

# ROMAN-CANON IUS COMMUNE

There is a common European legal culture centred around a legal scholarship and legal practice that were informed by the same sources. The old European law is known as the ROMAN-CANON IUS COMMUNE



**ROMAN EMPIRE**  
 AT ITS GREATEST EXTENT  
 THIRD CENTURY A.D.

English Miles  
 Roman Miles



BRITAIN

Hadrian's Wall

GERMANY

FRANCE

THE ALPS

River Tiber

ROME

SPAIN

New Carthage

Corsica

Sardinia

ITALY

GREECE

TURKEY

Black Sea

SYRIA

NORTH AFRICA

Carthage

Sicily

Mediterranean Sea

CYPRUS

CRETE

EGYPT



# The twelve tables

This is the earliest attempt by the Romans to create a **CODE OF LAW**; a commission of ten men (Decemviri) was appointed (ca. 455 B.C.) to draw up a code of law which would be binding on both parties and which the magistrates (and the two consuls) would have to enforce impartially.

## **Table I. Proceedings Preliminary to Trial**

1. If the plaintiff summons the defendant to court the defendant shall go. If the defendant does not go the plaintiff shall call a witness thereto. Only then the plaintiff shall seize the defendant.
2. If the defendant attempts evasion or takes flight the plaintiff shall lay hand on him.
3. If sickness or age is an impediment he who summons the defendant to court shall grant him a vehicle. If he a does not wish he shall not spread a carriage with cushions.

## Table VIII – torts or delicts

- 12. If the theft has been done by night, if the owner kills the thief, the thief shall be held to be lawfully killed.
- 13. It is unlawful for a thief to be killed by day....unless he defends himself with a weapon; even though he has come with a weapon, unless he shall use the weapon and fight back, you shall not kill him. And even if he resists, first call out so that someone may hear and come up.

## Table VIII – torts or delicts

2. If one has maimed a limb and does not compromise with the injured person, let there be retaliation. If one has broken a bone of a freeman with his hand or with a cudgel, let him pay a penalty of three hundred coins. If he has broken the bone of a slave, let him have one hundred and fifty coins. If one is guilty of insult, the penalty shall be twenty-five coins.

## TABLE I - preliminaries to a trial

6-9 When the parties compromise the matter, an official shall announce it. If they do not compromise, they shall state the outline of the case in the meeting place or market before noon.

### *Italian labour law*

*Art. 31 Legislative Decree no. 80 of 31st March 1998 provides that before an employee or an employer goes to Court, he or she has to attempt a conciliation at the Provincial labour Office. The conciliation board is presided over by the director of the Labour Office, and is composed of four labour union and four employer representatives nominated by the most representative organisations. The majority of cases are settled by this tripartite board or by conciliation before the Court. If the dispute is not solved by the parties or via conciliation, it can be decided in the private (and also in the public) sector by ordinary Courts*



## Table IV - Rights of fathers

1. A dreadfully deformed child shall be quickly killed

4. A child born after ten months since the father's death will not be admitted into a legal inheritance

## Table IX – Public Law

5. Treason: he who shall have roused up a public enemy or handed over a citizen to a public enemy must suffer capital punishment

# **Italian Constitution**

## **Article 27 [Rights of the Accused]**

- (1) Criminal responsibility is personal.
- (2) The defendant may not be considered guilty until sentenced.
- (3) Punishments may not contradict humanity and must aim at re-educating the convicted.
- (4) Death penalty is prohibited except by military law in time of war.

## Table X – Sacred law

1. A dead man shall not be buried or burned within the city

## Table IX

4. The penalty shall be capital for a judge or arbiter legally appointed who has been found guilty of receiving a bribe for giving a decision

6. Putting to death of any man, whosoever he might be, unconvicted, is forbidden

# Italian Constitution

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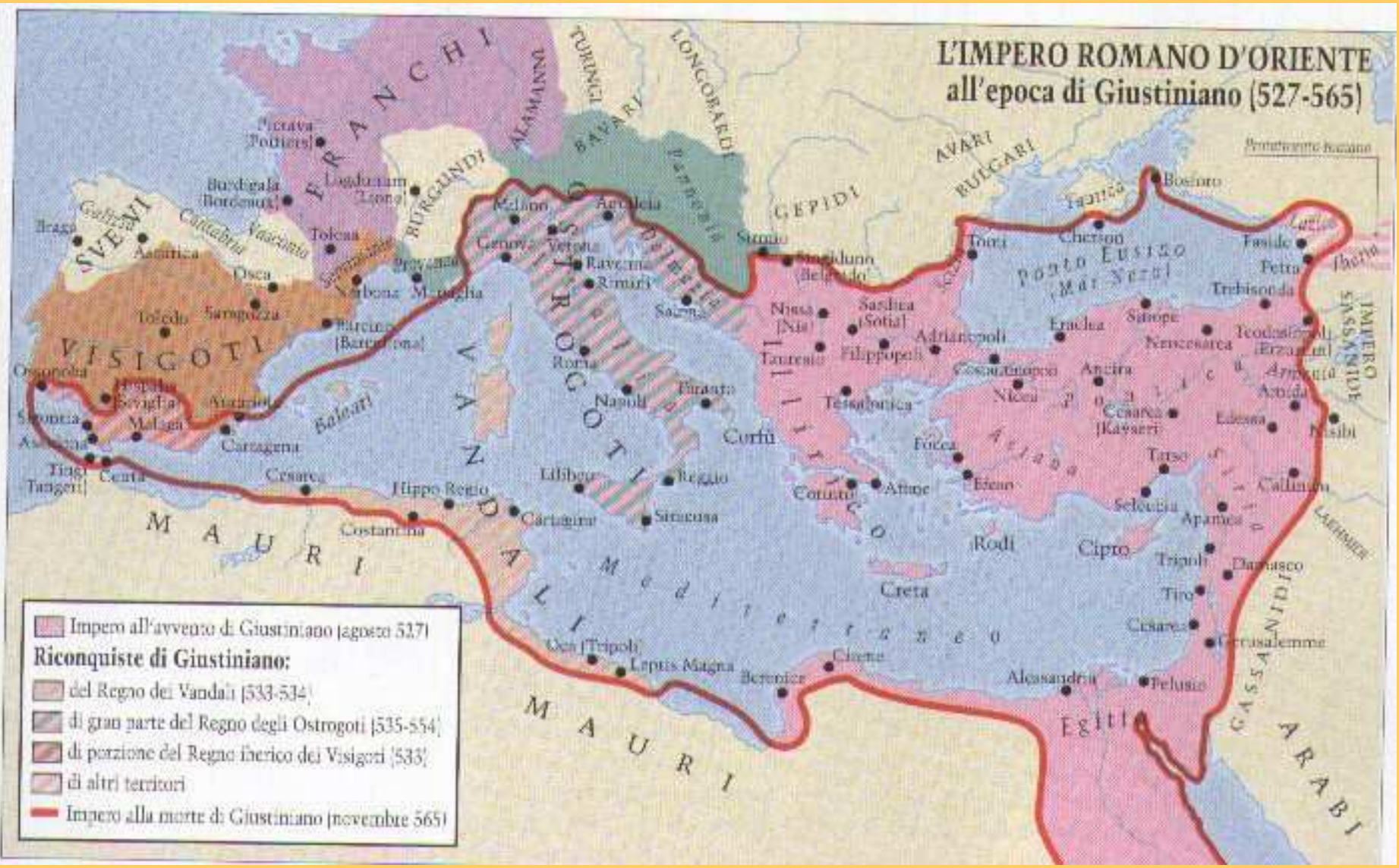




Dante Alighieri  
The Divine Comedy  
Paradise, Canto VI, Justinian

[...] Caesar I was, and am Justinian  
who, by the will of primal Love I fell,  
took from the laws the useless and redundant

# L'IMPERO ROMANO D'ORIENTE all'epoca di Giustiniano (527-565)



- Impero all'avvento di Giustiniano (agosto 527)
- Riconquiste di Giustiniano:**
- del Regno dei Vandali (533-534)
- di gran parte del Regno degli Ostrogoti (535-554)
- di porzione del Regno iberico dei Visigoti (533)
- di altri territori
- Impero alla morte di Giustiniano (novembre 565)



# CORPUS JURIS CIVILIS

Codex Vetus, promulgated in 530

Digest or Pandects, 533

Justinian's Institutes, 534



D IUSTINIANI IMPERATORIS



UTRINQUE TEMPVS

# CORPVS

Juris Civilis

PRVDENTVM RESPONSA,  
CAESARVMQVE RESCRIPTA  
Compendiosè

*Quoque Tomis distinctim.*

MVLTLIS LEGIBVS AVCTVM.

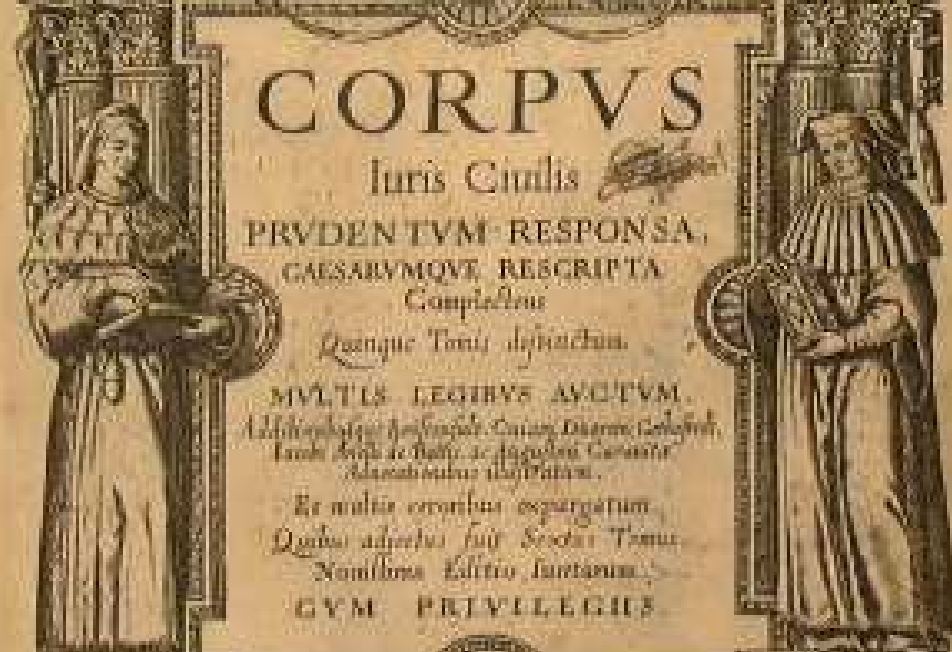
*Adhibet huiusmodi Capitula, Decretum, Collectio,  
Liberi, Annot. de Bullis, ac Augustini Constantini  
Adversus Iulianum illi Patrem.*

*Et multis corambris expurgatum.*

*Quibus adiectus fuit Sextus Tomus.*

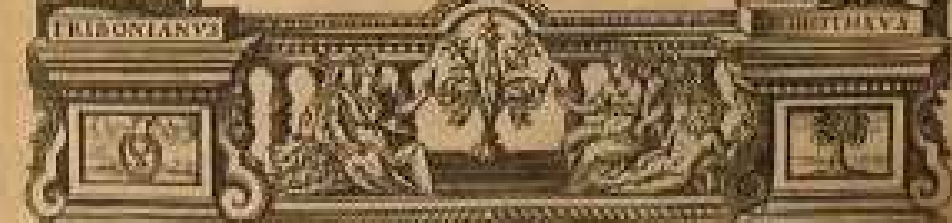
*Nomlibus Ecclesie Iustianum.*

QVM PRIVILEGIIS



FRIBONIANVS

FRIBONIANVS



XIX. LEGE

VENETIS APVD IUNTAM

VERA



DIGESTVM VETVS.

SEV PANDECTARVM

Iuris Ciuilis,

TOMVS PRIMVS.

CVM LECTIIONVM FLORENTINARVM

*varietatibus, diligentias quàm antea in margine appositis,*

AC POST ACCVRSII COMMENTARIOS.

CONTII Scholia, CENACII Paratitla, DVARENI,  
aliorumq; Clarissimorum I.C. Additiones,

IACOBI ANZANI DE VOTII, AC APVSTINI CARAVITAE

*Regium in Regno Neapolitano Consiliariorum,  
Adnotaciones illustratae.*

CVM PRIVILEGIIS.



*L. Pascoli  
P. J. E. Valentini*

*Dele  
Famila Stamp.*

VENETIIS. Apud Iuntas. MDCXXI.

CORPVS  
IVRIS CIVILIS  
QVO IVS VNIVERSVM  
IVSTINIANEVVM  
COMPREHENDITVR

PARISIIS, AD EXPENDIUM ACADEMIÆ REGIÆ  
CODICIS, CUM OPTIMIS QVIBVSQVE LITVNDIIS  
COLLECTIS, PER D. DIONYSII GOTHOFREDI I.C.  
CURIAM JAVENACENSIS PALATII ACADEMIÆ REGIÆ, CUM  
ADDETA ET INDEXIBVS, JOSEPHO CLOVETII, SACRÆ ET  
PUBLICÆ BIBLIOTHECÆ, PARISIENSIS, COMMISSARIJ, IN  
CUIUS BIBLIOTHECA HÆC EST LIBRARIJ, CUM  
ADDETA ET INDEXIBVS, JOSEPHO CLOVETII, SACRÆ ET  
PUBLICÆ BIBLIOTHECÆ, PARISIENSIS, COMMISSARIJ, IN  
CUIUS BIBLIOTHECA HÆC EST LIBRARIJ, CUM  
ADDETA ET INDEXIBVS, JOSEPHO CLOVETII, SACRÆ ET  
PUBLICÆ BIBLIOTHECÆ, PARISIENSIS, COMMISSARIJ, IN  
CUIUS BIBLIOTHECA HÆC EST LIBRARIJ, CUM



*Handwritten notes:*  
C. Goussier  
1802  
57

*Handwritten signature:*  
Goussier

LYODNI  
Sumpibus IOANNIS CAFFIN,  
M. D. C. C.  
CUM FRVNDIIS LIBRIS  
EX BIBLIOTHECA REGIÆ



# Justinian's Institutes

## Liber Primus, Tit I, De Iustitia et Iure

Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.

(Justice is the constant and perpetual wish to render every one his due)

Iurisprudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.

(Jurisprudence is the knowledge of things divine and human; the science of the just and the unjust)

# LAW

Iuris praecepta sunt haec: honeste vivere,  
alterum non laedere, suum cuique  
tribuere

(The maxims of law are these: to live  
honestly, to hurt no one, to give  
everyone his due)



# Public and private law

The study of law is divided into two branches; that of public law and that of private law. Public law regards the government of the Roman Empire; private law, the interest of the individuals. The latter is composed of three elements, and consists of precepts belonging to the natural law, the law of nations, and to the civil law

# De iure naturali, gentium et civili

## Natural, common and civil law

The law of nature is the law which nature teaches to all animals. For this law does not belong exclusively to the human race, but belongs to all animals, whether of the earth, the air, or the water. Hence comes the union of the male and female, which we term matrimony; hence the procreation and bringing up of children. We see, indeed, that all other animals besides men are considered as having knowledge of this law

# Italian Constitution

- **Article 29 [Marriage]**

(1) The family is recognized by the republic as ***a natural association founded on marriage.***

(2) Marriage entails moral and legal equality of the spouses within legally defined limits to protect the unity of the family.

# De iure civili

Civil law is thus distinguished from the law of nations. Every community governed by laws and customs uses partly its own law, partly laws common to all mankind. The law which people makes for its own government belongs exclusively to the state and is called the civil law, as being the law of the particular state [.....]

# De Iure Gentium

The law of the nations is common to all mankind, for nations have established certain laws, as occasion and the necessities of human life required. *“Wars arose, and in their train followed captivity and then slavery, which is contrary to the law of nature; for by that law all men are originally born free. Further, by the law of nations, almost all contracts were at first introduced, as, for instance, buying and selling, letting and hiring, partnership, deposits, loans returnable in kind, and very many others.”*



## Italian Constitution

### **Article 10 [International Law]**

- (1) The legal system of Italy conforms to the generally recognized principles of international law.
- (2) Legal regulation of the status of foreigners conforms to international rules and treaties.
- (3) Foreigners who are, in their own country, denied the actual exercise of those democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law.
- (4) Foreigners may not be extradited for political offences.

### **Article 11 [Repudiation of War]**

Italy repudiates war as an instrument offending the liberty of the peoples and as a means for settling international disputes; it agrees to limitations of sovereignty where they are necessary to allow for a legal system of peace and justice between nations, provided the principle of reciprocity is guaranteed; it promotes and encourages international organizations furthering such ends.

## How did the old European Law known as the Roman-Canon *Ius Commune* evolve?

The *Ius commune* developed as part of the cultural upheaval known with the term *Renaissance* (of the 12<sup>th</sup> Century).

At Bologna, then also at other Universities founded on the same model, lawyers began systematically, using the scholastic method, to penetrate the most important body of Roman sources, the Digest, and to make it intellectually accessible.

*Thus, the rationalization of the law meant, to a significant degree, its Romanization; and over the following centuries Roman Law, in the form imported by Justinian and turned into “legal science” by the lawyers of Bologna, conquered Europe.*

This process is known as “Reception”

Law was not conceived of as a system of rules enacted for, and exclusively applicable in, a specific territory; it was recognized and applied on an international scale

# The hallmarks of civil law systems

One of the hallmarks of modern civil law systems is that its legal rules are predominantly written. Roman jurists made a distinction between written laws – **ius scriptum** – and unwritten laws – **ius non scriptum** - .

• Nowadays the laws of civil law countries are to be found in part in codes, which present the rules dealing with different departments of law in a systematic and comprehensive form. There are different kinds of codes:

- **Civil code** – it is the fundamental private law source in civilian jurisdictions, and it is concerned with the law of persons and the law of things. The latter is regularly divided into distinct sections – the law of property (what can be owned) and the law of obligations (what can be owed). Within each of these divisions, the code deals with questions such as how property and obligations are acquired, what forms they may take, how they are transferred from one person to another, and how they are terminated.

- **Code of civil procedure** – it deals with how rights and duties are enforced by the legal system

- **Penal Code** – it contains the rules of criminal law

- **Code of criminal procedure** – it deals with the criminal justice process

- **Commercial code** – In some legal system the relations of businessmen are to be found in a separate code, in order to draw a distinction between legal relationships of a predominantly mercantile nature from contractual obligations entered into by ordinary citizens as part of their everyday life

The fact that legal rules are mainly contained in codes emphasizes another characteristics of civil law systems, that is that the primary source of law within them is **enacted law**.



**Civil law systems possess written constitutions**, that is written fundamental laws. The Constitution is not just a set of rules dealing with the organisation of the State and the making of laws. Rather it is a statement of those rights and duties which belong to legal subjects not as citizens of a particular State but simply as human beings. Fundamental rights are not the creation of a particular State. It can be said that the State exists to guarantee and protect these rights.

## **What happens when a law does not conform to the Constitution?**

Civil law systems possess Constitutional Courts or some such body to hear and determine such matters.

## Which is the function of courts in civil law systems?

Courts have the function of interpreting and applying the law, but they are not given the power to make law in any way. Law making is the function of the legislator. Despite this, the recorded decisions of the courts in civil law countries, especially those of the Court of Cassation, have considerable persuasive force, and are referred to with the term of **jurisprudence**. Court decisions however, cannot be regarded as a justifying reason why the law should be applied or interpreted in a particular way.