Bulletin of the *Transilvania* University of Braşov
Series VII: Social Sciences • Law • Vol. 16(65) Special Issue – 2023
https://doi.org/10.31926/but.ssl.2023.16.65.3.15

ROMAN LAW AS A FUNDAMENT OF MODERN CIVIL LAW

Cristinel Ioan MURZEA[1]

Resume: *Roman lawmakers and legal advisers have created a system meant to organize social and economic relations in a market economy created by the Roman state, which, because of its great territorial conquests becomes the most powerful state of the Antiquity spread throughout three continents. Roman law was a priceless thesaurus of universal civilization, as it represents the conceptual structure which would later become the basis of all future institutions, principles, and regulations of legal systems. In the modern age, along with the coding activity, Roman law was a theoretical and practical guide for all future regulations.*

Key words: *regulations, institutions, principles, legal relations, society.*

1. Introduction

The dimension of law in its content and form of expression was a panacea for Roman lawmakers, which made viable the concept according to which "jus civilae", is eternal, as it was created and enforced in an organic connection which emphasized the bilateral relation between religious regulations "FAS" and legal relations "IUS".

Ancient Rome would be known to posterity as that empire in which social order was governed by the legal ideology meant to ensure the ideal instrument in promoting and affirming the interests of Roman citizens.

2. The Roman Legal system - foundation of private law

Starting from the social dimension of law, seen as a network of social relations, the Romans granted significant importance to creating legal regulations, as this is how they could promote and legally acknowledge those subjective rights which covered the class interests of the most significant personalities of the Roman state.

Based on these coordinates, for 11 centuries, a legal system was created, a system characterized by an exceptional power of synthesis, which made possible for structural social relations to reconvert to legal relations which resulted from legal acts and deeds pointing out the principles and fundaments of the science of law seen in a gnoseological plan and an axiological plan.

[1] *Transylvania* University of Brasov, cristinel.murzea @unitbv.ro,

Given their practical spirit, but also by using an exceptional legal technique, the Romans have created regulations, principles, institutions and branches of law which would become a patrimony of the science of law, thus influencing subsequent ages and proving their usefulness and pragmatism until the present times.

From the time it was created, law was seen as both technique and art, as they were all in a dynamic confluence with the moral principles and traditions of Roman citizens, thus showing that ,"jus est ars aequi et boni" (Molcuț E., Oancea D, 1993, p. 6).

By analyzing the formal sources of Roman law, doctrine stated that the legal habits, laws, imperial constitutions and jurisprudence have created the fundament, the constant element of both objective and subjective law, which would later become the patrimony of universal civilizations.

Thus, doctrine correctly pointed out that "The thesaurus of Roman legal thinking is formed of concepts with a rigorous meaning created by an exceptional force of synthesis, from symmetrical evocative principles" (Molcuț E., Oancea D, 1993, p.6).

State and law were in an indestructible unity, influencing one another and in a state of dynamism as the Roman lawmakers believed in the axiom according to which - where there is society, there is also law- "ubi societas ibi ius" - a theory which was fully demonstrated in social practice.

The conservative thinking of the Romans left its mark on the entire legislative system starting from the first law, namely "The law of the 12 tablets," on to the laws of Emperor Justinian (527 - 565) who attempted to regulate social and economic relations from the time of early feudalism by adapting the laws of the classical age.

Thus, in the opinion of Romans, law was a gift from the gods meant to organize and sanction the conduct of individuals who did not respect the general rules of the Roman state, whether in "comitia curiata" or "comitia centuriata" or "comitia tribute" depending on the historical age which it references, namely the old age, the classical age or the post classical age.

In this context, the Romans believed that "jus civilae" is eternal and ideal in content and form, as it expresses the will of the Roman people, who saw the „eternal citadel" as „the ideal and eternal state which was meant to ensure the domination of Roman civilization over the barbaric states".

Even from those times, the essential function of law was referenced, as seen from the test inserted in the "Institutes" according to which – "Cuius merito quius non sacerdotes appelant; justitiam neque animus et boni et aequi notitiom profitemur aequum ab iniquo separanter licitum ab ollicitio discernentes bonus non solum, metu poenarum, verum etiom, praemiorum, queque exhorestatione efficacere cupientes, veram, nisi falloz, philosophian non simulatum affectones" – "we are rightfully named the founding parents of this science as we cultivate justice, we show people just and common sense ideas, by separating what is right and allowed from what is forbidden, thus wishing for good people to grow not only for fear of punishment but also by payment, reward and, if I am not mistaken, by aspiring to true wisdom and not a false philosophy" (Murzea Șchiopu, Bianov, 2006, p. 7).

Thus, we notice that the system of law is based on moral values which transform into commandments for those called upon to elaborate legal regulations, by which subjective

rights and guarantees and the balance and existence of the entire social system is ensured.

By this phrasing, the Roman lawmakers separate the law from moral regulations whereas the religious people believe it has a distinctive status in the sphere of social relations, as it need to ensure the practical enforcement of moral principles considering the tradition of the Roman people.

Thus, the Romans would become the first people of the antiquity who made an obvious separation between morals and law. However, certain mixtures still exist in case of legal constructions which attempted to give force to legal regulations whose violation would have been a violation of the will of the gods, a deed which was severely sanctioned in the Roman society.

The evolution of Roman society and the state which was to make the passage from the citadel city of Rome to the Empire seen as "Axis mundi" spread throughout three continents as a result of its conquests will make the obvious separations between "ius humonorum" and "ius sacrum" under the authority of pontiffs whose legal competence becomes weaker and weaker, perceptible only in relations with Roman gods.

Now, the duties regarding the administration of justice are given to magistrates, whereas in the empire period they are performed by the emperor or the courts of law.

3. Roman Law as a Fundament of Modern Civil Law

"Jus civilae" is emancipated and a distinction is seen between IUS and FAS as there is a quality difference unequivocally pointed out by the legal adviser Iulianus who stated that law is a general will – "jus est consensum omnium" (Longinescu, 1927, p. 161).

As it is a form of manifestation of the general will, the essence of law is the harmonization of individual behaviors, thus creating social harmony as stated by the neokantian thinker Kostian Rudolf Stamler; this thesis would influence the philosophy of law in the modern age and thus adapted by Roman legal advisers, who, represented by the illustrious legal adviser Ulpianus stated that – "Hoc igitur nostrum constant aux ex scipto, ad sine scipta, ut apud Giaecos "Thus, this right of ours is either written of unwritten as is the case of Greeks".

By these endeavors, law is taken from the gods and given to the people who are called upon, through their behavior, to respect a preestablished order of law which is ensured by the coercive means of the state who is responsible for enforcing law before the high commandment.

It is this very paradigm that would reunite all posthumous schools of law, regardless of whether they belong to different system of law, namely continental, Anglo-Saxon, Muslim, Asian and so on; starting from the fundament of law as stated by doctrine, the Romans had the possibility to distinguish between the regulations, institutions and branches of law, whether they were a part of private law or public law.

The Romans defined and created the legal regime specific to some fundamental institutions of private law, such as those pertaining to person, family, property, goods, contracts, obligations, succession whether legal or testamentary; this is merely an example and is not limited to the mentioned institutions.

We must also notice the contrary opinion phrased by professor Th. Sâmbrian who stated - for the scientist who dedicated his life to research in one branch of law, Roman law is the starting point without which we are unable to explain and understand the present and the future or law (Sâmbrian, 2004, p. 27).

In conclusion, specialty doctrine phrased opinions according to which, by analyzing "the appearance of Roman institutions as well as the degree of perfection of the principles of law they are phrasing, an elevated level of legal technique has led the Roman system of law to become an important cognitive and practical instrument meant to adjust the new legal figures and judicial institutions, by considering the high degree of abstraction of Roman law". (Murzea, 2003, p. 9).

It is unanimously acknowledged by specialty doctrine that today, more than ever, in the full process of globalization which tends to erase territorial, ideological and cultural borders, the system of law created by ancient Romans represents the basis of posthumous schools of law, as well as the main source for posthumous legislative works. Thus, we must mention the pertinent opinion phrased by the late professor C. Tomulescu who stated that „Roman law created the legal language, Rome created the alphabet of law and thanks to this alphabet we can nowadays phrase any legal ideas" (Tomulescu, 1956, p. 6).

It would be unconceivable for the science of law in modern age, especially for that of the present days, to state a nihilist and self-sufficient approach likely to not valorize and develop the theoretical and practical constructions of Roman jurisprudence, starting from the unjust hypothesis according to which several legal provisions elaborated in this age are not enforceable today given the configuration of law in the present age.

By creating a universal state, the Romans allowed the passage from a closed, autarchic economy to a market economy based on intense trading, thus creating new legislative challenges for those called upon to enforce it, especially for the priest who had the duty to intervene in the structural content of "jus civilae" thus adjusting it to the new realities of social and economic practice, to complete or even change it in order to acknowledge new subjective rights meant to satisfy the interests of subjects of law, whether private citizens or companies.

Thus, the parties were granted new legal instruments which helped create the content and form of an evolved system of law, an exceptional legal technique which made possible for Roman law to become what the illustrious Cicero wanted – "the living soul of the Roman people" - being immortal and permanent at the same time.

The modern age emphasized the important role and the value of the entire Roman legal thinking which would later become the basis of the entire codified law, especially in case of private law where, once the Civil Code of Napoleon Bonaparte was passed in 1804, the capitalist relations would be legally expressed in an efficient ad pragmatic manner.

There is no legal institution which does not valorize the knowledge collected and analyzed by the Roman antics, thus they will turn into real principles, general rules which later turned into new legal regulations.

The short phrasing found in the Roman system of law was distinctly regulated in the subsequent legislative works who contributed to the overall evolution of society.

The 1804 Civil Code of France would provide Roman law its rightful place and importance, as by abandoning the old feudal regulations, a new modern system was created, a system based on evolved principles with a high degree of abstraction materialized by regulations, institutions and principles of private law; all these would become an entire system of law, namely the continental one, a branch of law which includes the Romanian system of law, influenced by the French one as demonstrated by the 1864 Civil Code.

Specialty doctrine correctly noted that the Civil Code of 1804 is one which regulates private property – the central piece of this law, namely the right to private property, regulated with regard to content and characteristics, which represent the fundament on which all other real rights were built on, as well as other institutions which define other rights and guarantees.

4. Conclusions

The influence of Roman law on modern legal regulations, especially those of private law, would become obvious, given the fact that during the 11 centuries of existence of Roman law, a set of principles was drafted, with a high degree of abstraction, regulated as legal constructions and institutions which allowed for the congruence between the objectives and challenges of a market economy meant to ensure efficiency and functional coherence, but mostly a general climate based on a system of equity and guarantees meant to ensure a healthy civil circuit, as well as benefits for all subjects of law, whether private citizens of companies.

The principles of law phrased by the Romans were true legal instruments meant to interpret the new practical situations which occurred within the relations of the civil circulation, thus creating new legal categories to ensure a just enforcement of legal regulations.

The cause was the fact that the Romans built these universal and general principles from the coordinated effort of interpreting, associating and valorizing the different solutions given to all practical cases; this is why, Roman law still provides an example in creating an effective legal background especially in the context of aligning and systematizing different systems of law from different states.

All attempts of state unification in Europe were based on the model of the Roman Empire and, although these attempts have failed, it becomes more and more obvious that the new European construction which arises from the wish for economic and political cooperation of member states, finds an efficient support by valorizing the immense value of Roman legal thinking.

Roman law was the fundament on which the legislative system of several European states was built and we can affirm that it represents the „layer" on which one can build a coherent legal system, meant to ensure a predictable background for the European Union but also a coherent legal background for member states in present times.

References

Longinescu, S.G. (1927). *Elements of Roman law*, second volume. Bucharest: Tipografia Curierul judiciar.

Molcuț, E., & Oancea, D. (1993). *Roman law*. Bucharest: Șansa Publishing House SRL.

Murzea, C. (2003). *Roman law.* Bucharest: All Beck Publishing House.

Murzea, C., Șchiopu, S.-D., & Bianov, A.M. (2006). *Crestomaţie de texte juridice latine* [Collection of Latin Legal Texts]. Braşov: Romprint Publishing House.

Sâmbrian, Th. (2004). *Institutions of Roman law*. Craiova: Sitech Publishing House.

Tomulescu, C. (1956). *Roman private law manual*. Bucharest: Tipografia învățământului.