

# Correlation between classical Roman law and English common law: comparative historical analysis

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## **Abstract**

*The term 'correlation' can be interpreted in a wider meaning than the presence of a frequency of connection between two collignial indicators. This semantic content as "a relation existing between phenomena" is present in the discourse of liberal arts, in contrast to parametric statistics. The purpose of the study is to verify the existence of a correlation between basic conceptual ideas in Ancient Roman law and English common law and to evaluate the scope and manifestations of this issue. The research problem is complicated by the fact that the overwhelming majority of modern historians traditionally contrast the legal systems of continental European countries with Anglo-American law. And there very few famous scientists who consistently reaffirm the opposite position and consider that the common legal tradition in Europe exists. The article shows three groups of key evidence of Ancient Roman Law influences on the English Common Law. The historical arguments explain the fantastic ability of English law to export to other countries. In world history, this property was only one legal culture, namely Old Roman. These abilities to transfer and reception are defined as the most significant parallels between the legal traditions that are investigated.*

**Keywords:** Ancient Roman law, English common law, legal history, comparative law, reception of law.

**JEL Classification:** K15, K33

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*How far that little candle throws his  
beams!  
So shines a good deed in a weary world.  
William Shakespeare, The Merchant of  
Venice*

*Oh Rome! my country! city of the soul!  
Lord Byron, English Poet*

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## 1. Introduction

All bread is not baked in one oven. But it seems like all systems of law have something in common and something unique. It's precisely the balance of these qualities that constitute the essence of law. We will apply the term "correlation" to the study of these relationships.

This word is used in at least three meanings: (1) a connection or relationship between two or more facts, the state of being correlated; (2) the separate act of correlating; (3) an indication of a linear relationship between two variables.

The definition of correlation, as defined in the Merriam-Webster dictionary, while debatable, is considered reasonable for current purposes of this study: "a relation existing between phenomena or things or between mathematical or statistical variables which tend to vary, be associated, or occur together in a way not expected on the basis of chance alone"<sup>4</sup>.

However, we will understand the term 'correlation' in a wider meaning than the presence of a frequency connection between two colligial indicators. Such semantic content is present in the discourse of liberal arts, in contrast to parametric statistics.

In this way, the primary purpose of the study is to verify the existence of a correlation between basic conceptual ideas in Ancient Roman law and English common law and to evaluate the scope and manifestations of this issue. And the subject of the scientific research reveals to us an intriguing plot, a kaleidoscope of interwoven past and present, ancient and modern legal cultures.

## 2. Research methodology applied to a comparative study of antique Roman and English legal cultures

This Article warns against the some of the dangers inherent in comparative research in the legal field. Comparative law is a conspicuously challenging source of scientific conclusions. It should be noted that "the danger results from the fact that mere correlation (some jurisdictions are associated with some outcomes) is not causation (a difference in legal design is responsible for the difference in outcomes)"<sup>5</sup>. This error occurs because investigators are focused overwhelmingly on detecting technical differences, but not on unearthing the common cultural heritage in the process of comparing the real legal systems. Therefore, we discuss, first of all, possible solutions to resolving these methodological problems.

The methodology of comparative law is really undergoing a rapid evolution and the dialectics of the general and particularly in different legal systems is becoming more in focus. It is well accepted that "in moving beyond

<sup>4</sup> Webster's Dictionary (1828) An American Dictionary of the English Language, available at <<https://www.merriam-webster.com/dictionary/correlation>> accessed 22 Much 2023.

<sup>5</sup> Engel, Christoph, Challenges in the Interdisciplinary Use of Comparative Law. *The American Journal of Comparative Law*, Volume 69, Issue 4, December 2021, pp. 777–797, available at <<https://doi.org/10.1093/ajcl/avab020>> accessed 10 April 2023.

mere description, comparativists showed that common elements behind what appeared to be different legal rules, and similarly, revealing substantive differences across legal systems that appeared to have uniform black letter law”<sup>6</sup>.

The research problem is complicated by the fact that the overwhelming majority of modern historians traditionally contrast the legal systems of continental European countries with Anglo-American law<sup>7</sup>. And there very few famous scientists who consistently reaffirm the opposite position and consider that the common legal tradition in Europe exists<sup>8</sup>.

It is quite clear that there is an underlying fault line between different legal traditions, which runs directly through the system of classic Roman Law, and more specifically under a sphere of its influence for different European countries.

In particular, it is rightly pointed out that “no historian of repute” has ventured to suggest that relations between Roman and English law are of major importance in English legal history and “most writers dismiss it summarily in the course of their general introductory remarks or relegate it to an appendix”<sup>9</sup>.

That is why the official Anglo-American doctrine, which is mainly aimed at proof of its own uniqueness and self-identity, affirms the essential, and very even often absolute, independence of English law from ancient Roman law<sup>10</sup>. And even opposing views expressed by certain experts competent in the history of European Law<sup>11</sup> can’t make a difference and therefore the official position on this

<sup>6</sup> Francesco Parisi, Tom Ginsburg, The Role of Comparative Law in the Social Sciences: An Introduction Get access *The American Journal of Comparative Law*, Volume 69, Issue 4, December 2021, pp. 627-635, available at <<https://doi.org/10.1093/ajcl/avab018>> accessed 12 April 2023.

<sup>7</sup> Dainow, J., The Civil Law and the Common Law: Some Points of Comparison *The American Journal of Comparative Law*: Vol. 15, No. 3 (1966-1967), p. 435, <http://www.jstor.org/stable/838275> accessed 12 April 2023; Stein, P., The influence of Roman Law on the common law, *BW-krant Jaarboek* p. 165, available at <<https://openaccess.leidenuniv.nl/bitstream/handle/1887/36630/240.pdf?sequence=1>> accessed 12 April 2023; Crittenden, A.R., Roman Law in Modern Life and Education // *The Classical Journal*: Vol. 15, No. 3 (Dec. 1919), published by The Classical Association of the Middle West and South, Inc., pp. 151-152, available at <<http://www.jstor.org/stable/3287837>> accessed 12 April 2023.

<sup>8</sup> Yntema H.E., Roman Law and Its Influence on Western Civilization. *Cornell Law Review*: Vol. 35, Issue I, Fall 1949, p. 88, available at <<http://scholarship.law.cornell.edu/clr/vol35/iss1/4>> accessed 12 April 2023; Zimmermann, R. Roman Law and European Culture. *HeinOnline-2007 N.Z. L. Rev.* 341 2007, pp. 369-370, available at <<http://www.direitocontemporaneo.com/wp-content/uploads/2014/02/Roman-Law-and-European-Culture.pdf>> accessed 12 April 2023.

<sup>9</sup> T. F. T. Plucknett, The Relations between Roman Law and English Common Law down to the Sixteenth Century: A General Survey. *The University of Toronto Law Journal* Vol. 3, No. 1 (1939), p. 24, available at <<https://doi.org/10.2307/824596>> accessed 12 April 2023.

<sup>10</sup> Plucknett, Theodore F.T., A Concise History of the Common Law, 5th ed.-Boston: Little, Brown and Co., 1956. pp. 9-10, available at <[http://lf-oll.s3.amazonaws.com/titles/2458/Plucknett\\_1578\\_Bk.pdf](http://lf-oll.s3.amazonaws.com/titles/2458/Plucknett_1578_Bk.pdf)> accessed 12 April 2023; Lefroy, A.H.F., The Anglo-Saxon Period of English Law, *The Yale Law Journal*: Vol. 26, No. 4 (Feb. 1917), p. 291, available at <<http://www.jstor.org/stable/pdf/786820.pdf>> accessed 12 April 2023.

<sup>11</sup> Donlan S.P., ‘Our laws are as mixed as our language’: Commentaries on the Laws of England and Ireland, 1704-1804, *Electronic Journal of Comparative Law*: vol. 12.1 (May 2008) pp. 6-10, available at <<https://www.ejcl.org/121/art121-6.pdf4>> accessed 12 April 2023; Sherman, C.P., The Romanization of English Law, *The Yale Law Journal*: Vol. 23, No. 4 (Feb., 1914), p. 318, available at <<http://www.jstor.org/stable/785012>> accessed 12 April 2023.

point still prevails.

The great challenge in that respect is to find a way of understanding the real relationship between ancient Roman Law and English Common Law and absolutely reliably prove or disprove their correlation in general.

Without a solution to this problem there is no need to talk about a common cultural tradition of European Law. By definition that means the Europeanization of private Law is giving up its own cultural space. Consequently, legal integration in this area is an exclusively technical issue of improving legislation, which is difficult to compare to case law.

However, it would be a gross error to underestimate the European nature of English Common Law.

In such a wide cultural and legal context "with the term "Roman law" we mean not only law of Ancient Rome proper, but also the modern laws which are founded on it, through Latin and Germanic codifications"<sup>12</sup>.

This approach opens many facts, which positively indicate the Europeanism of English legal culture.

### **3. Key evidence of ancient Roman law influences on the English common law**

Restrained optimism inspires that "the influences of civil law on common law are legion. Many of them doubtlessly can't be detected"<sup>13</sup>.

Let's carefully consider in turn the basic cohorts of the arguments that together make up this "legion".

*Firstly*, it is not acceptable to ignore the most important historical fact that large parts of the British Isles's territory were under occupation by Rome, which lasted more than three and a half centuries (from AD 43 to AD 410). Roman Britain, as is known, was raised to the status of a Roman province (Latin: *Provincia Britannia*) almost from the very beginning<sup>14</sup>.

It is an indisputable fact that the Roman dominion in Britain had not only political, but very important law-making consequences.

This is especially true given that: (1) It has long been argued that in Roman Britain there were certain branches of law, who completely repeated the contract law and hereditary law of Ancient Rome, respectively<sup>15</sup>; 2) in this Roman province established the system of courts, which were similar to permanent commissions

<sup>12</sup> Sarfatti, M., Roman Law and Common Law: Forerunners of a General Unification of Law. *The International and Comparative Law Quarterly* Vol. 3, No. 1 (Jan. 1954), p. 102, available at <<https://www.jstor.org/stable/755690>> accessed 3 April 2023.

<sup>13</sup> Frank, Jerome, Civil Law Influences on the Common Law. Some Reflections on "Comparative" and "Contrastive" Law. *University of Pennsylvania Law Review* Vol. 104, No. 7 (May 1956), p. 888.

<sup>14</sup> Re, E.D., The Roman Contribution to the Common Law // *Fordham Law Review*: Vol. 29, Issue 3, Article 2, 1961, pp. 457-458, available at <<http://ir.lawnet.fordham.edu/flr/vol29/iss3/2>>.

<sup>15</sup> Spence, G., esq. *The Equitable Jurisdiction of the Court of Chancery*. Vol. I. London: Stevens and Co., 1846. pp. 2-3, available at <<https://ia802702.us.archive.org/9/items/equitablejurisd01spenuoft/equitabl ejurisd01spenuoft.pdf>> accessed 12 April 2023.

(Quaestiones perpetuae) in Rome<sup>16</sup>; (3) famous Roman lawyers practiced in such judicial bodies, as Papinian, Ulpian and Paul worked in York, and transferred their experience to British colleagues<sup>17</sup>.

Secondly, it should be noted that after Imperial Rome left Britain, the connection with Catholic Rome continued for a very long time until 1534, when the Act of Supremacy by Henry VIII was adopted.

During this period the key event was the official Christianization of Anglo-Saxon England, which was a process spanning the 7<sup>th</sup> Century.

This has effectively resulted in the powerful influence of ancient Roman law being carried out through Canon law of the Catholic Church (*ius canonicum*). This law of the Church "was rapidly becoming more modern, more equitable and less formalistic" than a Crown law<sup>18</sup>.

The Anglo Saxon and Danish rulers were the main legislators in the VI-XI centuries and had direct contact with the Head of the Catholic Church<sup>19</sup>. Almost all the closest advisers to the crown, namely the Anglo-Saxon and Anglo-Norman lawyers, and judges, were from clergy and were experts in both canonical law and Roman law<sup>20</sup>. It is not surprising that the Anglo-Saxon codes were not only written in the Roman style and in Latin, but also contained numerous elements of Roman law<sup>21</sup>.

The *third*, and, in our opinion, the main, in our opinion, argument in favour of the influence of Roman law on English law is the leading role of Latin in the process of forming a legal doctrine in Britain.

In the European Middle Ages, unique legal entity called an *Ius Commune* was formed. The commonality of this legal system, mainly doctrinal, extended, notably through Latin to all European countries and England was no exception<sup>22</sup>. On that occasion, John Green said: "A large proportion of the abstract terms in the English language are derived from the scholastic Latin"<sup>23</sup>.

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<sup>16</sup> Ibid. p. 2.

<sup>17</sup> Sherman, C.P., The Romanization of English Law // The Yale Law Journal: Vol. 23, No. 4 (Feb. 1914), p. 318, available at <<http://www.jstor.org/stable/785012>> accessed 12 April 2023.

<sup>18</sup> Plucknett, Theodore F.T., A Concise History of the Common Law, 5th ed.-Boston: Little, Brown and Co., 1956. 802 pp. 17-18, available at <[http://lf-oll.s3.amazonaws.com/titles/2458/Plucknett\\_1578\\_Bk.pdf](http://lf-oll.s3.amazonaws.com/titles/2458/Plucknett_1578_Bk.pdf)> accessed 12 April 2023.

<sup>19</sup> Re, E.D., The Roman Contribution to the Common Law // Fordham Law Review: Vol. 29, Issue 3, Article 2, 1961, pp. 460-461, available at <<http://ir.lawnet.fordham.edu/flr/vol29/iss3/2>> accessed 12 April 2023.

<sup>20</sup> Sherman, C.P., The Romanization of English Law // The Yale Law Journal: Vol. 23, No. 4 (Feb. 1914), pp. 319, 321-322, <http://www.jstor.org/stable/785012> accessed 12 April 2023; O'Sullivan, R., The Inheritance of the Common Law, London: Stevens & Sons Limited, p. 43, available at <[https://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/The\\_Inheritance\\_of\\_the\\_Common\\_Law.pdf](https://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/The_Inheritance_of_the_Common_Law.pdf)> accessed 12 April 2023.

<sup>21</sup> Re, E.D., The Roman Contribution to the Common Law // Fordham Law Review: Vol. 29, Issue 3, Article 2, 1961, p. 459, <http://ir.lawnet.fordham.edu/flr/vol29/iss3/2>; Sherman, C.P. The Romanization of English Law / The Yale Law Journal: Vol. 23, No. 4 (Feb. 1914), p. 320, available at <<http://www.jstor.org/stable/785012>> accessed 12 April 2023.

<sup>22</sup> The Creation of the *Ius Commune*: From Casus to Regula. Edinburgh Studies in Law / by John W. Cairns (Editor), Paul J. du Plessis (Editor). Edinburgh University Press. (in English). 320 pp.

<sup>23</sup> Cit. for Frank, Jerome, Civil Law Influences on the Common Law. Some Reflections on

Now this topic is a major line of research. For example, Professor Thomas McSweeney studies the relationship in the thirteenth-century between common law's justices and the academic jurists of Roman law working in the universities. In particular, he believes that "the crucial influence of academic Roman and canon law was not on specific rules or doctrines, but on legal culture, and more specifically on the culture of a circle of justices". So, he came to the conclusion that the English common law was part of a pan-European legal culture. This was achieved based on the fact that English judges at the time assimilated the texts they produced in the English royal courts to literature they had encountered in the schools of Roman law<sup>24</sup>.

Dr. Łukasz Jan Korporowicz was working to that end too. He looked for traces of the presence of ancient Roman law in English law, in the canon law and the history of teaching Roman law in the universities of the Middle Ages<sup>25</sup>.

#### **4. Parallels between receptions of ancient Roman civil law and English common law in third countries**

At this point the research is appropriate to some philosophical generalizations, the meaning and scope of which are not immediately disclosed but can be understood later.

While we live in one cultural space, past and present will continue to coexist. As long as this space is common for certain nations, these people will continue to live in total cultural time. This logic carries the synergetic understanding that Ancient Roman law and English Common Law are the parts to the whole European legal culture. Given the whole is often greater than the sum of its parts, only the process of Europeanization can explain that certain relations between these cultures that existed in different physical times. Individual formations, co-existing in one cultural environment, always have certain cyclical conceptual analogies (parallels) without temporar crossing each other. This is how it should be understood "the parallels between Roman Civil Law and English Common Law"<sup>26</sup>.

The above historical arguments explain the ability of English law to export to other countries. In world history, this property was only one legal culture,

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"Comparative" and "Contrastive" Law. *University of Pennsylvania Law Review* Vol. 104, No. 7 (May 1956), p. 891.

<sup>24</sup> John Hudson, Thomas J. McSweeney, *Priests of the Law: Roman Law and the Making of the Common Law's First Professionals*, *American Journal of Legal History*, Volume 60, Issue 4, December 2020, pp. 574-576, available at <<https://doi.org/10.1093/ajlh/njaa016>> accessed 12 April 2023.

<sup>25</sup> Łukasz Jan Korporowicz, *Prawo rzymskie w Anglii w XVIII wieku. Nauczanie, studia, nauka*, Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2019, stron 237 / Łukasz Jan Korporowicz, *Roman Law in Eighteenth-Century England. Teaching, Studying, Scholarship*, Łódź: Lodz University Press, 2019, 237 pp.

<sup>26</sup> Halberda, Jan *Parallels between Roman Civil Law and English Common Law (Litigation, Obligations)*, *Acta Historico-Iuridica Pilsensia* vol. 2009-2010, Plzen 2011, pp. 78-91, available at <<https://ssrn.com/abstract=3606483>> accessed 12 April 2023.

namely Old Roman.

English procedural presumption of Foreign Law, which comes from the general presumption *jura novit curia* is the most relevant in this regard.

Essentially, three foreign law presumptions employed by the courts of English Common Law:

(1) the court will presume, in the interests of “inherent justice”, that the rudimentary principles of law necessary to support the claim are recognized in all civilized countries and that the foreign state in question, being civilized, would give effect to the claim;

(2) the law of the foreign state will be presumed to be the same as the law of the forum, where both states were originally part of the common law world; and

(3) the law of the foreign state, regardless of the history of its legal system, is presumed to be the same as the law of the forum<sup>27</sup>.

All this leads to the conclusion that *forum's sense of justice*, guided by modern English judges is nothing other than *Common Sense of Mankind*.

All this surprisingly resembles the semantic connection of such basic concepts of ancient Roman law as *Justitio* and *Sensuc Conimnis*.

In this case, such analogies are quite appropriate: historical facts indicate that universal meanings are based on Equality and Justice.

Really, these moral and legal terms in one sense or another may be found in almost any branch of law in developed legal systems. But we can hardly agree that the basic values of law have varied dramatically and shifted meanings to the opposite in legal history. Equity is not “a roguish thing”, or a species of “intellectual quicksilver”<sup>28</sup>.

A comparative analysis of ancient Roman Law and Common law can also be applicable to the analysis of “foreign elements” in so-called “Mixed Legal Systems”<sup>29</sup>.

Exactly in such countries, one of which is Great Britain, there are sufficient conditions for the construction of “dialogic jurisprudence”<sup>30</sup>.

But the world history of law demonstrates that a clear rejection of monologic norm-setting has occurred for the first time in the Roman Empire, when other jurisdictions began to be recognized within the framework of *ius gentium*. Later English Common Law repeated this experience of Ancient Rome. However, Great Britain and the USA, ironically, are considered the birthplaces of international private law. This is where a unique judicial practice of the foreign law

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<sup>27</sup> Gregory S. Alexander, Application and Avoidance of Foreign Law in the Law of Conflicts / 70 Nw. U. L. Rev. 602 (1975-1976), p. 609.

<sup>28</sup> Yntema, Hessel E., Equity in the Civil Law and the Common Law. *The American Journal of Comparative Law*. Vol. 15, No. 1/2 (1966 - 1967), p. 60.

<sup>29</sup> Olivier Moréteau, Luis Muñoz Argüelles, (2022) Multicultural Populations and Mixed Legal Systems in the United States: Louisiana and Puerto Rico. *The American Journal of Comparative Law*, Volume 70, Issue Supplement\_1, October 2022, pp. i1–i25, available at <<https://doi.org/10.1093/ajcl/avac016>> accessed 12 April 2023.

<sup>30</sup> Bomhoff, Jacco, Proportionality Balancing and Global Governance: A Comparative and Global Approach. *The American Journal of Comparative Law*, Volume 69, Issue 1, March 2021, pp. 128, 132, available at <<https://doi.org/10.1093/ajcl/avaa022>> accessed 10 April 2023.

application<sup>31</sup> was built. These curious historical parallels demand special scientific research.

## 5. Conclusions

A historical sketch of the developments of relations between different types of European cultural traditions has clearly demonstrated, “the origins of a people, its history and roots wouldn’t allow, nor do they still do, that certain national conceptions would vanish under the harmonizing process”<sup>32</sup>. That does completely refer to the classic legal culture of Rome as well.

A majority of positivist legal practitioners whose roots are in a different legal tradition might disagree with certain conclusions of this research. But we believe, “at a higher level of abstraction, our legal systems belong to a common European tradition and culture, including the tradition of Roman law”<sup>33</sup>.

But, as it turns out, the identification of similar traits and differences among Classical Roman Law and English Common Law are not ends in themselves. It is much more important that the very formulation of this question already does not look into the eyes of the jurists absurdly, and it means Jurisprudence taking on a new perspective on past and present.

So, we hope that the final result of this work brings a great peace of mind, which favours complete confidence in the existence of European cultural unity. And so this faith instils confidence and doesn't let the servants become disheartened in the search for truth and justice in universal human terms.

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<sup>31</sup> John F Coyle, William S Dodge, Aaron D Simowitz, Choice of Law in the American Courts in 2021: Thirty-Fifth Annual Survey. *The American Journal of Comparative Law*, Volume 70, Issue 2, June 2022, pp. 318-363, available at <<https://doi.org/10.1093/ajcl/avac038>> accessed 24 March 2023.

<sup>32</sup> Maria João Mimoso, Maria do Rosário Anjos, André Almeida, (2018) The private international law communitarization. *Juridical Tribune* Volume 8, Issue 3, December 2018 pp. 616-617.

<sup>33</sup> Rafał Szczepaniak, (2018) Semantic aspects of research on the application of private law in the public sector within the legal culture of Continental Europe (with particular emphasis on Polish experience). *Juridical Tribune*. Volume 8, Issue 2, June 2018. p. 329.



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