

THE MAIN STAGES OF ROMAN LAW ASSIMILATION INTO EUROPEAN JURISPRUDENCE

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The subject of the article is periodization of the stages of Roman law assimilation into European jurisprudence.

The purpose of the article is to allocate independent stages of reception of the Roman law by legal science of the European countries.

The methodological basis of research is analysis and interpretation of legal literature devoted to genesis of European jurisprudence. Taking into account that methodology as a specific branch of scientific activity appeared relatively recently, this work is mainly devoted to historical and legal issues of acceptance and subsequent reception of Roman law by European legal science, which in turn means focusing on more easily protected private law, which has a much longer history of formation and development compared to other legal systems.

Results, scope of application. The paper attempts to systematize the main stages of penetration of the foundations of Roman law in the main legal concepts of the European States, occurring from the moment of their origin at the end of the 12th century up to the beginning of their unification in the national codified acts in the 17th century. There was a pre- dominance of teaching of Roman law and, in particular, the Code of civil law (*Corpus iuris civilis*), – Digests of Justinian, – which became the main text for legal research. The Roman law, however, did not have a complete monopoly, and therefore the paper examines the fundamental conceptual approaches of Canon law and moral theology. Their own systems of legal norms were also developed in Canon law on a completely different basis in compare with Roman law. Those systems in a critical dialogue with the approaches inherent in Roman law, actually paved the way to natural law, which served as the basis for the creation of modern normative legal acts, including codified ones. The work takes into account the considerable scale of Europe, which influenced the historical development of jurisprudence in its various parts, in connection with which the European legal science existed for centuries until the emergence of national codified legal acts objectively predetermined the need to focus mainly on their own national legal systems. Special attention is paid to the period of time between the emergence of the first universities in continental Europe and the development of national codified legal acts in the XVIII century.

Conclusions. It is obvious that the glossators may have applied Roman law, although it has very little evidence in the historical material. In turn the commentators definitely used Justinian's Digests. The criticism of legal humanists and natural lawyers meant that Roman law was ultimately applied only when its reasonable content continued to be satisfactory. The transition to national codifications, accompanied by the abolition of Roman law as a source of law, actually became a real paradigm shift in European jurisprudence. However, this does not mean that the common heritage of Roman law has become forgotten.

1. Conceptual approaches of the study

Based on modern scientific, including legal and legal approaches, we believe it is important to note that historically in continental Europe, Roman law, in the form of the document "Code of civil law" ("Corpus iuris civilis"), called the Digests of Justinian, without any doubt, was actually "the most important element in the passage of legal training, since the Middle ages, until the era of the emergence of national codified legal acts (XVIII century.)" [26, p. 3] and, as such, it retains a certain value today. Moreover, despite the fact that local laws and customs are rather fragmentary in most places, Roman law had to play its role in legal practice as an auxiliary (optional) law, through its penetration (reception) into the norms of national law [1, p. 12]. Thus, the digests of Justinian have for centuries served as the main reference point for European jurists, even if the exact role of the digests studied has changed over time. In the era of interpreters of ancient legal manuscripts, glossators (1100 – 1260) Digests were essentially the main means of teaching in the universities of continental Europe, and it took a lot of effort to make Digests more accessible through the application of comments and a system of cross-references.

The basis for the free interpretation of the texts of Roman law was prepared by the Orleans school, which flourished in the middle of the XVIII century. Commentators (postglossators), who acted in the period 1260-1500 in accordance with the methods of both the glossators and the Orleans school, also began to use the Digests of Justinian as practically the main source of law in legal practice, which in turn allows us to speak with a sufficient degree of certainty about the importance of statutory law, local customs and Roman law, as a kind of complex legal system. Somewhat later, the doctrine of legal humanism, developed in the period 1500-1750, began a gradual challenge to the authority of Roman law, questioning the textual basis of the document "Corpus iuris civilis" by applying a much more fundamental method of text analysis. At the same time, another methodological

innovation was introduced, according to which attempts were made to build the texts of this document in the form of a logical system, namely the Institutions of Justinian [4, C 319], which appeared from the works of the Roman lawyer Gaius. In the XVI-XVIII centuries. in the concept called " the Use of modern Roman private law " ("Usus modernus Pandectarum"), a certain kind of synthesis of the methods of commentators and legal humanism was achieved. Finally, the historical school of Germany and its followers, as well as the adherents of another concept, called the "study of the Roman private law" ("Pandectenwissenschaft"), which studied the ancient Roman codes, carried out a later but very important revision of Roman law in order to develop new technical concepts and improve systematization, which allowed the codification of German private law in the Civil code (BGB) of 1900.

At the same time, it is important to note that in the studied time period, Roman law did not have a complete monopoly in Europe. For example, especially in the middle ages, Canon law was an important part of the curricula in universities and other European scientific schools. It has contributed greatly to the development of legal rules and procedures. In the area of private law, it helped to develop General contract law and the General concept of tort. The key to these important contributions was the influence of moral theology, most notably the work of Thomas Aquinas. In the XVI century. the application of the principles of moral theology to law flourished especially in the Spanish school of Salamanca, which in turn had a considerable influence on natural law. Canon law and moral theology differed quite interestingly from Roman law: their approach is based on General principles, in contrast to Roman law, which mainly consists, oddly enough, of precedents arising in the system of specific actions, which subsequently, in our time, began to lead to the convergence of the Romano-German and Anglo-Saxon legal families.

As such, natural law represents the third important fundamental approach to European law. It is already present in Canon law and moral theology in the form of General principles with an essentially theological basis. Secularized by Hugo Grotius and

transformed into a rational approach to law in the seventeenth century, it began to compete with Roman law in universities, where natural law departments were established in the late seventeenth and early eighteenth centuries. In turn, natural law contributed to the critique of Roman law and paved the way for the national codified legal acts that became the end result of the Enlightenment.

2. Relationship between Roman law and Justinian's Digests

Since the middle ages on the European continent began to develop an almost continuous line of development of jurisprudence. In fact, this process began with the University of Bologna (University of Bologna), founded against the background of the struggle for power between the German Emperor and the Pope and the simultaneous flowering of many cities in Northern Italy. Following the example of Charlemagne, the Emperor of Germany positioned himself as the successor to the Emperor of the Western Roman Empire and found some support for his claims to power in the legal texts of Roman law. Emperor Frederick Barbarossa hired a large number of Bologna lawyers to determine his exact rights in Italy.

The economic growth of cities has also led to the growth of employment of lawyers. Not least in the function of authoritative jurists, who were not members of one of the local rival families, but actually were Supreme judges, who, of course, had to have a solid understanding of the surrounding legal education, was the resolution of judicial disputes (in our days, this kind of approach can be observed, for example, in paragraph "d" of article 38 of the Statute of The international court of justice [2]). Thus, gradually began to develop a market for legal services, the needs of which had to meet and the University of Bologna, and, of course, other universities and research schools.

The main source in legal education, especially at the beginning of the studied period, was the main text of the document of Roman law "Corpus iuris civilis" of Emperor Justinian (527-565) of the (Eastern) Roman Empire. In 528-534 in

Constantinople, under his auspices, three important works were compiled: the Codex of Justinian (first published in 529). and revised in 534, containing legal advice and decisions made by Justinian's predecessors and himself), Institutions (introductory work for novice students, but having the force of law, based in turn on the Institutions of the Roman lawyer Gaius, written around 160 ad) and Digests, collections of laws (or in Greek: pandectae; a set of fragments of laws from the writings of Roman lawyers of the classical period, CA. 100 BC-250 ad, published as one of the constitutions of Justinian). After the publication of these works, Justinian continued to issue new constitutions (constitutions) - the decrees of the emperors, which are called novellae(novellae); a collection of 168 such novels, together with the three works mentioned above, forms what is called "Corpus iuris civilis" or Digests of Justinian [15, p.296].

The extant Institutions, Digests, Codex, and collection of novellas were brought to Italy at a time when Justinian's generals managed to take control of most of the country in the campaign that began in 534. The above texts received in Italy in 554 the force of laws, presumably at the request of Pope Vigilius. Little is known about their exact fate over the next five centuries. There is no doubt, however, that by 1100 the Digests of Justinian became the main text in the teaching of civil law, taking its form in the Studium (University) of Bologna. University legal education has spread throughout the European continent, and its traditions remain virtually unbroken to the present day. For most of this period, the legal texts of Roman law were the basis of the curricula of educational institutions of higher and secondary vocational education.

It is important to study such important problems as, for example, Roman legal texts were used for teaching in medieval universities. There are three not radical, but still, different approaches to Roman texts: glossators (Glossators), Orleans school and commentators.

3. Interpreters of ancient legal manuscripts (glossators)

The beginning of this first period is traditionally considered to be 1088, which is

considered the year of the founding of the University of Bologna. The end of this period is considered to be the death in 1263 of Accursius, who collected the glosses (interpretations) developed during the first one and a half centuries of the existence of jurisprudence, in his work "Glossa ordinaria" (CA.1260) [17, p. 36]. Undoubtedly, this does not mean that the methods used by lawyers have somehow changed dramatically after 1263. However, the writing of new glosses after Accursius was practically not carried out.

Most of the work done during this period by scientists consisted in writing glosses to the text of the document "Corpus iuris civilis". Glosses, which were marks in the margin and sometimes between the lines of Justinian's texts, were marks (marks), ranging from simple explanations of the meaning of words and alternative versions of the text to a thorough analysis of the legal content. They provided teachers with materials for their classes. Glossators have made the first attempts to come close to the unstructured content of the corpus Juris ("Code of laws"). In addition to providing comments in such glosses, they created a system of references (sayings) that made it easier to compare texts on the same subject in institutions, Codex, Digests and novellas with each other. In accordance with Justinian's instructions, they tried to interpret the texts in such a way that no contradictions remained: Justinian's compilers actually left many such inconsistencies [23, p. 131]. They achieved this by grouping texts in favor of and against certain arguments or rules, and then interpreting some texts as a rule and others as exceptions to it by identifying differences. This approach, in fact, is non-historical: the glossators studied the document "Corpus iuris civilis" as the main part of the authoritative texts and were not interested in the records in the Digesta, which provided information about individual lawyers and the possibility of determining each of them his place in the history of Roman law.

In addition to glosses, there are several other types of legal literature, which arose partly in the course of teaching the course "Corpus iuris civilis" in universities. They are followed by other works: interpretations (commentum), later called

"readings" ("lectura"), which are essentially lectures of the Professor, recorded by experienced students or assistants of the Professor, and sometimes edited by the Professor himself. The older interpretations (commentum) are usually somewhat condensed, while the readings are complete accounts of everything that was said and done in the lecture hall, including the remarks of the tutor or supervisor (reporter) about the behavior of students, as well as incidents, anecdotes and gossip about their colleagues, told by professors in order to spice up their lectures. Another type of literature is written references to controversial issues (quaestio disputata): they were intended to teach students to analyze problems and argue cases in structured confessions of guilt. The question could be either purely theoretical or taken from legal practice [3, p. 14].

Another kind of commentary that was not related to teaching is Summa. The totals (summae) are a summary, basically a listing of all the sections in the corpus iuris civilis. Unlike interpretations (commentum) or readings (lecture), they are systematic works, even if such a system does not fall outside the scope of this section. The oldest of them are not from Bologna, but many of them from France: the reason for this was that the printing of books in France was not as well organized as in Bologna. Azo wrote a series of totals (summae) to different parts of the corpus iuris civilis, to which other totals were added during the first half of the thirteenth century to form a standard total throughout The corpus iuris civilis. After that, there were no new summae (the famous phrase about it: "chi non ha Azzo non va a palazzo" - "he who does not have an Azo with him should not go to the Palace (of justice)") [18, p. 58]. It should be emphasized that the summae differ from the commenta and lecturae in that they do not follow the order of the text in the corpus iuris corpus, but – at least in relation to the corresponding title – establish their own order and system for dealing with fragments within the title. To some extent, summae paved the way for legal humanists to follow a systematic approach.

In addition to these works, there were also short monographs on specific topics: small totals (summulae) or treatises (tractatus). And in the literature, an important category related to

procedural law was formed, called "legal decisions" ("ordines iudicarii"). There is no specific extensive section on procedural law in Justinian's digest of Digests; legal decisions (ordines iudicarii) sought to gather together all the necessary materials on procedural matters and on specific actions, with instructions on how to prepare a court order. One of the most influential works of this kind is the Judicial mirror by Wilhelmus Durantis (circa 1270).

The glossators considered the Digests of Justinian to be the valid law of their time, as it was of Imperial origin. Accordingly, they did not hesitate to add to them the constitutions of the German emperors Frederick Barbarossa and Frederick II. In this regard, we believe it possible to put forward the assumption that in this regard, the glossators did not have any problems with the adoption as valid in their present day texts from the fairly distant past. And not because they were ivory tower lawyers unaware of the realities of legal practice: it can be shown that many glossators took an active part as legal advisers, lawyers or judges. However, little or nothing of their practical experience was manifested in their comments on The corpus iuris civilis, which remained a rather isolated object of their scientific interests: they paid no attention to legal norms outside of this document, such as statutory law or customs. If they had used the Digests of Justinian in practice, which in itself was not excluded, such a fact might have been reflected in their writings, which was not done.

There was a close relationship between the glossators and the Emperor in the sense that Roman law provides the Emperor with a historical basis for his claims to power. Charlemagne (742-814) was the first to claim that he was in fact heir to the throne of the Emperor of the Western Roman Empire (much to the displeasure of the Byzantine Emperor) and this ideology was again taken up by Emperor Otto I (912 – 973) when he became German Emperor in 962. Frederick Barbarossa (1122 – 1190, Emperor from 1152) hired a large number of Bologna professors as his legal advisers in his conflicts with Italian cities, and granted them privileges, for example, exemption from General jurisdiction (privileges granted to all

aliens wishing to engage in science in a foreign city) [24, p. 123]. However, neither Frederick Barbarossa nor his followers ever gave Justinian's Digests the force of law. The legend that Roman law was introduced in Germany by the Emperor Lothar II (1125-1137) proved to be false, as it was proved by Helmstedt Professor G. Konrig in 1643 [21, p. 234].

One of the oldest of glossators is Imperius (mind. 1125); some glosses are attributed to him. The differences in the views of the glossators can be demonstrated from the XII century, with Bulgaras de Bulgariia (mind. in 1166) and Martinus Gosius (d. C. 1160), were two of the so-called "Four" doctors of law and glossators, known as opponents. In the end, Bulgaras de Bulgarinis became a kind of founding father of a mainstream stream of glossators who stuck close to the text in their interpretations, and Martinus Gozia and his disciples represented an alternative line that favored more liberal interpretations based on principles of goodwill, perhaps inspired to some extent by Canon law. Johannes Bassianus, a disciple of Bulgaras, was the teacher of the above-mentioned Azo (d. about 1220), who, in turn, was the teacher of Accursius (d. 1263). The latter became known for his culminating work of the period: in the middle of the XIII century he compiled an ordered apparatus of glosses (as opposed to random glosses, the apparatus became a complete commentary, which filled the fields around the text) on the entire set of "Corpus iuris civilis", using all the materials that have been prepared since the beginning of the XII century. Civilis "for the next many centuries. Writing glosses with his help reached its Zenith, and the attention of lawyers shifted to other approaches, which was possible because the corpus iuris civilis was by then fully equipped with cross-references and full comments.

4. Methods of interpretation of ancient legal texts

The main medieval scientific method was the scholastic method or dialectic (the method of formal logic was applied to the authoritative text). Just as theologians dealt with the Bible as the main text, and medical students with Galen, lawyers had the corpus iuris civilis. The challenge was to be able to

read the text as a logical whole. In the case of The *corpus iuris civilis*, this meant finding ways to reconcile texts containing opposing views on the subject or to resolve the same legal problems. In the introductory clauses to his codification, Justinian foresaw the problem of contradictions (*antinomiae*) and granted the legal world an Imperial solution: that they did not actually exist, provided that his books were interpreted with sufficient care. This is exactly what medieval civilists (that is, lawyers working in the field of civil law, as opposed to canonists) intended to do. The same thing happened in Canon law (the very title of the section of the Decree (*Decretum*) of Gratian "Collection of canonical laws" ("*Concordia discordantium canonum*") indicates that it is about the harmonization of texts that are not comparable with each other.

The applied formal logic is largely based on Abelard's *Yes and no*, written around 1120. it was an important and influential book in which Abelard applies the principles of formal logic discovered by Aristotle (that is, Aristotle's *Logica Vetus*, which was known at the time, given in the Latin translations made by Boethius in the fifth century, and later in Arabic translations), to the texts of the Church fathers. He juxtaposed contrasting texts, pointed out differences of opinion in them and treated them in a critical, dialectical way, without betraying a final decision. The work "Yes and no" uses the philological method as applied to authoritative texts. This raises a number of common doubts related to possible text damage, errors of the author, the translator's real understanding of the translated text, etc. Texts are grouped according to their similarity (*similitudo*, *similia*) or opposition (*inconsistency*, *contraria*), and the method of reasoning by analogy (*per analogiam*) or from the opposite (*a contrario*), with the differences revealed (*distinctiones*), to explain the differences between these groups. This so-called scholastic method can be applied to any authoritative text in the field of theology, medicine, philosophy, and law, and it reigned Supreme in the middle ages and was not lost in later centuries; in fact, it remains to this day an important part of the legal argument [14, p. 78].

Regarding the sources of law, Professor E.

Schragge notes that in the middle ages lawyers specializing in civil law, did not observe any specific hierarchy with respect to the sources of law. There was a distinction between civil law and natural law, but neither was considered more important than the other. This continued until Azo in *Summa* advanced the idea that some sources of law are more important than others. Thus, Azo singles out the decisions of the great Nicene councils of the Christian Church in Constantinople, Ephesus and Chalcedon as more important than other rules. It seems that the idea of a hierarchy of sources of law has a Christian origin, and through canonical law it also influenced the civil law of the middle Ages [19, p. 416].

5. Orlean school

Beginning in 1235, one can trace the mention of the Orleans school as a place where the teaching of law was organized; in 1306 it was transformed into a University. The school gained prominence in the thirteenth century. thus, Thomas Aquinas mentions Paris, Bologna, Salerno and Orleans as the four main places for the study of General principles (*studia generalia*) of his time. The first professors were French and Italians, who studied in Bologna and could well belong to the opponents of Accursius. Later in the School there were such important personalities who were trained in France as Jacques de Revignon (Latinized surname, Jacob Ravana, d. in 1296) and Pierre de Alpers (Latinized name, Petrus Belaire, mind. in 1308). They were more interested than the Italian glossators in the theory of law and the more historical approach to Roman legal texts. Jacques de Revignon is known to have criticized the glossators for being too close to the text of the *Corpus iuris civilis* and for ignoring a particular passage of the text. Adherents of the Orleans school widely recognized the importance of legal practice (they cited examples taken from the cases of their time). And they also contributed to areas unrelated to Roman law, such as private international law and criminal law.

In their approaches to the Digests of Justinian, they tended to be more original than the Italian glossators, and interpreted the texts of this body more freely. Revision and Belper, in General, shared

the approaches of Canon law. An important innovation on Revignon was the creation of a legal entity, which later became known among commentators in Italy as a representative person (*persona repraesentata*). In this connection, it is worth noting that this concept was also dealt with by canonical law; Revision, apparently, shared common views on a number of different issues with experts in canonical law.

In the fourteenth century, the works of the Orleans school became a source of inspiration for commentators. Thus, in particular, Cino da of Clement VII, with great respect spoke about Refinane and Bulmershe and often quoted. Although the school continued to be an important centre of learning in France, the importance of the Orleans school seems to have been diminished by this time, although this may also be due to the fact that the later period of the school's history is insufficiently studied. Only relatively recently was published a thorough study of the activities of the Orleans school in the XIV century. [11, p. 147].

The ultramontans (French lawyers in Orleans, as well as in Montpellier and Toulouse) used essentially the same methods as their Italian counterparts in Bologna, even if they were a little more adventurous in their application, and published the same kinds of legal literature. Many *summae* were written in France, perhaps because the book production of that country was less well organized, which meant that copies of the document "*Corpus iuris civilis*" were not publicly available [22, p. 436].

One of the genres that flourished especially in Orleans was called repetition (*repetitio*). It consisted of individual lectures on particularly complex texts. They were considered not in the course of ordinary lectures, but at other times, in the afternoon. During the repetitions, the main text (*sedes materiae*) was studied in connection with other texts, which, in the end, often led to a complete and systematic discussion of a particular topic. Consequently, some form of systematic discussion of law could also be found in the Orleans school.

6. Postglossators, commentators and advisors

Representatives of the direction that appeared in law after the glossators are often called simply postglossators or followers of glossators, as well as commentators or advisers, from the word "Council" (*consilia*). In this case, there is much controversy, as commentators have based their work on the writings of glossators and Orleans school. The three most important figures among the commentators were Chino da Pistoia (d. approx. 1336), whose tribute to Rivignano and Belpasso mentioned above, Bartolo da Sassoferrato (1314 – 1357), was, student, Chino, and Baldus de Bartolinis (1327 – 1400 years). In this connection, we note that Bartolo da Sassoferrato became a landmark lawyer of his time, immortalized in the expression "no one is a lawyer if he is not a follower of Bartolo" ("*nemo iurista nisi Bartolista*").

The collection of glosses of Accursius' predecessors and contemporaries, *Glossa ordinaria*, became the watershed line between glossators and commentators. It was the culmination of a century and a half of legal training and a reference point for the future. New commentators took more part in the practice of law, in the further development of the dialectical method due to the fact that new translations of Aristotle's works, some of them unknown until then (*Logica Nova*), became available, and in the dissemination of the law learned in the process of learning (community Law, *ius commune*) throughout Europe.

The perception of Roman law became true in the time of the commentators. With the growth of economic prosperity and the development of Italian cities during the XI – XIII centuries, the need for legislation was met by local authorities through the adoption of a large number of local laws. Together with all kinds of local customs, they did not simplify the overall picture, because there were many sources of law, while not always consistent and often incomplete. In such a situation, Roman law had to play its role as a more complete system of law at its core, a structure into which local laws and customs could be inscribed within a larger whole. At the same time, lawyers with a University degree in Roman law were willing to meet the demand for legal competence in everyday practice. Legal thinking in accordance with Roman law became more important, it was encouraged and emphasized with

the advent of high courts, which were staffed by lawyers trained in universities and scientific schools, such as, above all, the Parliament of Paris (1273), the Supreme court of the Netherlands (in Mechelen, 1473) and the Imperial court (Reichskammergericht) (1495). The fact that Roman law was of Imperial origin is an important factor, but it began to impose itself also by the very weight of its intellectual authority.

The manifestation of increased attention to legal practice is observed in the genre of controversial issues (*quaestio disputata*). Thus, from the middle of the thirteenth century onwards, the Bologna professors linked their questions more to local statutory law, or even to customary law, which were analyzed by the methods of civil law.

Providing legal advice and being active in legal practice was not directly related to the appearance of commentators, but they certainly showed themselves more by their practical activities in their writings. The *consilium*, which is the advice of a Professor of law on a practical problem, became, in our opinion, the most important form of legal literature of the time. Baldus made a name for himself as an adviser (according to some, often scattered data from not entirely reliable publications, he prepared almost 2,500 councils).

Judges were often forced to seek advice before making their decisions (a similar situation is observed in our time, especially when the courts consider issues related to the application of the national law of other States). The problem of interpreting the complex mixture of local laws and customs in the Council was solved on the basis of the methods of interpretation and argumentation of the Roman lawyers. In other words, through the councils, the jurisprudence of Roman law on the basis of Justinian's Digests had a great influence on the practice of law. Roman law was used as the main argument; Statute law has been interpreted in accordance with its context, mainly as a deviation from it, and as a result has been influenced by romanization.

It was also typical of commentators that they were more likely to choose their key information from a particular topic or question (*matter*) rather than from the text of the *Corpus iuris civilis*

document. The corresponding type of literature was treatises, which, therefore, were not structured according to the texts of The *corpus iuris civilis*; their structure was derived from *matter* and included those texts from the Digests of Justinian that fit into arguments and counterarguments. Thus, the commentators carried out further work in the direction of a more synthetic and systematic use of texts from the *corpus iuris civilis*. A useful tool for their purpose was the last section of the Digests, "*De diversis regulis iuris antiqui*," on the various rules of ancient law. It contains 211 fragments, each consisting of one or more rules and maxims. The section under study was considered a kind of summary of the entire contents of Digests, a collection of laws [23, p. 148].

In the time of the commentators, there was a stronger connection between civil law and Canon law. Baldus, for example, wrote commentaries on both civil and Canon law. In the fourteenth century, it became customary for University law students to study both of these subjects and thus become *doctor utriusque iuris*, doctor in both areas of law or doctor of both rights (as, for example, Sebastian Brant).

7. Canon law

In the middle ages, Canon law was given as much importance as civil law both in practice and in universities, particularly in the areas of family law, contract law, wills and civil procedure law. The courts of Canon law had considerable jurisdiction.

Initially, Canon law did not have an easy-to-handle body of texts comparable to the *corpus iuris civilis* of civil law. This changed around 1140, when a monk named Gratianus assembled a collection of texts of very different origins (which included the works of the fathers, the decrees of the Councils, texts from the Bible) into a collection officially called the *Concordia discordantium canonum*, commonly known as the *decretum Gratiani*. This collection, given the nature of its source materials, gained great authority, despite the fact that it was only a private collection and not an official code. In an attempt to bring together all the laws of the Church into one systematic whole, this collection presented a comprehensive and systematic body of Canon law.

After the publication of the Decree of Gratian,

the popes continued to make laws, make administrative decisions and pass judicial sentences. Subsequently, these texts (decretals, decrees, decretals) were combined in other collections. The so-called "Super book" ("Liber Extra"), which is a compilation of decretals, is a collection of five books with decrees, published in 1234 by Pope Gregory IX. The "Liber Extra" was followed in 1298 by a collection of the decretals of Pope Boniface VIII and his predecessors, called "Book six" ("Liber Sextus"). Both of these collections of Canon law constitute a real code of Canon law: as such, they were officially published by these two popes, and to ensure that they would be applied in practice, they were sent to the University of Bologna with the urgent recommendation that they be studied by students specializing in Canon law and applied in practice after graduation. Together with the Decree of Gratian, they form the main part of the body of Canon law ("Corpus Iuris Canonici"), which additionally contains the decrees of Pope Clement V, starting from 1317 (Clementines, Clementinae), the decretals (Additions, Extravagantes) of Pope John XXII (1316 – 1334) and several other decretals also of several subsequent popes (Local additions, Extravagantes communes). These three sets of texts have never been officially released as a codifier and therefore do not have a sufficient level of authority comparable to the previous ones.

With regard to substantive law, Canon law has made a significant contribution to the development of General contract law. In civil law, contracts were treated as separate categories with their own actions or actions that determined the legal consequences of the contract. The agreement, which cannot be classified under one of the predefined categories, was not considered a contract in the field of civil law, and therefore, in principle, invalid. In Canon law, the principle of effective binding of all agreements is applied, according to which "treaties must be observed" ("pacta sunt servanda"), a famous phrase, the origin of which seems possible to link with the Council of Carthage (348 ad), which was supported by a passage from the gospel of Matthew (5:37): "But let your word be: Yes, Yes; no, no, and what is more, then from the evil one" [27, p.128]. In other

words, a good Christian should always be faithful in this world [8, p. 43].

The same General approach (as opposed to action-based) has been applied in Canon law, supported by moral theology, in the area of compensation for damages. Instead of applying a series of actions, each with its own specific and limited scope, Canon law holds that anyone who, through culpa, has harmed another must pay compensation to the latter. In the end, this – here, as we shall see, an important link is the work of Hugo de Grotius-led to the General approach that we find in such contemporary codes as the French Civil code (art.1382) and the Dutch Civil codes of 1838 (art. 1401) and 1992 (art. 6:162).

Together with civil law, Canon law has also done much for the development of procedural law. It was very poorly represented in the corpus iuris civilis, where there was no special section devoted to judicial procedures in General (there are many small sections devoted to aspects of procedural law, but they are scattered throughout The corpus iuris civilis). These small sections were eventually merged into a systematic review of procedural law, often referred to as legal prescriptions (ordines iudicarii). The most influential of these are the "Speculum of justice" ("Speculum iudiciale") by Wilhelmus Durantis (circa 1270). Canon law has made a great contribution to the discussion of the General principles of procedural law, which helped to build the above-mentioned legal prescriptions.

The method used in Canon law is essentially similar to the method of civil law [23, p. 132]. The official name "Decree" ("Decretum") well reflects what is at stake, namely, the coordination of clearly disparate texts to form an authentic whole. This was done by means of well-known dialectics: by arguments by analogy (per analogiam) and from the contrary (a contrario), and by identifying distinctions (distinctiones), which explain the differences between texts that were consistent with each other and those in which a different opinion was expressed. There were also summae, the most important of which were written in the middle of the thirteenth century by Hostensis-they abound in references to civil law, awarding their author the well-deserved name of king of both systems of law (monarch utriusque iuris).

As well as civil law, Canon law eventually led to the development of more or less systematically considered doctrines. It did so, however, on the basis of other source material, which is the *corpus iuris Canonici*, and focusing on other topics (especially personal law and family law).

8. Moral theology and the Salamanca school

Moral theology was based on the doctrines of Thomas Aquinas (1225-1274), based on the *Ethics of Nicomachus* ("*Ethica Nicomachea*") of Aristotle, representing Thomism (from lat. Thomas – Thomas), - the most important work of F. Aquinas "*Summa theologiae*" ("*Summa theologiae*") was a guide for novice students of theology on all aspects of the relationship between God and man – for a long time until the beginning of the XVI century., when traditional ideas about man and his relationship with God and the world began to be challenged by Humanism, Protestantism and in connection with the discovery of the new World. The school in Salamanca (Salamanca school as one of the directions of late scholasticism was formed in the University of Salamanca in the XVI century.) took up the solution of these problems and tried to give them an answer. It was a school of theologians and lawyers who tried to reconcile Thomism with the new socio-economic order. Its most famous representatives were Francisco de Vitoria (1483-1546), Martin de Azpilicueta (1492-1586), Domingo de Soto (1494-1570) and Fernando Vazquez (1512 – 1569). The main object of study in the Salamanca school was man and his practical problems of a moral, economic and legal nature.

Salamanca school performed important work in the field of Economics; it is considered the birthplace of economic science [6, p. 94]. But no less important was its importance to jurisprudence. Members of the school developed a theory of natural law, which led to interesting conclusions about equality and human rights and that the Supreme power belongs to the people, who can transfer it to the monarch. Vitoria developed the theory of the law of Nations (*ius gentium*) and thus became the founder of public international law. Other developments of the School were theories about just war. Finally, some of its members took

part in the famous debate between Juan Hinez de Sepulveda and Bartolome de Las Casas on the legitimacy of the conquest of the New World (Junta de Valladolid, 1550-1551).

The ideas of the Salamanca school took hold of the Netherlands (in the broadest sense of the word) in various directions. One of them was represented by the Jesuit Lenart Ieys (Leonardus Lessius, 1554-1623) from Leuven. While studying in Rome, he met one of the members of the Salamanca school, Francisco Suarez (1548-1617), with whom he was in correspondence. Lessius taught moral theology for many years at the Jesuit school (*studium*) in Leuven, presenting the ideas of the Salamanca school. For the weekly debates on ethical issues, he used the works of Martin de Azpilcueta (or the Doctor of Navarre, 1492 – 1586 gg.). He was known for his clear style of writing; one of his works was *On truth and other rights to virtue and justice* (*De iustitia et iure ceterisque virtutibus cardinalibus*, 1605). In the Northern Netherlands, Hugo de Groot (Grotius) was inspired by Domingo de Soto's work on justice and law (*De iustitia et iure*), which he brought to Louvestein castle in 1619, where Grotius was taken to life imprisonment the same year. He also quoted the works of Azpilicueta. It was through Grotius that the General principles of moral theology spread from theology to law [12, p. 377].

9. Legal humanism

Legal humanism represented a newer approach to civil law. This approach was inspired by the General spirit of curiosity and rejection of everything as due, at the end of the middle Ages and marked the beginning of another era. He is characterized by a great interest in classical antiquity and a desire to learn it directly from sources. Instead of simply studying legal texts, humanists took an interest in their historical and linguistic foundations.

Legal humanism is characterized by two periods of its heyday, and in two different places (it originated in France in the XVI century, at the University of Bourget). Some important figures that are important to point out in this context were Guillaume Bude (Latinized surname, Boudeus, 1468-1540), Andrea Alciato (Latinized surname, Alciat, 1492-1550) and Jacques Cujas (Cujasius – Latinized

surname of the famous French lawyer Jacques de Cujas, 1522-1590). More than a century later, he was revered again in the Republic of the Netherlands, from about 1670 to 1730. This young, prosperous Republic aroused the interest of scientists in many countries for its high academic level of historical approach to the legal sources of Roman law, known as the School of Roman-Dutch law [5, p. 284].

In our opinion, the most significant figure was Gerhard Noot (1647-1725, professorship at the University of Leiden from 1706), and outside the ranks of University professors it is also appropriate to mention Henrik Brenkmann (1681-1736), who worked for many years on a new edition of the Digests (Collection of laws), which he failed to complete; his remarks, however, became the basis for an important edition of Gebauer and Spangenberg, and in his Preface to the main edition (editio maior) of the Collection, Mommsen noted that he owed much to Brenkman's book "History of the code of private law" ("Historia pandectarum") (CIT. according to [9, p. 83]).

With the emergence of the current of legal humanism, the approach to the corpus iuris civilis has completely changed. Legal humanists were interested in the historical context of the texts of Justinian's Digests and tried to read them against this background, correlating them with information presented in non-legal sources of antiquity. A typical type of publication in this field is observatio, an observation-a short essay in (elegant) Latin on a particular position. In addition, they tried to return to the oldest possible versions of the texts and looked for manuscripts that would help them in this: the result of this approach is a return to the sources (ad fontes). In the case of Justinian's Digests, in particular, this means an increased interest in the elusive Florentine Codex, which was eventually reproduced as a quasi-facsimile edition by Francisco and Lelio Torelli in 1553. (Torelli's famous edition is the Digests of the code of private Florentine law, edited by Lelisse Taurelius, of Florence, in the works of Laurentia Torrentini, 1553) [16, p. 173]. Another innovation was that, unlike their medieval predecessors, humanists read Greek texts (Graeca leguntur), which allowed them, for example, to use the manuscripts of the Basilica

(Greek integrated versions of the Digests and Codex of Justinian, prepared by the Byzantine Emperor Leo the Wise around 900; these texts contain a large number of fragments of literal translations of the Digests and Codex into Greek) to improve the text of the document "Corpus iuris civilis". This new historical and critical approach to legal texts became known as the French approach to sources of law (mos gallicus) in contrast to the traditional Baldus Bartolus method, the Italian approach to sources of law (mos italicus). This approach was not very welcome in legal practice, rather the opposite. The practicing lawyers did not like any of the doubts placed on the texts they used to substantiate their arguments.

Proponents of legal humanism were also responsible for the emergence of criticism of interpolation, i.e. insertion into the texts of other people's manuscripts, and restoration of texts. The critique of interpolation is aimed at eliminating the changes made to the legal texts of the classical period of Roman law (approximately 100 BC-250 ad), when they were included in the Digests of Justinian. This is not easy to do with any degree of certainty unless one has uncorrected text to compare, and for centuries some scholars have been diligent in interpolating. Without diminishing the merit of the early criticism of interpolation, it reinforced to a certain extent the impression that the text of the Digests (Codex) of Justinian was by no means perfect.

The restoration of the texts benefits from the fact that each fragment of Justinian's Digests is accompanied by a mark (inscriptio), which indicates the name of the author and to which work of this author the fragment belonged. They allow for a kind of reconstruction of the original works (always with the text of Justinian) to the extent that fragments from it were used in Digests. The principle of operation (modus operandi) is quite simple, it is to divide all the fragments contained in Justinian's Digests according to the litters, sort them by lawyers, and then for each lawyer sort them by his work and then by book (e.g. Ulpian, eighth book, tenth decree). The project was started by Jacobus Labbitus at the instigation of Cuiatius (he compiled a list of authors with references to both the texts of these authors contained in the Digests and to passages of

texts of other authors where they are mentioned). He has not yet tried to restore the original order in the works of individual lawyers, it was done only in the XIX century. Lenel, the author of a more specific method of reconstruction of texts.

Given that Justinian's compilers retained only about five percent of the available texts, the restoration never aimed to achieve a complete reconstruction of the original works. However, in the case of those lawyers whose work was used the most, one can get a good impression of what the structure of the work was. Thanks to the reconstruction, it is possible to read individual fragments of Justinian's Digests in their original context, which can be very useful for their interpretation. Reconstruction thus serves both legal and historical purposes.

In addition to this largely antiquarian approach, there is also a tendency (already noticeable, especially among later commentators, but whose importance is now increasing) to attempt a more systematic treatment of the contents of The corpus iuris civilis. The medieval summae and repetitiones introduced the method of systematically analyzing one section at a time, but now an attempt has been made to present the entire "Corpus iuris civilis" as one systematic whole. The institutions of Justinian were chosen as a model, as they are only part of the "Corpus iuris civilis", containing a real system derived from the system of institutions of Gaius (CA 160 ad); they could not use the texts of Gaius directly, since the texts of his institutions were found only in 1816. The most famous example of this new systematic analysis is the commentaries of Hugo Denon (Donellus, 1527-1591), although this method has also been applied to materials other than the Corpus iuris civilis, notably by Charles Demolinus (Molineus, 1500-1566) on the customary law of Paris (Coutume de Paris) and Hugh de Groot on the Dutch legal system.

Another point that has an impact on legal methods is that the critical approach of humanists slowly but surely undermined the authority of Roman law. On the one hand, the hunt for new manuscripts revealed many doubts about the exact wording of some passages from the Corpus iuris civilis. On the other hand, the humanists' desire to

restore the classical texts of the Roman jurists suggested that the traditional text of Justinian was not, in fact, real. This made Roman law vulnerable in its competition with other legal sources, especially natural law. His authority, once based on who was then (German) Emperor, and now he began to rely on their internal qualities, where the Roman law is not yet clearly challenged. This change can be summed up by a play on words in Latin: "Roman law is applied not because of its strength, but because of its inherent high qualities" ("non ratione imperii, sed imperio rationis") [13, p. 87].

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10. Natural law

In the seventeenth and eighteenth centuries, natural law became a more serious competitor to Roman law, and was eventually able to make an important contribution to national codifications that put an end to the direct application of Roman law in practice.

The idea of natural law as a comprehensive system of law can be traced back to the ancient Greek philosophers. The Roman jurists (under the influence of stoat) regarded it mainly as a body of law, respected equally by all peoples, and therefore also called international law. The father of the Church, Aurelius Augustine (354-430), put forward the idea of the divine origin of law immediately after Christianity became the state religion of the Roman Empire (380). The Latin Bible thus became the primary source of natural law. As noted above, Thomas Aquinas, inspired also by the works of Aristotle, later developed a philosophy of law that drew law from the ideal order of God's creation (*ordo Dei*). In the XVI century philosophy of Thomas Aquinas was received in a so-called second scholasticism of the Salamanca school. The Spanish doctrine of natural law, which adheres to a theological basis, has had a great influence on the philosophy of law and even on the dogmatic aspects of law, as it treats specific pressing problems from the standpoint of natural law.

The Dutchman Hugo Grotius (1583-1645) - who deserves mention because of the important

influence he had on other lawyers in various countries (continued the tradition of the Salamanca School, but was also responsible for making an important change); developed the idea of rational natural law based on the index of mental ability (*ratio*). In his famous and influential work "Laws and customs of war and peace" (1625), he cautiously argues that even if we "took the liberty to assume that there is no God, the natural law will still operate" [12, p. 129]. The idea of rational natural law was further developed by the German jurist Samuel Pufendorf (1632-1694), who completely separated natural law from any theological Foundation. Pufendorf created a more geometric legal system using the method of natural Sciences, deducing his rules from a set of axioms.

11. Use of modern Roman private law

If legal humanism was the fashionable way of working with the "*Corpus iuris civilis*" in the sixteenth and seventeenth centuries, it was based on many more such lawyers who used it from a purely practical point of view, continuing the traditions of medieval *mos italicus*. The work of legal humanists has led to some distinctions at the expense of better publication of texts, and historical arguments have also made their way to some extent into practice, but the methods of practice have remained largely unchanged. In Germany, this practical approach became known as "the Use of modern Roman private law" ("*Usus modernus Pandectarum*"), a title taken from the identical title of a book by Samuel Stryck (1640-1710) published in 1690.

In its broadest sense, the term can refer to any improved and even modern use of Roman law (especially the Digests of Justinian, also known as "*Pandectae*") as such a source of law as we still meet with in South Africa or Sri Lanka. In a narrower, more methodical sense, legal humanism refers to the approach of positivist German jurists in the seventeenth and eighteenth centuries. Above all, it is a continuation of the use of Bartolo's *mos italicus* method. At the same time, mainly because of the critical attitude to Roman law initiated by legal humanists, it is a sufficiently independent approach to the study of the sources of law. *Usus modernus Pandectarum* developed the doctrine of the various

sources of law. The tone was set by Hermann Conring (1606-1681) in his work "the Origin of the laws of Germany" ("De Origine iuris Germanici", 1643), in turn Stryk also clarified it in the Preface to his book "the Use of the modern code of Roman private law" ("Usus modernus Pandectarum"). While Roman law had played its part as a source of law, the position of local laws was now different; it should be studied as a separate, independent topic. In the middle ages, jurists also dealt with several sources of law, including Roman law and local laws, but they generally considered local laws to be deviations from Roman law. Instead, the "Usus modernus Pandectarum" considers these laws to be a further development of Roman law on the basis of custom. This approach provided a much stronger position for local law compared to Roman law, which lost its leading position among sources of law. The scientific study of local law began with the use of the modern code of Roman private law.

With regard to Roman law, the title "Use of modern Roman private law" ("Usus modernus Pandectarum") has great significance, especially the first two words. *Usus* (usage) implies that the purpose is to apply the legal Roman texts in practice, not to study them scientifically. Next comes the word *modernus*, which implies that it was related to its application in modern law. Representatives of the current modern use of Roman private law may have benefited from the work of legal humanists, but they used Roman texts not historically, but as another source of legal norms. Legal humanism was not, by the way, limited to Germany; many French and Dutch lawyers worked in the same spirit. In this case it is possible to cite as one well-known example the work of Simon van Gronevegen, "the Abolition of laws" (CIT. by [20, p. 374]), in which he explores those texts of Roman law which may still be considered possible for application as laws in the Netherlands [10, p. 229].

The use of modern Roman private law was inconsistent in what Roman legal texts were to be applied. Some proponents of the modern use of Roman private law hastened to suggest that Roman law was no longer applicable, while others assumed it to apply and demanded a refutation to the contrary [13, p. 74].

12. Historical School of Germany (study of Roman private law)

Strangely enough, but not improbably, in fact, ironically, the German Civil code (*Bürgerliches Gesetzbuch*, BGB) of 1900, was strongly influenced by the work of a man who in 1814 strongly opposed the very possibility of codification. In the same year, Professor Anton Friedrich Justus Thibault of Heidelberg University proposed the idea of codifying the General civil law (including private, criminal and procedural law) of Germany in order to promote national political unity [25, p. 24]. He made no secret of his admiration for the French Civil code (which at the time was applied in parts of Germany West of the Rhine). In the same year, a Professor of Roman and civil law in Berlin, Friedrich Karl von Savigny (1779-1861), wrote an eloquent and famous answer to "Legislators and jurists from a professional of our time" ("Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft"), in which he argued that Germany was not ready for codification, and that much still needs to be done before successful codification in Germany [16, p. 19]. It is debatable whether this delay was entirely due to Savigny, but the fact remains that it took almost another century before the German Civil code came into force and Germany received its unified civil law.

Savigny's theory was a reaction to the claims of rational natural law (as a product of the Enlightenment) just as romanticism in art and literature was a reaction to the dry intellectualism of the previous era. He was, in fact, closely associated with such famous figures of romantic Germany as von Arnim and Brentano, having married in 1804 the sister of the latter, Kunigunde. In his reply ("Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft", Savigny outlined most of the programs for the Historical school, which he officially founded in 1815. together with his colleague in Berlin Karl Friedrich Eichhorn (1781-1854). They edited the program journal of this school, called the Journal of the history of jurisprudence ("Zeitschrift für geschichtliche Rechtswissenschaft"), which became the predecessor of the modern Savigny Journal.

In his response to legislators and jurists,

Savigny opposes the idea of constructing law in a mathematical, more geometric (more geometrico) way. In his opinion, the laws of the nation-state are as characteristic of this country as its language. They are not created by people, but grow organically with people; this is a historical phenomenon, because Roman law is the most outstanding example of this. Codification, therefore, can be successful only if it is based on the historical traditions of the laws of men, and a thorough knowledge of these traditions is essential for the proper codification. This knowledge of historical traditions (or rather lack thereof), as Savigny pointed out, is the greatest weakness in Germany and is therefore the main obstacle to successful codification. He concludes that the only way to work out a better law for Germany is to have a jurisprudence that develops organically and explores traditions from their inception. And this is exactly what he and his disciples have been doing since the adoption of Roman law in Italy during the middle Ages. In fact, Roman law (in its Justinian form) was, as it was established, an important common element in the legislation of many countries in Germany (then – a number of many so-called German States). land), especially since it has been applied by the General Supreme court of Germany since its Foundation in 1495.

Roman law, however, was studied not so much for its own sake, but with an eye to the future. Savigny's disciples used Roman law, and especially Justinian's Digests or, as already noted, Pandectae, to develop General notions that the Romans themselves never used, such as "Business law" ("Rechtsgeschäft") or "legal capacity" ("Geschäftsfähigkeit"). This type of jurisprudence was known as "the Study of the code of Roman private law" ("Pandektenwissenschaft"). One of its most famous representatives, Bernhard Windscheid (1817-1892), wrote a manual that has not yet lost its importance, and he later became a Central figure in the Committee that prepared the German Civil code. In the civil code of Germany (1900) it is not difficult to find another form of acceptance of Roman law. Undoubtedly, the German civil code in question is a codification that is more closely related to the codification of Justinian than, for example, to the French civil

code, even if it is further removed from the first by a century. This is the most optimal and characteristic, from our point of view, an example of the influence of Roman law on the formation of modern private law.

13. Generalizing conclusions of the study

Concluding the study, we believe it is important to note how long Roman law remained one of the main points of reference in legal practice and in the academic training of lawyers in (continental) Europe and that it remains the same subject in the curricula of law in many countries, including the Russian Federation (before the introduction of the bachelor's degree in "Jurisprudence" there was a separate academic discipline "Roman law", now the foundations of Roman law remain partly in the academic discipline "History of state and law of foreign countries").

In the course of the study, it was determined, among other things, firstly, that the glossators may have applied Roman law, while in the historical material on this account there is very little evidence. In turn, commentators definitely used Justinian's Digests, and even if the critical approach of legal humanism undermined to some extent his authority, the traditional method of commentators continued to be used not only in Italy but also in other countries. The modern use ("Usus modernus Pandectarum") of the foundations, primarily the Digests of Justinian, is a somewhat modernized version of Roman law, which incorporates some of the conclusions (especially the corrected texts) of legal humanism. Roman law, however, began to lose its self-evident authority, which it possessed in the middle ages because of its connection with the Emperor. The criticism of legal humanists and natural lawyers meant that it was ultimately applied only when its reasonable content continued to be satisfactory. And in this sense it is still often present in modern codifications, albeit on the basis of a new authority.

And, secondly, throughout the studied time period and subsequently, there was a development of case law in codification (codes) with a system of legal norms at a relatively high level of abstraction.

Roman law, in its classical form, consisted of case law (a property it shares with modern common law). Both the Codex Justinian and his Digests are a collection of decisions on specific cases. In Roman times, such decisions "did not have any automatic authority, since they would fall into dependence on the prestige of their author" [23, p. 2]. However, they played a role in future decisions, which was similar to common law precedents.

In addition, we note that during the process of acceptance in the middle ages and later, Roman law was studied and interpreted in such a way that today there are such systems of civil law, which, ultimately, are derived from the system based on case law. This is a very interesting evolution, which predetermines the continuation of the already outlined processes of rapprochement of the Romano-German and Anglo-Saxon legal families. The study found that there were probably two key factors, one internal and the other external. The internal factor is related to the medieval *summae*, in which the sections "*Corpus iuris civilis*" are considered on a systematic basis. Grouping together all the agreed and contradictory texts around the place of the problem (*sedes materiae*) made it somewhat easier to find common rules and principles that were hidden behind the decisions made in these cases. The rules and maxims of the last section 50:17 of Justinian's Digests "The tree of origin of ancient law" ("*De diversis regulis iuris antiqui*") were interpreted as a summary of the digests studied in briefly formulated rules and maxims that became General principles of law. And finally, the systematization of the entire body of the document "*Corpus iuris civilis*" in accordance with the Institutions (*Institutiones*), allowed to determine all the rules and principles of their logical place within the wider contour of the boundaries [9, p. 278]. An external factor is that Canon law, moral theology, and natural law tended to think in much broader terms of General principles than Roman law did. In the end, this led to the possibility of building systematic codifications of private law, in which Roman law found its sufficiently vivid reflection and, importantly, a considerable worthy place.

Thus, the transition to national codifications, accompanied by the abolition of Roman law as a

source of law, actually became a real paradigm shift in European jurisprudence. In the modern world, codification has become the focus of attention of lawyers, while many normative legal acts that do not contain the term "code" in their name, in their content (content) and volume quite correspond to the codified acts of medieval Europe. In some countries Roman law has retained its place in legal education; in others, for example, in France and Belgium, the fixation on codification was complete, first of all, the school of *exegesis* [7, p. 38]. However, this does not mean that the common heritage of Roman law has become forgotten. On the contrary, it is gradually returning, but at a higher level of training of lawyers (usually in graduate school). As the European Union and other European countries strive to achieve greater uniformity in legislation, and a number of research groups analyze the differences between European private law systems in order to try to create a pan-European civil code (note that since 1994 there has been a model civil code in the CIS format), Roman law is attracting more and more attention as a common element, and even as a possible source of solutions in the future.

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