

**XXII International Scientific Conference „Legal days –
Prof. Slavko Carić”
“LAW AND JUSTICE”**

The University of Business Academy in Novi Sad
The Faculty of Law for Commerce and Judiciary in Novi Sad

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Nenad Stefanović, PhD, Associate Professor
*Faculty of Law for Commerce and Judiciary in Novi Sad,
University Business Academy in Novi Sad
e-mail: nenad@pravni-fakultet.info*

Tamara Crevar, Msc
*Faculty of Law for Commerce and Judiciary in Novi Sad,
University Business Academy in Novi Sad
e-mail: tamara.crevar@pravni-fakultet.info*

THE PRINCIPLE OF THE RULE OF LAW AND HUMAN RIGHTS FROM ANCIENT ROME TO THE PRESENT DAY

*“ A slave is a man just like you;
although lower in status,
he is equal by nature.”*
(Seneca, *Epistulae Morales*, 47.1.)¹

Abstract:

The objective of this paper is to explore the origins, development, and evolution of core European values, with a particular focus on the principle of the rule of law and the protection of human rights, beginning in Ancient Rome and continuing to the modern era. The authors seek to present the historical transformation of these values and assess their influence on the formation of contemporary European legal systems and society. Special consideration is given to Roman law, which serves as the bedrock of the European legal tradition, and to the pressing contemporary issues surrounding the preservation of the rule of law and human rights. The paper analyzes the emergence and development of the concepts of human rights and the rule of law within Roman law, through the work of legal schools and their most prominent representatives, examining the continuity and evolution of these values over time. The methodological approach incorporates comparative, historical, analytical, and deductive methods.

Keywords: *human rights, rule of law, Roman law, Roman legal schools.*

INTRODUCTION

The ideas of the rule of law, as well as the protection of human rights, are most commonly associated in practice today with international standards proclaimed in

¹ According to the translation, 2020, Seneca. (2020). *Moral Letters to Lucilius* (R. Gummere, Trans.). Harvard University Press. (Original work published ca. 65 CE), Letter 47.1.

international conventions and recommendations, which are interconnected. However, the key question arises – where does the principle of the rule of law originate from? Did human rights, as we understand them today, even exist in Roman law? If they did, were they guaranteed to every individual, or were they reserved for specific groups? The primary aim of this paper, as the authors emphasize, is to examine how the principle of the rule of law and norms related to human rights and their protection emerged, how they evolved, and how they influenced the European continental legal system, the legal status of citizens, and their fundamental rights and freedoms.

1. CONTRIBUTION OF ROMAN LAW

Europe adopted the Roman understanding that without law there can be no organized society, and that law is the key instrument for regulating social relations.² A correct interpretation of Roman legal norms and the perceptions it offers represents the foundation and *conditio sine qua non* for understanding the principle of the rule of law and the evolution of fundamental human rights.

a) Archaic Period

The archaic period spans from the founding of the city of Rome (*ad urbe condita*) in 753 BC until the adoption of the Law of the Twelve Tables between 451 and 450 BC.³ In this period, the most significant source of law was custom, and we cannot speak with certainty of a fully formed legal system. It is known that priests interpreted the law; however, the Romans did not perceive these customs and rules as “law” in the modern sense. Human relations were regulated by magic and the will of the gods, and priests (*pontifices*) were the only ones who know the rules and rituals. Later, the high priest (*pontifex maximus*) was the one interpreting legal norms. The topic of this paper are the rule of law and human rights. What is relevant from this period, in relation to the topic, is the social and class differentiation. Already at that time, divisions emerged in Roman society, which was divided into patricians, plebeians, clients, and slaves. The class differences between patricians (Lat. *patricii*, from *pater* – father) and plebeians (Lat. *plebs*, from *pleo* – multitude) and their conflicts are a prime example of the struggle for better social status. Patricians were the privileged social class. They appropriated all war spoils and could participate in political life as well. In contrast, plebeians had no rights. Although they fought alongside patricians in wars, they received little or none of the war prize. One of the leading examples of class differentiation is the fact that until the enactment of the Canuleian Law (*Lex Canuleia*) in 445 BC, patricians and plebeians were not allowed to marry each other. This means that the guarantee of universal human rights was not even remotely present.⁴

We can conclude that in the archaic period, the rule of law did not exist in its modern sense, as there was no general equality before the law. Furthermore, human rights did not exist—especially considering the status of slaves—but the plebeians’ struggles eventually resulted in more rights for broader layers of society.

2 Malenica, A. & Deretić, N. (2011). *Rimsko pravo*. Univerzitet u Novom Sadu, Pravni fakultet u Novom Sadu – Centar za izdavačku delatnost, Novi Sad. p. 3.

3 *Ibid.* p. 33.

4 Stefanović, N. (2022). Human rights and the social position of citizens in ancient Rome. *Pravo teorija i praksa*, 39(3), 38–51, pp. 42–43.

b) Pre-Classical Period

In the pre-classical period, new legal institutes began to develop, and a distinction was made between two types of law: *ius civile* and *ius gentium*. The former applied to Roman citizens, while *ius gentium* was applied to foreigners. *Ius gentium* marked a significant step toward the universality of human rights, as it recognized legal protection for foreigners. Therefore, we can observe some progress in the direction of the rule of law, primarily through the strengthening of judicial practice. Of course, the idea of equal rights for all was still far off, although certain population groups, such as merchants, craftsmen and free men (*libertini*), acquired more favorable legal positions.

c) Classical Period

The classical period is also referred as the “golden age of Roman legal science.” Although the *princeps senatus*⁵ was equated with the position of a ruler, even he was obliged to obey legal norms. The title of *princeps* had symbolic and honorary significance, granting him only the right to speak first in the Senate. In essence, the *princeps* held unlimited monarchical power—it was a dictatorship, even it was not given that name. During this period, legal norms had absolute authority and applied to everyone. So, it is only in the classical period that the idea of the rule of law crystallized within the Roman Empire. For the first time, we see the idea of natural rights, especially in preserved texts of the prominent jurist Ulpian, who spoke about the right of equality and freedom. This can be connected to the roots of human rights, and the status of Roman citizenship expanded.⁶

d) Post-Classical Period

The post-classical period ended with the enactment of the most cited and most important act of that era – *Corpus Iuris Civilis*. However, during this time, we cannot discuss of the rule of law, since all power was concentrated in the hands of the emperors, who were above the law. Still, the idea of universal law began to emerge in outlines, which represented a significant step toward the ideal of equality of all individuals before the law.

Roman law is the foundation of European legal tradition because it established principles that form the basis of modern legal protection. Above all, these include equality before the law and legal certainty. Therefore, even though it did not recognize human rights in the modern sense, we can still observe the early foundations of both human rights and the rule of law.

2. THE INFLUENCE OF NATURAL LAW IDEAS FROM ANCIENT GREECE TO ANCIENT ROME

The Romans had taken many ideas from the Greeks, including the idea of natural law, which can be considered as the basic of the human rights. Although people differed in social status and rank, as well as in abilities, all had to be equal before the law (Greek: *isonomia*). Also, a certain minimum of rights was recognized as necessary for the

5 This term originates from the period of the Roman Republic, where the *princeps senatus* was the most influential senator in the Senate, known as the “first among equals.” Generally, the Principate as a period is associated with Augustus, who chose this title to conceal his true monarchical power.

6 Malenica, A., & Deretić, N. op. cit. p. 79-81.

preservation of human dignity.⁷ Thus, here for the first time we notice elements of human rights in the Roman state. Stoicism contributed the most to this.

Cicero, in his work “Republic”, studies natural law and believes that there is one universal law – reason – which applies to all people and is constant. Any attempt by man to abolish or alter such an eternal law would basically be unsuccessful, and ultimately, it is not easily achieved.⁸

Ancient thinkers did not have uniform views on slavery. For example, the Stoics were the first to begin denying the concepts of slavery and the then-traditional ideas about the naturalness of nobility.⁹ On the other hand, Aristotle believed that some people are born to be free, and others are not. “Where then there is such a difference as that between soul and body, or between men and animals (as in the case of those whose business is to use their body, and who can do nothing better), the lower sort are by nature slaves, and it is better for them as for all inferiors that they should be under the rule of a master. For he who can be, and therefore is, another’s and he who participates in rational principle enough to apprehend, but not to have, such a principle, is a slave by nature. Whereas the lower animals cannot even apprehend a principle; they obey their instincts. And indeed the use made of slaves and of tame animals is not very different; for both with their bodies minister to the needs of life. It is clear, then, that some men are by nature free, and others slaves, and that for these latter slavery is both expedient and right.” (Aristotle, *Politics*, 1254b16–21/ Rackham, 1932)¹⁰

3. THE BEGINNINGS OF THE RULE OF LAW AND LEGAL SCHOOLS

Although today’s study of Roman law focuses primarily on private law, which was indeed more developed than public law, it is indisputable that one document was of crucial importance to the topic of the rule of law—and that is the *Lex Duodecim Tabularum* (around 450 BC), or the Law of the Twelve Tables. Created primarily as an attempt to reconcile the two opposing social classes—patricians and plebeians—this law ultimately led to an improvement in the position of citizens in relation to the authorities, which is considered highly progressive and significant for that period.¹¹

a) Glossators

The Glossators ensured legal certainty by insisting that law is applied based on objective interpretation rather than the arbitrary will of rulers. They also made no distinctions in applying the law based on individuals’ social status, which aligns with the principle of legal equality.

The greatest importance of the Glossator school lies in the fact that they established

7 Zajec, A. P., & Pohoryelova, Z. O. (2021). Formation of the idea of natural law in ancient Greece and ancient Rome. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 15–28, p. 25.

8 Barham, F. (1842). *The political works of Marcus Tullius Cicero: Comprising his treatise on the commonwealth; and his treatise on the laws* (Vol. 1). London: Edmund Spettigue. <https://oll.libertyfund.org/titles/cicero-treatise-on-the-laws>

9 Zajec, A. P., & Pohoryelova, Z. O. op. cit. p. 26.

10 Aristotle. (c. 340 BC). *Politics* (H. T. Rackham, Trans.). Harvard University Press. (Original work published c. 340 BC)

11 Malenica, A., & Deretić, N. op. cit. p. 38.

a scholarly framework for studying Roman law.¹² The school of Glossators was active from the 11th to the 13th century. In that context, we cannot speak of their awareness of human rights in the modern sense. However, they emphasized that the role of a jurist is to interpret laws and other legal acts, not to arbitrarily create the law.

The Glossators' school raised many questions that remain relevant today, such as the concept of a just war (*bellum iustum*) and issues concerning rulers, including property rights, legislative authority, and relations with the church.¹³

The contribution of the Glossators was far more significant regarding the rule of law. They proclaimed the idea that laws must apply equally to everyone and be based on reason (*ratio legis*). Here we can identify the basis of the notion that the law is above the ruler.

The Glossators laid the foundation for both rational interpretation and the systematization of law in general. In doing so, they had a significant influence on the creation of a legal tradition from which, centuries later, the most important legal values—such as human rights and the rule of law—would emerge. Jurists in Northern Europe began to apply Roman law as valid, or positive, law. The core of their judicial practice was Accursius's *Glossa Ordinaria*.¹⁴

b) Post-Glossators

Also known as commentators, the post-glossators engaged in analysis of the Glossators' work, pointing out positive and negative aspects of both. They primarily relied on Accursius's *Glossa Ordinaria*. While they continued to study Roman law, they gradually distanced themselves from some of the legal positions held by their predecessors, relying instead on Justinian's codification.¹⁵ However, it is incorrect to claim that the post-glossators had no significant impact on the reception of Roman law. In fact, they were more practical than the Glossators—they combined Roman law with local customs. In doing so, the law began to be applied even to the lower classes of society, representing a step forward toward the emergence and development of human rights.

c) The Humanist School

Also referred to as the Old Historical School, the Humanist School emerged and operated in France. Its representatives sought to rediscover the original Roman law, cleared of later layers such as glosses and commentaries. Unlike the Glossators and Post-Glossators, the Humanists did not advocate for the reception of Roman law. For them, law was a product of historical development, which is why they studied French customs while also analyzing Roman law.

When it comes to the reception of Roman law, their contribution is undeniable, as they enabled its practical application.¹⁶ They believed that law must be based on reason—a concept known as rational law—which can be loosely linked to the idea of the rule of law.

12 Zorić, M., & Župljanić, M. (2019). Recepcija rimskog prava. *Oditor: Časopis za menadžment, pravo i finansije*, 5(1), p. 87.

13 Malenica, A., & Deretić, N. op. cit. p. 111-113.

14 Šarac, M., & Lučić, Z. (2006). *Rimsko privatno pravo*. Sarajevo: Pravni fakultet, p. 50.

15 Crevar, T. (2024). *Odnos ius divinum i ius humanum u Rimu i kod jusnaturalista* (Master rad). Novi Sad: Pravni fakultet, p. 14.

16 Malenica, A., & Deretić, N. op. cit. p. 132.

d) The School of Natural Law

“There are eternal laws that have never been written down and are unchangeable, and the written laws of state authority cannot change these eternal unwritten laws.”¹⁷ Natural law (lat. *ius naturale*) is a set of unchangeable, objective, and eternal rules of human behavior that in this sense resemble the laws of nature.

The emergence of the school of natural law is linked to ancient Greece, where natural law was equated with the concept of justice. At that time, natural law stood in opposition to positive law. In the Middle Ages, natural law acquired an absolute theological foundation and dimension. Representatives of the school of natural law, Saint Thomas Aquinas and Gratian, equated natural law with divine law. Men can only partially, with the help of reason, grasp the essence of natural law.

In the 17th century, incredible scientific achievements influenced the emergence of the modern school of natural law. All representatives of the school believed that people are born free and that the institution of slavery should be abolished. This represents significant progress compared to ancient Greece, where even Aristotle, one of the greatest thinkers of that time, justified slavery and the degrading treatment of certain groups of people.

The ideas of the school of natural law represent an ethical corrective to legal systems, especially in the area of human rights.¹⁸

Confirmation of the ideas of the school of natural law can be found in:

- The English Bill of Rights,
- The American Declaration of Independence, and
- The Declaration of the Rights of Man and of the Citizen.¹⁹

In relation to the rule of law, natural law was positioned in such a way that even the government had to respect it unconditionally. Here we see the first theoretical foundation for the idea of human rights as we know them today, in terms of proclaiming the ideas of liberty, equality of all people, and property.

Thomas Hobbes

Thomas Hobbes did not believe in the guarantee of human rights as understood today. The only right he recognized was the right to self-defense—the right to preserve one’s life. This is clearly seen in his views on the so-called “state of nature”, i.e., the status before the existence of the state. He believed that the state has no obligation to guarantee basic human rights to its citizens.

In his most famous work “Leviathan”, Hobbes argued that democracy is a necessary evil, and that unconditional dictatorship by an individual is the ideal form of government. He believed that natural rights as such belonged to the ruler, but not to individuals. The ruler had

17 Karajović, E. (1996). Ideja prirodnog prava u delima antičkih mislioca. In D. Stojanović (Ed.), *Srbija i evropsko pravo* (Knj. 1, p. 17). Kragujevac: Pravni fakultet.

18 Crevar, T. op.cit. p. 16-19.

19 Matić, I. (2019). *Doktrina prirodnog prava u klasičnoj ugovornoj teoriji* (Doktorska disertacija). Beograd: Pravni fakultet, p. 70

full authority over the lives of his subjects.²⁰ Hobbes was not completely consistent when it comes to total subordination to the will of the ruler. Namely, he acknowledged that in certain situations, when the ruler's command is unjust, the subject has the right to refuse to obey it.

John Locke

John Locke held that certain modern human rights, such as the right to liberty and the right to life, are universal and inalienable. Unlike Thomas Hobbes, Locke did not believe that state authority is absolute, but rather that it is conditioned by respect for the rights of individuals. Therefore, when there is a violation of the rights that are absolutely guaranteed to people, they have the right to rebel against state authority.²¹ Liberty, according to Locke, is based on human reason, which is the basis for understanding natural laws. Reason teaches individuals that all people are equal, that no one has the right to violate another's freedom, to harm them, to endanger their health, or to seize their property.²²

Jean-Jacques Rousseau

Writing about the state of nature and people of that time, Jean-Jacques Rousseau claimed that no man has any right over another, especially not to deprive them of life. He believed that in the early community, equality prevailed among people and that it was property that disturbed this equality. His famous statement is well known: "Man is born free, and everywhere he is in chains."²³ He was the first to articulate democratic demands for equality among all people, and his ideas served as inspiration for the French bourgeois revolution of 1789.²⁴

e) The Historical School of Law

The historical school of law emerged as a kind of response to the school of natural law, marked by a conflict of opinion between two prominent German professors, Thibaut and Savigny, about the idea of natural law and the need for codification of law. "It arose in Germany after the French bourgeois revolution, when the question was raised whether legal rules should be codified in Germany as well." As a response to Thibaut's advocacy for codification, Savigny published the book "Vom Beruf unser Zeit fur Gesetzgebung und Rechtswissenschaft", which had a decisive impact on delaying the adoption of a civil code. The ideas and arguments presented in this work represent the foundation of the historical school of law. The concept of the "Volksgeist", or national spirit as a common and general belief, gives birth to a people's law just as it does to their language. Law born in the national spirit develops slowly and evolutionarily, and, without changing the essence that is "given" by the spirit, passes through three stages of development: unconscious and underdeveloped customary law, scholarly law, and legislation.²⁵ Representatives of the historical school of law remained critical toward the ideas of universal human rights. Their view of law as an expression of the national spirit denies the existence of any universal law, which can be considered a step backward when observing the modern universality of human rights.

20 Hobz, T. (1991). *Levijatan ili materija, oblik i vlast države crkvene i građanske* (M. Marković, Trans.; M. Đurić, Predgovor i priredio). Beograd: Gradina, pp. 16–17.

21 Locke, J. (2003). *Two Treatises of Government and A Letter Concerning Toleration*. New Haven, CT: Yale University Press, p. 144.

22 Lok, Dž. (2002). *Dve rasprave o vladi* (K. Čavoški & N. Savčić, Prev.). Beograd: Utopija, p. 238.

23 Ruso, Ž.-Ž. (1892). *Društveni ugovor* (K. Petrović, Prev.). Beograd: V. Valožić, p. 12.

24 Bećirović, E. (2019). Žan-Žak Ruso i Francuska revolucija. *Univerzitetska misao – časopis za nauku, kulturu i umjetnost*, 18, p. 55.

25 Vasić, R. R. (1991). Istorijaska škola prava. *Anali Pravnog fakulteta u Beogradu*, 39(1-3), p. 58.

f) Pandectist Science

The pandectists recognize freedom and equality only formally, through legal institutions that define and specify them, but this is far from a political concept. The most famous critic of the historical school of law was Rudolf von Jhering.²⁶ As previously noted, representatives of the historical school believed that law arises as an expression of the national spirit. Jhering, on the other hand, evaluated the advancement of law based on its universal applicability, that is, beyond the borders of a single state or culture. Even the Romans realized that *ius civile* had a limited domain, since it applied only to Roman citizens. They gradually introduced the institution of *ius gentium* (law of nations), which applied even to those who were not Roman citizens and had a supranational application. Law should not focus solely on the culture and history of a single nation, but must be comprehensive and practically effective everywhere.²⁷

Although different in approach and understanding of law, each of the mentioned schools played a role in shaping the modern concept and idea of the rule of law. When we talk about human rights, they are truly affirmed only in the school of natural law, but this does not diminish the contribution of the other legal schools to the development of legal certainty.

Therefore, to conclude: the first ideas of human rights did exist as early as ancient Greece and Rome, but the form in which we recognize them today is more closely related to the school of natural law and its ideas, even though they were not defined or specified in the way we know them now.

3. HUMAN RIGHTS TODAY

Human rights as a concept are indeed intriguing because each of us knows what we are talking about when we mention them. Yet, interestingly, the Universal Declaration of Human Rights does not contain a precise definition of human rights. This lack of an attempt to define human rights actually confirms the universalist doctrine that was passed down from Greece to Rome.²⁸

But has it always been this way? In the few preserved documents from the time of the kings, one of them, Tullus Hostilius, justified the punishment of people as a kind of warning to all.²⁹

The key document for understanding human rights is the Universal Declaration of Human Rights. From the second to the twenty-ninth article, it explicitly lists and defines the rights and freedoms that the state and society must respect – from the right to life, the prohibition of discrimination, slavery, and torture, to the right to security, education, work, social protection, and freedom of expression, all the way to the duties of individuals toward the community.

RULE OF LAW

26 Malenica, A., & Deretić, N. op. cit. p. 127.

27 Nicholas, B. (1962). *An Introduction to Roman Law*. Oxford: OUP, 54-57.

28 Bauman, R. A. (2000). *Human rights in Ancient Rome*. London and New York: Routledge, p. 2.

29 Bauman, R. A. op. cit. p. 2.

As Ulpian states (*Digesta*, 1.1.10.1), the fundamental principles of law are: “to live honorably, to harm no one, and to give each person what is rightfully theirs”.³⁰ In literature, the terms “legal state” and “rule of law” are often mentioned as synonyms, with the first term more commonly associated with the European-continental legal system, and the second with Anglo-Saxon law³¹, which defines the rule of law as a political and legal concept according to which all citizens (whether in power or not) are subject to the law, rather than to arbitrary decisions or the will of individuals. It implies equality of all before the law, respect for human rights and freedoms, and an independent judiciary that protects these values.

CONCLUSION

The path from ancient Rome to modern democratic societies has unfolded through complex historical processes – in terms of change, conflict, and ultimately the restoration of fundamental values. The rule of law today means that the law applies equally to everyone, that the judiciary is independent, and that there is a right to a fair trial and legal certainty. International organizations such as the United Nations, the European Union, and the Council of Europe emphasize the protection of fundamental human rights and the rule of law, which is also a precondition for membership in these organizations. Human rights have come a long way from classic civil and political rights to today, where contemporary challenges such as the right to environmental protection and digital rights are in focus.

30 Ulp. D. 1,1,10,1 *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*. Stojčević, D. & Romac, A. (1971). *Dicta et regulae iuris: latinska pravna pravila, izreke i definicije sa prevodom na srpskohrvatski jezik i objašnjenjima*. Savremena administracija. Beograd.

31 Lauc, Z. (2016). Načelo vladavine prava u teoriji i praksi. *Pravni vjesnik*, 32(3-4), 49–50.



Dr Nenad Stefanović, vanredni profesor
Pravni fakultet za privredu i pravosuđe u Novom Sadu
Univerzitet Privredna akademija u Novom Sadu

Tamara Crevar, mast. prav., saradnik u nastavi
na Pravnom fakultetu za privredu i pravosuđe u Novom Sadu
Univerzitet Privredna akademija u Novom Sadu

NAČELO VLADAVINE PRAVA I LJUDSKA PRAVA OD ANTIČKOG RIMA DO DANAS

Rezime:

Cilj ovog rada jeste da prikaže korene, genezu i razvoj osnovnih evropskih vrednosti, sa posebnim naglaskom na načelo vladavine prava i zaštitu ljudskih prava, počev od Antičkog Rima pa sve do savremenog doba. Autori nastoje da prikažu istorijsku transformaciju ovih vrednosti i sagledaju njihov uticaj na oblikovanje savremenog evropskog pravnog sistema i društva. Posebna pažnja posvećena je rimskom pravu kao temelju evropske pravne tradicije, kao i savremenim izazovima u pogledu očuvanja vladavine prava i ljudskih prava danas. U radu se analizira nastanak i razvoj ideje ljudskih prava i vladavine prava u rimskom pravu, kroz delovanje pravnih škola i njihovih najznačajnijih predstavnika, te se razmatra kontinuitet i evolucija ovih vrednosti. Metodološki okvir rada čine komparativni, istorijski, analitički i deduktivni metod.

Ključne reči: *ljudska prava, vladavina prava, rimsko pravo, škole rimskog prava*

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