/alternative) to jus civile.

Roman law, like other ancient systems, originally adopted the [principle of personality](https://www.britannica.com/topic/principle-of-personality)—that is, that the law of the state applied only to its citizens. Foreigners had no rights and, unless protected by some [treaty](https://www.britannica.com/topic/treaty) between their state and [Rome](https://www.britannica.com/place/Rome), they could be seized like ownerless pieces of property by any Roman. But from early times there were treaties with foreign states guaranteeing mutual protection. Even in cases in which there was no treaty, the increasing commercial interests of Rome forced it to protect, by some form of [justice](https://www.merriam-webster.com/dictionary/justice), the foreigners who came within its borders. A magistrate could not simply apply Roman law because that was the privilege of citizens; even had there not been this difficulty, foreigners would probably have objected to the cumbersome formalism that characterized the early jus civile.

The law that the magistrates applied probably consisted of three elements: (1) an existing [mercantile law](https://www.britannica.com/topic/business-law) that was used by the Mediterranean traders; (2) those institutions of the Roman law that, after being purged of their formalistic elements, could be applied universally to any litigant, Roman or foreigner; and (3) in the last resort, a magistrate’s own sense of what was fair and just. This system of jus gentium was also adopted when Rome began to acquire provinces so that provincial governors could administer justice to the peregrini (foreigners). This word came to mean not so much persons living under another government (of which, with the expansion of Roman power, there came to be fewer and fewer) as Roman subjects who were not citizens. In general, disputes between members of the same subject state were settled by that state’s own courts according to its own law, whereas disputes between provincials of different states or between provincials and Romans were resolved by the governor’s [court](https://www.britannica.com/topic/court-law) applying jus gentium. By the 3rd century **CE**, when citizenship was extended throughout the empire, the practical differences between jus civile and jus gentium ceased to exist. Even before this, when a Roman lawyer said that a [contract](https://www.britannica.com/topic/contract-law) of sale was juris gentium, he meant that it was formed in the same way and had the same legal results whether the parties to it were citizens or not. This became the practical meaning of jus gentium. Because of the universality of its application, however, the idea was also linked with the theoretical notion that it was the law common to all peoples and was dictated by nature—an idea that the Romans took from Greek philosophy.

## Written And Unwritten Law

The Romans divided their law into jus scriptum (written law) and jus non scriptum (unwritten law). By “unwritten law” they meant custom; by “written law” they meant not only the laws derived from legislation but, literally, laws based on any written source.

There were various types of written law, the first of which consisted of leges (singular lex), or enactments of one of the [assemblies](https://www.britannica.com/topic/assembly-government) of the whole Roman people. Although the wealthier classes, or patricians, dominated these assemblies, the common people, or plebeians, had their own council in which they enacted resolutions called [plebiscita](https://www.britannica.com/topic/plebiscita). Only after the passage of the [Lex Hortensia](https://www.britannica.com/topic/Lex-Hortensia) in 287 BCE, however, did plebiscita become binding on all classes of citizens; thereafter, plebiscita were generally termed leges along with other enactments. In general, legislation was a source of law only during the republic. When [Augustus Caesar](https://www.britannica.com/biography/Augustus-Roman-emperor) established the empire in 31 BCE, the assemblies did not at once cease to function, but their assent to any proposal became merely a formal ratification of the emperor’s wishes. The last known lex was passed during the reign of [Nerva](https://www.britannica.com/biography/Nerva-Roman-emperor) (96–98 CE).

The earliest and most important legislation, or body of leges, was the [Twelve Tables](https://www.britannica.com/topic/Law-of-the-Twelve-Tables), enacted in 451–450 BCE during the struggle of the plebeians for political equality. It represented an effort to obtain a written and public code that [patrician](https://www.britannica.com/topic/patrician) magistrates could not alter at will against [plebeian](https://www.britannica.com/topic/plebeian) litigants. Little is known of the actual content of the Twelve Tables; the text of the code has not survived, and only a few fragments are [extant](https://www.merriam-webster.com/dictionary/extant), collected from [allusions](https://www.merriam-webster.com/dictionary/allusions) and quotations in the works of authors such as [Cicero](https://www.britannica.com/biography/Cicero). From the fragments it is apparent that numerous matters were treated, among them [family law](https://www.britannica.com/topic/family-law), [delict](https://www.britannica.com/topic/delict) (tort, or offense against the law), and [legal procedure](https://www.britannica.com/topic/procedural-law).

A second type of written law consisted of the [edicta](https://www.britannica.com/topic/edictum) (edicts), or proclamations issued by a superior magistrate ([praetor](https://www.britannica.com/topic/praetor)) on judicial matters. The office of praetor was created in 367 BCE to take over the expanding legal work involving citizens; later, a separate praetor was created to deal with foreigners. Upon taking office, a praetor issued an edict that was, in effect, the program for his year in office. The [curule aediles](https://www.britannica.com/topic/curule-aedile), who were the magistrates responsible for the care and supervision of the markets, also issued edicts. During the later stages of the republic, these praetorian and magisterial edicts became an instrument of legal reform, and leges ceased to be a major source of private law.

The Roman system of procedure gave the magistrate great powers for providing or refusing judicial remedies, as well as for determining the form that such remedies should take. The result of this magisterial system was the development of the jus honorarium, a new body of rules that existed alongside, and often superseded, the civil law. The edicta remained a source of law until about 131 CE, when the emperor [Hadrian](https://www.britannica.com/biography/Hadrian) commissioned their reorganization and consolidation and declared the resulting set of laws to be unalterable, except by the emperor himself.

A third type of written law was the [*senatus consulta*](https://www.britannica.com/topic/senatus-consultum), or resolutions of the Roman [senate](https://www.britannica.com/topic/Senate-Roman-history). Although these suggestions to various magistrates had no [legislative](https://www.britannica.com/topic/legislature) force during the republic, they could be given force by the magistrates’ edicts. In the early empire, as the power of the assemblies declined and the position of the emperor increased, senatus consulta became resolutions that [endorsed](https://www.merriam-webster.com/dictionary/endorsed) the proposals of the emperor. As the approval of the Senate became increasingly automatic, the emperor’s proposals became the true instrument of power. Consequently, emperors ceased referring proposals to the Senate and, not long after the early imperial period, ended the practice of legislating through the Senate.

A fourth type of written law consisted of the [*constitutiones principum*](https://www.britannica.com/topic/constitutiones-principum), which were, in effect, expressions of the legislative power of the emperor. By the middle of the 2nd century CE, the emperor was, essentially, the sole creator of the law. The chief forms of imperial legislation were edicts or proclamations; instructions to subordinates, especially provincial governors; written answers to officials or others who consulted the emperor; and decisions of the emperor sitting as a [judge](https://www.britannica.com/topic/judge-law).

The last type of written law was the [*responsa prudentium*](https://www.britannica.com/topic/responsa-prudentium), or answers to legal questions given by learned lawyers to those who consulted them. Although law, written and unwritten, was originally a rather secretive monopoly of the college of [pontiffs](https://www.britannica.com/topic/pontifex), or priests, a recognizable class of [legal advisers](https://www.britannica.com/topic/lawyer), juris consulti or prudentes, had developed by the early 3rd century BCE. These legal advisers were not professionals as such but men of rank who sought popularity and advancement in their public careers by giving free legal advice. They interpreted statutes and points of law, especially unwritten law, advised the praetor on the content of his edict, and assisted parties and judges in litigation. Augustus empowered certain jurists to give responsa with the emperor’s authority; this increased their [prestige](https://www.merriam-webster.com/dictionary/prestige), but the practice lapsed as early as 200 CE.

During the early empire, numerous commentaries were written by the great jurists on individual leges, on civil law, on the edict, and on law as a whole. In the 5th century a law was passed stipulating that only the works of certain jurists could be cited. Legal scholarship declined in the postclassical period.