

# THE INFLUENCE OF ROMAN LAW ON THE MODERN CHANGE OF THE LEGAL PARADIGM

*Bielova Miroslava, Byelov Dmytro*

DOI <https://doi.org/10.61345/1339-7915.2023.4.2>

**Annotation.** Roman law occupies a unique place in the legal history of mankind. It represents the highest degree in the development of law in ancient society and in the ancient world as a whole.

It is distinguished, first of all, by an extremely wide coverage of the most diverse life relationships and situations. Various methods of protecting the interests of private owners, and even various participants in property turnover, were especially carefully developed in Roman law. It was the Romans, relying on all the previous world experience, including the countries of the East, who for the first time made individual private property, as well as other property rights and interests, the subject of skillful and perfect legal regulation. According to the results of Roman law, which was distinguished by the great development of its forms, the richest legal culture was formed, which became the common property of humanity in the following stages of the development of civilization.

One of the elements of legal culture was Roman jurisprudence, which initiated both an independent science of law and professional legal education.

The private law of Rome had a great influence on the subsequent history of law, and was adopted by many legal systems in the medieval era and in modern times. The achievements of Roman jurisprudence are also used in law and legal science even in those countries of the world where there is no division of law into public and private.

The uniqueness of Roman law also lies in the fact that the Romans managed to create universal, rational legal formulas, which later formed the basis of European civilization. For the first time, law-making was separated from its religious-mythological beginning, and law acquired not only an independent meaning, but began to be considered as the basis of civil order, a way to ensure the progress of society.

**Key words:** Roman law, law, historical significance, private law of Rome, European civilization

## 1. Formulation of the problem.

Roman law is a system of law that developed in the most developed state of the ancient world - Ancient Rome, and which became the basis of the legal systems of most modern European states, that is, Roman law will be considered the prototype of the legal systems of many countries of the world. It should also be noted that it, Roman law, is considered the historical basis of the Romano-Germanic legal family. The influence of Roman law on the formation of legislation and the legal system of modern society cannot be underestimated. The conceptual-categorical apparatus, the institutions of Roman private law are an irreplaceable base, the foundation that determines the further development of the civil law system of modern European states, this very fact determines the relevance of the topic of this article.

One of the main research methods is historical. It allows you to draw parallels between the past and the present. When considering changes in law and the legal environment, it is impossible to ignore the formation of «Roman law». Even today, it is the basis for various legal doctrines. One of the main features of Roman law is its adaptability to the events that occurred in the world.

The law must be able to change, adapt to the events taking place in today's world and not repeat the mistakes of the past, but improve itself. Today, the term «Roman law» often refers to more than just the laws of Roman society. The legal institutions established by the Romans had an influence on the laws of other nations long after the demise of the Roman Empire, and in countries that had never been subject to Roman rule.

«Roman law became one of the components of modern European law, which developed intensively over thousands of years. It formed the ideas of universalism with the preservation of the national identity of law, ideas and arrays of legal norms were born that had an impact on a significant territory» [1]

«Europe is constantly looking back at its ancient origins: freedom and democracy, the contradiction between the norms that ensure the interests of the social whole and the protection of the interests of the individual, the discrepancy between the norms of natural and effective positive law - all this already took place in history before the European period, but remains so most relevant for modern Europe» [2].

2. Based on the above, the authors set themselves the **aim** of considering certain features of the influence of Roman law on the modern change of the legal paradigm.

### 3. The works of specialists in the field of law,

including O. Zhukov, D. Shustrov, O. Behrens, K. Hülsen and a number of other researchers, are devoted to the direct study of the issue we are researching.

### 4. Presentation of the main research material.

Roman law was the law of the city of Rome, and later of the Roman Empire. The influence of Roman law on modern legal systems has been enormous: several legal systems of the world (including the civil law system of Europe) have been significantly shaped, directly or indirectly, by the concepts of Roman law.

The development of Roman law covers more than a thousand years of jurisprudence, which developed in different stages. An important feature in Roman jurisprudence was the Corpus Juris Civilis (529-34 AD), compiled under the direct leadership of Emperor Justinian I (c. 482–565 AD). The Corpus Juris Civilis is a wonderful legacy of a remarkable era in legal history.

Five and a half centuries after the death of the Emperor Justinian and a century after the fall of the Roman Empire, the «jurisprudence» of Rome was «revived» - in part because it was studied in the universities of northern Italy from the eleventh century. Nicholas in his book «Introduction to Roman Law» noted that this phase of Roman law «gave to almost the whole of Europe a common stock of legal ideas, a common grammar of legal thought, and, to varying but considerable extents, a common mass of legal norms.» [3, p. 2]

Although many have argued that England opposed the «adoption» or «revival» of Roman law and retained its own common law, it is now recognized that the common law was also (and consequently the law of Ireland) heavily influenced by Roman law. Today in the world there are two major legal systems of European origin - the common law of England and the civil law of continental Europe, formed mainly by «revived» Roman law. Common law is the basis of the legal systems of most English-speaking nations. Civil law is the basis of the legal systems of the countries of the European continent, countries of South America and other countries. Other non-European legal systems, Hindu and Mohammedan, are predominantly religious, but have «imported» aspects of common law and civil law into commercial transactions.

There were three broad categories of Roman law. *Ius civile* was the law derived from statutes (*leges*), plebiscites, decrees of the senate, acts of the emperor, and the authority of the jurists, and was originally a body of laws that applied to the citizens of Rome. *Ius gentium* referred to both the body of law that

applied to «foreigners» in their relations with the citizens of Rome, and the law that regulated Rome's relations with other states. *Ius commune* was a common law common to all, a law that was binding on all nations, including Roman citizens. *Tabelliones* (later *notarii*), sometimes translated into English as «notaries», composed Roman legal documents. According to the edict of the emperor Antonius Pius (86-161 AD), the *tabellio* received the right to receive a *salarium* (salary/fee). Justinian introduced new rules for the *Corpus Juris* intended to give the *tabellio* profession a systematic sense of organization. In another evolution, notaries became secretaries of power, including the emperor. During the reign of Charlemagne (768–814 AD), documents drawn up by notaries acquired the same force and effect as a final court decision. The notary profession flourished during the Renaissance, and Napoleon in March 1803 endowed it with functions and duties that are largely preserved today on the European continent and in the countries of the world with the inheritance of civil law.

Roman law underwent renewal during the renaissance of learning in Europe from around the 11th century. This is sometimes called the «reception» of Roman law. P. Vinogradov in his famous work «Roman Law in Medieval Europe» raised the question of why the so-called «reception» of Roman law became so significant in the period from the eleventh to the eighteenth centuries, expressing himself in the following terms:

«In the whole range of history there is no more important and mysterious problem than that concerning the fate of Roman law after the fall of the Roman state. How is it that a system formed according to certain conditions has not only survived those conditions but has retained its viability even to the present day, when the political and social environment has been completely changed? Why is it still considered necessary for a beginner in jurisprudence to read manuals compiled for Roman students who lived over 1,500 years ago? How did it happen that the Germans, instead of developing their legal system according to the national precedents and requirements of their own country, broke away from their historical jurisprudence to submit to the yoke of the past doctrines of a foreign empire?» [4, p. 11]

One of the explanations for the «acceptance» of Roman law, according to Professor A. Watson, is connected with the concept of «legal borrowing» – «legal transplantation» [5, p. 73]. When lawyers and courts are looking for solutions but none are available in their own system, the thinking lawyer can find precedent elsewhere. There were also professors of law, first in the famous universities of northern Italy, who studied the legal works of the Roman era and instilled in generations of lawyers and high-ranking administrators a respect for Roman law. This contributed to the gradual assimilation of Roman law into local customary law.

L. Mansfield (Lord Chief Justice of the King's Bench, 1756–1788), who is called the «father of modern commercial law», who studied Roman law at the University of Leiden and held the position of Chief Justice for a long time, developed a system of commercial law based on Roman law. [6, p. 5] Admiralty in Great Britain was closely related to the *lex mercatoria*; thus, the principles of Roman law are equally reflected in this branch of law.

Palmer B. noted that many basic principles of American law (as well as English law) are of Roman origin, such as the law of «adverse possession, suretyship, carriers and innkeepers, contracts, descent of property, easements, inheritances and wills, guardianship, restrictions shares, marriage, ownership and possession, transfer of rights, sales trusts, guarantees, partnerships and mortgages». [7, p. 45]

The Act of Union of 1800 united the Kingdom of Great Britain with the Kingdom of Ireland to form the United Kingdom of Great Britain and Ireland. Article 73 of the Irish Constitution of 1922 provided for the preservation in the new Irish Free State (subject to the 1922 Constitution) of the laws which came into force immediately before the adoption of the 1922 Constitution. Article 50 of the Irish Constitution of 1937 provided for the same, and thus the law in force in the United Kingdom of Great Britain and Ireland immediately before the adoption of the 1922 Constitution—with its Roman law influence—became part of Irish law.

According to the views of the ancient Greek philosopher Epicurus, the state and law arise when people enter into an agreement with each other to ensure mutual benefit - mutual security. Therefore, the main purpose of the state is the safe existence of society, because, according to the correct statement of O. Lemak, it is security that is the main point of the «agreement» concluded between society and



the state apparatus hired by it in the leading theory of the origin of the state. The security of society, that is, social or public security in this sense is synonymous with the concept of national security, based on the fact that the nation is a community of all citizens and stateless persons who currently live on the territory of the state and fall under its jurisdiction. That is, national (public) security is the security of everyone and every person living on the territory of Ukraine [8, p. 40]. Any danger to society is automatically a national danger. In addition, the equal sign between these concepts will eliminate the difference in their interpretation, such as the fact that national security is connected only with forceful actions of a military or similar nature, and social security - only with the social (civilian, peaceful, social) position of citizens in the state [9, p. 89].

## 5. Conclusions.

Thus, Roman law was not limited in its genesis to the city of Rome or the Italian peninsula, but to brilliant minds from many countries, and it left a great legacy in the legal systems of the world. The Emperor Justinian, drawing on earlier jurists, codified a sophisticated system of law in structured written form through the Digests, Institutes, and Codex. This codified system of law has influenced most civil law throughout the world. Concepts inherent in the legal order contained in *ius naturale* and *ius gentium*, aimed at extending beyond national borders, are today cornerstones of human rights law and international law throughout the world. The influence of Roman law on the development of common law is also undeniable.

His influence on modern law is considerable. Many scientists who study and research the development of law today turn to the past to see trends and under what conditions certain legal norms were created or changed. Today, Roman law is the foundation for the modern legal system. The development of our legal system depends entirely on world and domestic events, currently it is necessary to quickly respond to modern changes, paying attention to past decisions and mistakes that could have been made.

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**Miroslava Bielova,**

*doctor of legal sciences, associate professor*

*Department of Constitutional Law and Comparative Jurisprudence*

*Faculty of Law*

*«Uzhgorod National University»*

*ORCID ID: 0000-0003-2077-2342*

**Dmytro Byelov,**

*Doctor of Law, Professor,*

*Professor of the Department of Constitutional Law and Comparative Jurisprudence*

*Faculty of Law*

*«Uzhgorod National University»*

*Honored lawyer of Ukraine*

*ORCID ID: 0000-0002-7168-9488*