

Exploration of the Roman Notions of International Law

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Abstract

In an attempt to explore the Roman notions of international law, this paper analyses the notions of jus gentium, commonly perceived as Roman International law, jus fetiale, and jus belli. It argues that although jus gentium resembles the modern private international law, it cannot be labeled as public international law. It claims that jus fetiale, which is more a ceremonial system than legal, resembles modern international law more than jus gentium. The paper concludes that the Roman empire did not observe an international law proper. Instead, it observed two sets of laws where the first set regulated relations between Romans and Romans (jus civile) while the second set dealt with relations between Romans and other individuals (jus gentium). In none of the two sets do we observe rules that regulate relations between two states, which is the primary focus of international law.

Key words: International Law, Roman Law, Jus Civile, Jus Gentium, Jus Fetiale, Jus Belli.

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Introduction

The Roman Empire is generally treated as a law-abiding domain. It was perhaps one of the oldest societies where the rule of law is evident. This is clearly observed while focusing on the roots of civil law system, which is rooted in the Roman Empire and still prevails in a great part of the world.¹ Romans also had some notions related to international law, therefore, they topped the list of the history of international law. Also some of the notions of customary international law, such as inviolability of the envoys existed in the Roman civilization.²

Roman notion of *jus gentium* (law of nations) is perhaps the mostly known notion in international law. This notion is called Roman international law.

Most of the books³ on historical evaluation of international law begin with Roman era and discuss *jus gentium* as the beginning. Most of the writers⁴ overlook the *jus fetiale* and *jus belli* parts of Roman law, which contain important discussions related to international law. The present article tries to present a clear understanding of Roman notion of international law and whether it was an international law or not.

For this, the paper presents a brief history of Roman Empire. Afterwards, a general sketch of the Roman law is presented which is followed by the Roman notions of international law. In the endeavors of understanding Roman international law, three parts of the Roman law, i.e. *jus gentium*, *jus fetiale* and *jus belli* are elaborated. Conclusions are provided in the final part of the article.

2. Roman History in a Glance

Ancient Rome is mother to one of the oldest civilizations of the world that ruled for centuries over great part of the world. The city of Rome was incepted nearly 8 centuries BCE. Two factors⁵ played an important role in the flourishing of Roman empire, first was their copy from the Greek civilization,⁶ and the second was the wars they

fought with other countries⁷. At the time of its glory, Rome ruled around 60 million⁸ people in different continents. It also gained full control over the Mediterranean Sea, which Romans called, *mare nostrum*, or “our sea”.⁹

The very famous era of *Pax Romana*,¹⁰ i.e. Roman Peace, lasted for two centuries. Then the empire was divided¹¹ and reunified by the Constantine.¹² Then Byzantine Empire fell to Ottoman Empire in 1453.¹³

In its long times of ruling over the world, Roman empire left its heritage in the literature, philosophy, religion and other spheres of knowledge. Their legal contribution was also notable. It is said that Roman society was a law abiding.¹⁴ They had their own law known as civil law. They also had some notions that are attached with international law; therefore, they topped the list of the history of international law.

3. Roman National Law (*Jus Civile*)

Roman law has an important place in the legal history of the world, especially the European legal history. The Roman law took more than a millennium to develop and take its present shape.¹⁵ It primarily was in the form of un-written customary law. Through years, it got transformed into written form and developed gradually. As part of this development, they wrote the customary law in Twelve Tables, which was produced in 449 BCE and presented to the public.¹⁶ Twelve Tables contained issues of procedural law, loans, trials, torts, inheritance, public law and others.¹⁷

Byzantine emperor Justinian I (527-565), tried to reunify the divided empire through law. Therefore, he formed a commission to compile the existing Roman law into one body. The task was accomplished in 529 CE and titled “the Justinian’s Code” or *corpus juris civiles*.¹⁸ It was, basically, a combination of three parts: the Digest, the Institutes and the Code.¹⁹

The Justinian's Code has an illustrious place in the history of Roman law. It spread throughout the Europe and became the cornerstone of the European legal system ruling the continental Europe for centuries.²⁰

The Romans called their own law, *jus quiritium*. The *jus quiritium* later became *jus civile*,²¹ which literally means civil law of the people of Rome²² or simply, civil law.²³ *Jus civile* was the title used for all laws that were passed by the Romans and were supposed to be applied in affairs between them only. Therefore, it was the Roman national law.²⁴

Hence, *jus civile* consisted of Twelve Tables, the Justinian's code and all the laws enacted for Romans only, which includes both statutes and customs.²⁵ In short, *jus civiles* was a reference to all the laws except *jus gentium*.

4. Roman Notions of International law

It is clear that while making wars, there should be rules governing the declaration and/or commencement of war (*jus ad bellum*) as well as the conduct of war (*jus in bello*) and especially when a 'civilized' state is involved. Especially for an empire like Rome, it was essential to have a law regulating relations with others, because they deemed themselves to be a civilization fighting against barbarism.

Generally, we find three notions of Roman law which are attached to international law, or which has a touch of international law. Here, we discuss these three notions.

4.1. Jus Gentium

Roman was a society of classes while the²⁶ Roman law was designed for and regulated only the citizens of Rome. Since *jus civile* governed the people of Rome only, whereas Romans were now interacting with other people as well, they felt that they needed some

rules, which would govern their relations with non-Romans. The rules governing Roman relations with others were called *jus gentium*.²⁷

Elaborating the distinction between *jus civile* and *jus gentium*, Gaius²⁸ asserts that every nation has two sets of laws: one, which is peculiar to its own people (*jus civile*) and the other for dealing with others (*jus gentium*)²⁹ which is established by human reason and is common among all people.³⁰

The source of *jus gentium* remains disputed. It is assumed that this system is not produced through legislation; instead, it was developed consequent to governors and magistrates dealing with cases involving foreigners.³¹ Francisco Suárez, a Spanish philosopher, supports this view and states that *jus gentium* was not created in a meeting where all the people provided their consent to its contents, instead, he asserts, these were traditions and practices of the people that gave birth to this law.³² Buckland, in his *A Text-Book of Roman Law from Augustus to Justinian*, contends that it was not clear whether *jus gentium* was created by the Romans as their own law, or it was imported from the usages of the others.³³ Another opinion however is that Roman magistrates appointed in 242 BCE created *jus gentium* as a system acceptable to both Romans and non-Romans.³⁴

It means that the origins of *jus gentium* is full of ambiguities. Even Cicero himself uses the term *jus gentium* in different senses.³⁵ Although one thing is clear, i.e. it was a law that was used in interaction and relations with non-Romans, not on the state level but on individual level. It is for this reason that it is labeled as Roman international law.³⁶ However, some writers of Roman law asserted that *jus gentium* does not qualify to be deemed international law in the modern sense of the term. James Hadley, in his lectures on Roman law, asserts:

By “law of nations” we generally understand “international law” but the Latin *jus gentium* had no such meaning. It can hardly be said that the Romans had the idea of international law. [...] By *jus gentium* they always intend

those principles and practices of law which are found in all communities, or at least in all not utterly barbarous.³⁷

To critically examine the notion of *jus gentium* in the Roman era, it seems that it generally was a law for non-Roman individuals and hence not international law, but it had three aspects which touched international law:

First; *jus gentium* is applicable to all human beings and it is accepted by all people except barbarians. Therefore, it offered a belief that there could be a law that is applied to all human beings. Today's international law may have borrowed the spirit of its application from this notion.

Second aspect of resemblance of *jus gentium* with international law is that of contents of the two systems. For instance, inviolability of the heralds³⁸ is part of both the systems.³⁹ It was violation of *jus gentium* to commit assault on herald or ambassador.⁴⁰

Thirdly, there are similarities between the nature of *jus gentium* and private international law, also known as the conflict of laws. Private international law deals with issues that involve foreign element(s).⁴¹ Similarly, *Jus gentium* was a law aiming at removing the conflict of laws and presenting a unified system of law. Therefore, there seems a similarity between *jus gentium* and private international law.

Briefly, *jus gentium* in the Rome was developed because the prevalent *jus civile* was unable to regulate the relations between Romans and others, i.e. the non-Romans. This situation led to development of a law to fill the gap.

To conclude, *jus gentium* is the law that regulated affairs of the Romans with the non-Romans. The *jus gentium* with the lapse of time overcame and superseded the old *jus civile*.⁴² It means that *jus civile* was only for the Roman citizens, but later, the *jus gentium* became very popular and even Roman citizens started observing it in matters between them.

4.2. *Jus Fetiale*

In order to regulate war and related matters through religious norms; Romans had established a system of ceremonies to which they referred as “*fetiales*”. They established a priestly college of the *fetiales* in the early years of the ‘republic’, to engage in the ceremonies of declaration of war and creation of peace.⁴³ *Jus fetiale* is a part of Roman *jus sacrum* (the sacred law)⁴⁴ , which regulated legal and religious affairs of Rome with other states.⁴⁵

The task of the college of *fetiales* was to see whether the neighbors of Rome were right or wrong and whether they committed any act that would initiate a just war or not.⁴⁶ They believed in some principles to determine whether a war was just and pious or otherwise. Their causes of just and pious war is narrowed down to these four by some authors:

- Violation of Roman dominions;
- Violation of ambassadors;
- Violations of treaties and;
- Support to an enemy of Rome by a state that is friend of Rome.⁴⁷

Whenever Rome would feel that it has a grievance against another state, it would require satisfaction, or *rerum repetition*. At this moment, head of the *fetiales* would go to the enemy territory and utter some words as announcement of demands. After this declaration, Head of the College of the *fetiales* would return to Rome and wait for thirty-three (33) days to receive a response. No response or rejection of the demands would be interpreted that the nation is unjust and waging war against them is just and justified.⁴⁸

In cases where Rome was convinced that war would be waged against such an ‘enemy’, it would send head of the *fetiales* to frontier of the enemy state again and he would reiterate some words in presence of three adult males of the enemy state as a sign of

declaration of war against them.⁴⁹ The method of declaration was that *fetiales* would through a javelin dashed in blood into enemy territory⁵⁰ and hence, a war would be formally declared from then on.⁵¹ Similarly, matters related to ambassadors and violation of their inviolability would be dealt through the *fetiales*. In addition, they would regulate the formalities of treaties and conventions⁵²

To sum it up, the *jus fetiale* of Rome was more similar to international law of modern times; in other words, it covered more rules of international law than *jus gentium*, but it was more ceremonial than legal.

4.3. Jus Belli

Trade had an important role in the flourishing of ancient Rome, but it was war, according to Joshua Mark that “would make the city a powerful force in the ancient world”.⁵³ On the other hand, war was a very decisive factor in the development of the Romans.

Nevertheless, Romans were of the view that they fought for peace. The most influential Roman thinker and Philosopher Cicero,⁵⁴ while talking about the causes of war for the Romans, states, “the only reason for waging war is so that we Romans may live in peace”.⁵⁵ This is one side of the story, whereas the other side of the same story is that the Romans wanted to conquer as much as land as they could. Calgacus⁵⁶ therefore said, “to plunder, slaughter, and rapine they falsely give the name ‘empire’ they make desolation and they call it ‘peace’”.⁵⁷

It is narrated that Roman conduct of war was severe and ruthless. They torched villages, butchered the defenseless villagers alongside their animals and their livestock evicted. Roman settlers would take over their lands. The Roman warriors would take the heads of important members of the enemy with themselves and would gift them to the emperor.⁵⁸ It is also narrated that they committed ethnic cleansing in the war against Iceni.⁵⁹

Despite the same all that was done by the Roman army seemed legitimate and legal to the Romans, because Cicero says that *silent enim leges inter arma* (the law falls silent in times of war).⁶⁰ It means that Romans had no rules to regulate the conduct of warfare; therefore, their armies committed crimes against all they fought against. In short, they lacked a proper *jus in bello* or law of war.

5. Conclusion

Rome, after a long journey of becoming an empire ruling over the most parts of the world, achieved a civilization and Roman law is a part of that achievement.

Rome, from the very early times, had an unwritten customary law, which was presented to the citizens in a written form in the 5th century BCE. This law is known as the Twelve Tables. Later on, the Justinian's Code or *corpus juris civiles*, was developed which opened a new chapter in the legal history of Rome. Twelve Tables, alongside the Justinian's Code and customary law and statutes of the Rome are collectively known as *jus civile*. It is however important to highlight that this law applied to Romans only, so it was Rome's national law.

Another important set of law in force in Roman empire was titled *jus gentium*. The general image of *jus gentium* is that it is law of nations, but that does not appear to be the case. It happened to be the law for non-citizens or, in other words, it is not the law regulating relations between nations or governing war and peace. *Jus gentium* however inspired international law in spirit but did not qualify to be treated as public international law, although it resembled private international law.

Besides, *jus fetiale* seems more relevant to the concepts of modern international law. It contained rules of international law, including, the declaration of war and peace and concluding of treaties and conventions by the priestly college of the *fetiales*. Nevertheless,

jus fetiales performed religious duties hence their performance was more ceremonial than legal.

In view of the above, it becomes evident that Romans did not have proper international law and hence *jus gentium*, which is generally termed as international law, could not be termed as international law. Although *jus fetiale* had a few topics of public international law.

Notes and References:

- ¹ Jaap Hage, "Sources of Law", in *Introduction to Law*, ed. Jaap Hage, Antonia Waltermann and Bram Akkermans (Switzerland: Springer, 2017), 4-8.
- ² Nussbaum, Arthur. "The Significance of Roman Law in the History of International Law." *University of Pennsylvania Law Review* 100, no. 5 (1952): 678-87. Available online at: <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=7998&context=penn_law_review> (Last accessed on June 10, 2019).
- ³ See for instance, Oppenheim, *International Law: A Treatise* (London: Longmans, Green, And Co, 1905), 52-53.
- ⁴ See for instance, Conway Henderson, *Understanding International Law* (West Sussex: Wiley-Blackwell, 2010), 9-13.
- ⁵ Regarding the rise of Rome and its transformation from a 'republic' to an 'empire', it is said by the historians, that three wars known as 'Punic wars', which they fought against Carthage, an ancient city in the North Africa, situated in the today's Tunisia, between the years 264 BCE and 146 BCE, was the real cause of it. Carthage was a rival state to the Rome and both strived to control the Mediterranean Sea. In a series of Punic wars, Rome gained full control over the Mediterranean paving its way to become a great power. In the mid-first century BCE, Julius Caesar, a Roman general and politician, raised to power and following defeat of his rival, Pompey, assumed the role of a dictator thereby effectively transforming the republic into the Roman Empire.
- ⁶ *Ibid.*
- ⁷ Christopher Kelly, *The Roman Empire: A Very Short Introduction* (Oxford: Oxford University Press, 2006), 4.

⁸ *Ibid.*, 1.

⁹ *Ibid.*

¹⁰ It is a period of nearly 200 years in Roman history in which there was many advances and developments in the Empire. It is also the period, which witnessed a comparative peace in the Mediterranean world. This era ended with the reign of Marcus Aurelius (161 –180 CE). See “*The Pax Romana*,” *Ancient Civilizations Online Textbook*, <http://www.ushistory.org/civ/6c.asp> (Last accessed on June 10, 2019); The Editors of *Encyclopedia Britannica*, “*Pax Romana*,” *Encyclopedia Britannica*, <https://www.britannica.com/event/Pax-Romana> (Last accessed on June 10, 2019).

¹¹ Civil wars ensued this ear leading Diocletian to power in 284 CE who was able to restore peace in the Empire at the cost of unity of the Roman Empire as it was in his reign that the Empire was divided into Western and Eastern History.com Staff, “ANCIENT ROME.”

¹² In 324 CE, Constantine reunified the Empire and moved its capital to the city of Byzantium, which then became Constantinople. He converted to Christianity and declared it the formal religion of the Empire. However, 30 years after his death, the Empire disintegrated once again to Western and Eastern empires. Finally, in the year 476 CE, Western Roman Empire collapsed due to different uprisings and wars. *Ibid.*

¹³ John L. Teall, Donald MacGillivray Nicol, “Byzantine Empire,” *Encyclopedia Britannica*, <https://www.britannica.com/place/Byzantine-Empire> (Last accessed on June 10, 2019).

¹⁴ Malcolm Shaw, *International Law* (Delhi: Cambridge University Press, 2008), 16.

¹⁵ Eamonn Hall, “A Brief Introduction to Roman Law,” *The Faculty of Notaries Public in Ireland*, <http://www.notarypublic.ie/download/Roman%20Law.pdf> (Last accessed on June 10, 2019).

¹⁶ Different classes of people lived in the ancient Rome. Patricians were the elite class and the Plebeians were the common citizens. Some among the elites were interpreting the customary law; hence, they were giving decisions in favor of Patricians. The Plebeian struggled for the law to be in the written form. Twelve Tables came as the corollary of the struggles of the Plebeians. See “Roman Legal Tradition and the Compilation of Justinian,” *The Robbins Collection*, <https://www.law.berkeley.edu/library/robbins/pdf/RomanLegalTradition.pdf> (Last accessed on May 6, 2019).

¹⁷ For instance, third table says that the debtor shall have thirty days to pay his debts. If he was unable to pay it on the prescribed time, then forcible seizure of him is allowed. If he owed sum to more than one, then they can cut his body and divide it among themselves. In addition, table four says that a

father can kill his deformed son. See Ellie Crystal, “Law in Ancient Rome,” *Crystal links*, <http://www.crystalinks.com/romelaw.html> (Last accessed on June 10, 2019).

¹⁸ “Roman Legal Tradition and the Compilation of Justinian”.

¹⁹ Hall, “A Brief Introduction to Roman Law”. The Digest (*digesta*), which was prepared in 533, in fact was summary and extracts of some of the existing Roman law. The Code (*codex*), which was prepared in 534, was combination of the actual laws of the Empire. The Institutes (*institutiones*) was a textbook prepared for the students of law in 535. It summarized the *digesta*. The Justinian’s Code is also known as the *corpus juris civiles*.¹⁹

²⁰ In some countries, Roman law applied until very late. For instance, in Germany, it was applied until 1900. See: Maurice Alfred Millner and others, “Roman law,” *Encyclopedia Britannica*, <https://www.britannica.com/topic/Roman-law> (Last accessed on June 10, 2019).

²¹ Olga Tellegen-Couperus, *A Short History of Roman Law* (London: Routledge, 1993), 18.

²² “Jus Civile,” *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/jus%20civile> (Last accessed on June 10, 2019).

²³ Hall, “A Brief Introduction to Roman Law”.

²⁴ Tellegen-Couperus, *A Short History of Roman Law*, 18.

²⁵ David Johnston, *Roman Law in Context* (Cambridge: Cambridge University Press, 2004), 4.

²⁶ Donald L. Wasson, “Patrician,” *Ancient History Encyclopedia*, <http://www.ancient.eu/Patrician/> (Last accessed on June 10, 2019).

²⁷ Alina Kaczorowska, *Public International Law* (Oxon: Routledge, 2010), 7.

²⁸ Gaius is a famous Roman scholar who lived in second century CE and is writer of *The Institutes of Roman Law*. It is an authoritative work on the Roman law.

²⁹ *Gai Institutiones or Institutes of Roman Law by Gaius*, with a Translation and Commentary by Edward Poste, 4th ed. revised and enlarged by E.A. Whittuck, with a historical introduction by A.H.J. Greenidge (Oxford: Clarendon Press, 1904), 1.

³⁰ A question may arise here, that is: what is the difference between *jus gentium* and *jus naturale*? Both are the laws that natural reason acquires and is same among all people. Some scholars did not differentiate between the two. Others say that there is a small difference in application. For instance, slavery is not a part of *jus naturale*, but a part of *jus gentium*. Samuel Gregg says that in Justinian’s Institutes a different distinction is available. The Justinian’s institutes says natural is taught by nature to all animals but *jus*

gentium is limited to the human beings. See Samuel Gregg, “Natural Law and the Law of Nations,” *Natural Law, Natural Rights and American Constitutionalism*, <http://www.nlnrac.org/earlymodern/law-of-nations> (Last accessed on June 10, 2019); William Warwick Buckland, *A Text-Book of Roman Law from Augustus to Justinian* (Cambridge: Cambridge University Press, 1921), 54.

- ³¹ Powell and others, “Roman Law,” *Encyclopedia Britannica*.
- ³² Gregg, “Natural Law and the Law of Nations”.
- ³³ Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, 53.
- ³⁴ Kaczorowska, *Public International Law*, 7.
- ³⁵ See Buckland, *A Text-Book of Roman law from Augustus to Justinian*, 53.
- ³⁶ The general perception is that *jus gentium* is international law. Even Merriam Webster dictionary defines it as synonymous with international law. Which misleads the reader about it. See <https://www.merriam-webster.com/dictionary/jus%20gentium> (Last accessed on June 10, 2019).
- ³⁷ James Hadley, *Introduction to Roman Law: In Twelve Academical Lectures* (New York: D. Appleton and Company, 1902), 90.
- ³⁸ However, some sources use the term diplomat instead of herald, but the world herald would be better, because it was not confined to the diplomats, but included diplomat and non-diplomat herald.
- ³⁹ Gordon E. Sherman, “Jus Gentium and International Law,” *The American Journal of International Law*, Vol. 12, No. 1 (Jan., 1918), pp. 56-63. Available on: <http://www.jstor.org/stable/2187613> (Last accessed on June 10, 2019).
- ⁴⁰ The general rule among all people was that herald must not be killed, therefore *jus gentium* asserted on it. It is also said that King Tadius used the envoys of Laurentes in a plot for restoration of kingship, but they were caught and afterwards freed because they were ambassadors and their ill-treatment was against *jus gentium*. Nevertheless, it seems that it was the only content of *jus gentium*, which is a part of today’s public international law. Thomas Alfred Walker, *A History of the Law of Nations* (Cambridge: The University Press, 1899), 45, 46.
- ⁴¹ Abla Mayss, *Principles of Conflict of Laws* (London: Cavendish Publishing Limited, 1999), 1.
- ⁴² W. W. Buckland, *A text-book of Roman law from Augustus to Justinian*, (London: Cambridge University Press, 1921), 54.
- ⁴³ Walker, *A History of the Law of Nations*, 47; Benjamin Straumann, *Roman Law in the State of Nature*, tr. Belinda Cooper (Cambridge: Cambridge University Press, 2015), 143.

- ⁴⁴ Roman *jus sacrum* was a part of the public law which regulated religious affairs, such as worship and appointment of priests. See “*Jus sacrum*”, *Bouvier’s Law Dictionary*, 3rd Revision, 1914, Vol. I, p. 1794.
- ⁴⁵ Michael A. Meyer and others, *Reflections on Law and Armed Conflicts* (The Hague: Kluwer Law International, 1998), 5.
- ⁴⁶ *Ibid.*
- ⁴⁷ *Ibid.*
- ⁴⁸ Bederman, *International Law in Antiquity*, 231-232.
- ⁴⁹ *Ibid.*
- ⁵⁰ Walker, *A History of the Law of Nations*, 47.
- ⁵¹ Bederman, *International Law in Antiquity*, 233.
- ⁵² Walker, *A History of the Law of Nations*, 47.
- ⁵³ Mark, “Ancient Rome.”
- ⁵⁴ Cicero was the most famous Roman philosopher and thinker. For details, see: Cicero (106—43 B.C.E.), in *Internet Encyclopedia of Philosophy*, linked here: <http://www.iep.utm.edu/cicero/> (Last accessed on June 1, 2019).
- ⁵⁵ Kelly, *The Roman Empire*, 19.
- ⁵⁶ He was a warrior and head of Caledonians who fought the Roman Empire. See “CALGACUS”, *Undiscovered Scotland*, <http://www.undiscoveredscotland.co.uk/usbiography/c/calgacus.html> (Last accessed on June 10, 2019).
- ⁵⁷ Kelly, *The Roman Empire*, 22.
- ⁵⁸ Taking heads of the enemy is evident in their triumph column in Rome. See for details: “Caput Mundi – Beheading and Barbarism on Trajan’s Column,” *Roma Invicta*, <https://garethharney.wordpress.com/2013/06/21/caput-mundi-beheading-and-barbarism-on-trajans-column/> (Last accessed on June 10, 2019).
- ⁵⁹ Kelly, *The Roman Empire*, 15.
- ⁶⁰ “Marcus Tullius Cicero Quotes,” *Goodreads*, <http://www.goodreads.com/quotes/49233-in-times-of-war-the-law-falls-silent-silent-enim> (Last accessed on June 10, 2019).