

ROMAN LAW'S INFLUENCE ON RUSSIAN CIVIL LAW AND PROCEDURE

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The subject of the research in this article is the influence of Roman law on Russian civil procedure. Roman law has undoubtedly had a huge impact on the development of civil legislation in many countries of the continental legal system, in particular on Russian law. But the importance of the institutes developed by Roman lawyers of different eras, has not received a decent assessment of experts. In this article, the authors propose to the reader the concept that Roman civil procedure, finally formed during the reign of Emperor Justinian, is the foundation for the development of civil proceedings in Russia at different during key stages of its development. It is also suggested that Roman law was indirectly received with the help of nineteenth-century German scholars. Full use of the potential of Roman civil procedure in Russian civil procedure is difficult, because in the Russian legal science researchers have paid little insufficient attention to the correlation of such an important stage in the development of Roman, Russian and the continental law. And yet the theoretical legal basis laid by Roman law, well-developed by Roman lawyers, with procedural institutions that have had a significant impact on Russian law. The degree of such influence on Russian law in different periods of history varied. The institutions of the claim, representation in civil procedure, as well as evidence and proof, were most affected by Roman law, although the importance of other institutions of Roman civil procedure should not be underestimated. This article is intended to initiate more fundamental analysis of the impact of Roman law on Russian civil procedure.

Keywords: Roman and Byzantine law; civil procedure; influence on the Russian legal system; stage of influence; Pandect system; evidences; claim; oath; presumption; representatives; litis contestatio.

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Introduction

This paper's purpose is to inform the reader about the stages in Roman and Byzantine legislation that influenced Russian civil procedure. Contrary to the experience of other European countries, Roman law has more theoretical than practical significance on Russian jurisprudence. Although some norms of the Digests and other Roman sources were accepted, Roman law was never absolutely accepted by the Russian legal system.¹

In the 19th century, three major theories were expounded, describing how Roman law influenced Russian law:

1) S. Muromtsev and F. Leontovich's theory that Russian law historically developed independently from Roman law;²

2) K. Kavelin's theory that Russian law entirely developed from Roman law;³

3) the concept of partial borrowing by Russian law of certain Roman institutions and concepts (N. Rozhdestvenskiy, N. Duvernua, A. Gulyaev).⁴

¹ Перетерский И.С. Дигесты Юстиниана. Очерки по истории составления и общая характеристика [Ivan S. Pereterskiy, *Justinian's Digests. Overview of the History of Their Creation and Major Characteristics*] 99 (Moscow: Gosyurizdat, 1956).

² Муромцев С.А. О консерватизме римской юриспруденции [Sergey A. Muromtsev, *On the Conservatism of Roman Jurisprudence*] 182 (Moscow: Тип. А.И. Мамонтова и Ко., 1875). In his opinion, Roman law had no influence on the Russian system of law, it has only historical significance and should be evaluated only in this aspect. The most zealous advocate of this theoretical point of view, was M. Speranskiy: "From antiquity to the times of our Russian legislation, excluding the two epochs, at Yaroslav and Peter the Great, acted and escalated by separate natural forces and, perhaps, one throughout Europe, almost nothing was gleaned in the General source of laws, in Roman law, to add to this should that other peoples have entered into civil life with a great legacy, we on the contrary, we have hardly inherited anything from the Romans, and very little from the Greeks. All our wealth in this way is our own, well-received."

³ Шершеневич Г.Ф. Наука гражданского права в России [Gabriel F. Shershenevich, *The Science of Civil Law in Russia*] 238 (Kazan: Типография императорского университета, 1893). Proponents of this concept believed that Russian law – the product of Roman law and its origins lie in the Roman and Byzantine traditions.

⁴ Дювернуа Н.Л. Источники права и суд в Древней России [Nikolay L. Duvernua, *Sources of Law and Court in Ancient Russia*] 40–42, 172–175 (Moscow: Universitetskaya tipografiya, 1869). N.L. Duvernua

Modern Russian legal science follows the third theory. Modern scholars accept the dominant influence of Roman law on Russian civil legislation and split this Roman influence into two major stages: the Byzantine period, from the 10th century; and the Western period that started with Peter the Great's reforms in the late 17th and early 18th centuries.

1. Byzantine Law's Influence on Russian Legislation (10th–17th Centuries)

The Treaties of Princes Oleg and Igor with Greece (*Dogovory Knyazey Olega i Igorya s Grekami*) were the first Russian legal acts influenced by Roman law. The first of those treaties was signed by Russian Prince Oleg and Byzantine Emperors Leo and Alexander in 911. It included Roman procedural and evidentiary norms – introducing the Russian legal system to Roman ideas of oath taking, searches and witness testimony. Roman inheritance law and the concept of a will, theretofore unknown in Russia, were also introduced in this treaty. Other Byzantine concepts newly brought to Russia in this treaty were the ideas for setting monetary fines at double the price of stolen goods or property, and for redeeming military captives.⁵ The second treaty, signed by Russian Prince Igor and Byzantine Emperors Leon and Alexander, generally followed the provisions of the first one.

When Russia proclaimed Christianity as its official state religion in 988,⁶ Russian church courts (*tserkovnye sudy*) began to directly implement Byzantine law. The Byzantine *Nomocanon* was, therefore, partially included into the *Tserkovnye Ustavy* of Princes Vladimir, Yaroslav and Vsevolod, which contained procedural rules of the church courts and other rules governing church activities.⁷ Nearly all cases arising out of family relations (divorces, disputes between parents and children, inheritance and guardianship), and crimes against public morality and church laws were solved under the rules of the *Tserkovnye Ustavy*.⁸

and other representatives of the third concept, analyzing the old Russian legal sources came to the conclusion that in certain periods of the history of Russian law found traces of Roman influence.

⁵ Сергеевич В.И. Лекции и исследования по древней истории русского права [Vasiliy I. Sergeevich, *Lectures and Researches in Ancient History of the Russian Law*] 126 (2nd ed., St. Petersburg: Tipografiya M.M. Stasyulevicha, 1899).

⁶ The proclamation of Christianity as an official Russian religion made revolutionary changes in all the spheres of the country's legal life. Many Russian law rules created before that event became conflicting with the rulings of Christian morality and Christian Church laws (e.g. polygamy, the marriage ceremonies, etc.). This could lead to the full replacement of native Russian law by foreign and Church rules. But because of its stability and firmness, Russian law was changed only partly.

⁷ Самоквасов Д.Я. Древнее русское право [Dmitriy Ya. Samokvasov, *The Ancient Russian Law*] 202 (Moscow: Universitetskaya tipografiya, 1903).

⁸ Беляев И.Д. Лекции по истории русского законодательства [Ivan D. Belyaev, *Lectures on History of the Russian Legislation*] 69 (2nd ed., Moscow: Tip. A.A. Kartseva, 1879).

The *Nomocanon* was also partially incorporated into the *Sudniy Zakon Lyudem* (code of secular court procedure, hereinafter *Sudniy Zakon*), adopted in the 11th century under the rule of Prince Vladimir.⁹ The *Sudniy Zakon* controlled all civil disputes. Following the Justinian Code (*Corpus Juris Civilis*), which established that witnesses were the major source of evidence in civil proceedings, the *Sudniy Zakon* stated that no civil suit may be tried unless witnesses (*svideteli*) are present. The *Sudniy Zakon*'s articles on the number of witnesses required in a civil case, and those on conditions that make witness testimony unreliable, were also adopted from Byzantine law. For instance, the total number of witnesses in complicated civil cases could not be less than 18, and three to seven witnesses were allowed in less complicated cases. The *Sudniy Zakon*, again following the Byzantine tradition, introduced punishment for perjury, prevented slaves (*holopy*) from testifying as witnesses, and required that testimony be given under oath.¹⁰

The next source of Russian law influenced by Byzantine legal traditions was the *Russkaya Pravda*, in force, with various modifications, from the 11th to the 14th century. The *Russkaya Pravda* was partially copied from the *Sudniy Zakon*. In addition, from Byzantine law, and especially from the *Ecloga*, it took provisions on liability of the master for criminal actions of a slave, and some rules of inheritance. Corporeal punishments, which were popular in Russia before the *Russkaya Pravda*, were changed, in some circumstances, to fines equal to three *grivnas*. The *Russkaya Pravda* introduced Byzantine institutes whereby defendants made monetary guarantees equivalent to the amount of the suit, in particular bail.¹¹ Based on Byzantine concepts, Russia, at this time, started to divide civil actions into actions *in personam* and actions *in rem*. In addition, *Russkaya Pravda* created a distinction between purgatory and supplementary oaths.¹²

In different periods of time nine sources of law, either direct translations of Byzantine law or Russian incorporations, were included into the *Kormchaya Kniga* that became a guiding book for the Russian Church.¹³ The first translated source was the *Nomocanon of Johannes Scholasticus* in the 6th century. It included several novels of Emperor Justinian, which determined the civil rights and obligations of the priesthood, and the privileges of the Church and monasteries. Second, *Ecloga*

⁹ Щапов Я.Н. Новый памятник русского права XV в. // Славяне и Русь [Yaroslav N. Shchapov, *A New Monument of Russian Law of the 15th Century in Slav Nations and Russia*] 375–382 (Moscow: Nauka, 1968).

¹⁰ Владимирский-Буданов М.Ф. Обзор истории русского права [Mikhail F. Vladimirskiy-Budanov, *Overview of the History of Russian Law*] 94 (5th ed., St. Petersburg: Lito-tipografiya Tovarishchestva I.N. Kushnerev i Co., 1907).

¹¹ Belyaev 1879, at 120.

¹² Samokvasov 1903, at 345.

¹³ Рождественский Н.Ф. Рассуждение о влиянии греко-римского права на российские гражданские законы [Nikolay F. Rozdestvenskiy, *Thoughts About Influence of Greek and Roman Law on Russian Civil Legislation*] 216–218 (St. Petersburg: Tip. Shtaba voen.-ucheb. zavedeniya, 1843).

by the Greek Emperors Leo III and Constantine V of 741 was translated.¹⁴ These were included in the *Kormchaya Kniga* in the 16th century. The third source of Byzantine legislation added to the *Kormchaya Kniga* was the *Prochiron* by Basil the Macedonian. This was translated into Russian in the 13th century, where it was commonly known as the *Gradske Zakony*. The *Nomocanon* by Patriarch Photius, of the 9th century, was the fourth source. The fifth, sixth and seventh sources included the *Zakon Sudniy Lyudem*, the *Corpus Legum* by Emperors Roman and Constantine, and the *Legislation of Alexius Comnenus*, dated in the 10th century. The *Byzantine Matrimonial Law* was the eighth source, and the ninth was the *Hexabiblos*. The *Hexabiblos* (*Ruchnaya Kniga Zakonov*) was written by Constantine Harmenopoulos in the 14th century, however, its strongest effect on Russian legislation came later. It entered the legal system in the Western regions of the Russian Empire (Bessarabia) and started to be implemented in central Russia since 1831. In 1652, during the rule of Tsar *Aleksey Mikhailovich* the first printed version of the *Kormchaya Kniga* appeared. It contained the first eight sources of Byzantine law. One thousand two hundred books were printed and sent to civil courts “for application of this obligatory law.”¹⁵ Significantly, the *Kormchaya Kniga* was implemented in some parts of the Russian Empire until the 19th century. This is a record of longevity for Russia.

In 1497, the *Sudebnik* (Code) of *Ivan III*, “Great Prince and Autocrat of All Russia” was passed. It also showed some influence of Byzantine law. For the first time in Russia the Roman *restitutio in integrum* was introduced. Under this concept, if a master or respected landlord (*boyarin*) entered a “judgement” on an issue under the jurisdiction of the court, then the decision was “invalid and if anything was done towards its practical implementation everything had to be returned to the state it was before such activities.”

Although the Byzantine legislation discussed above was most actively used in the 16th century church courts (because at this time the influence of the Church greatly increased), these Byzantine sources lost their influence in other courts. Secular courts had to follow the procedural and substantive rules of the *Sobornoe Ulozhenie* of Tsar *Aleksey Mikhailovich* (father of Peter the Great). These were adopted in 1649 and used until the beginning of the 19th century.

The *Sobornoe Ulozhenie* was not only based on Russian experience, but also on some Roman and Greek legal sources¹⁶. Its construction had much in common,

¹⁴ This source of law contained rules on contracts, inheritance, guardianship and matrimony. See Шчапов Я.Н. Римское право на Руси до XVI в. // Феодализм в России [Yaroslav N. Shchapov, *Roman Law in Russia Before 16th Century in Feodalizm in Russia*] 216 (Moscow: Nauka, 1987).

¹⁵ Raoul C. van Caenegem, *History of European Civil Procedure in International Encyclopedia of Comparative Law*. Vol. XVI: *Civil Procedure* 83 (M. Cappelletti (ed.), Tübingen: J.C.B. Mohr, 1973).

¹⁶ Гуляев А.М. Об отношении русского гражданского права к римскому [Alexey M. Gulyaev, *On the Relationship Between Russian Civil Law and Roman Law*] 6 (Kiev: Tip. Imp. Un-ta sv. Vladimira V.I. Zavadskogo, 1894).

systematically, with the *Justinian Code*. It started with provisions on religion, the Church, and various sects; it continued with norms of state law and the structure of the court system; and it finished with criminal law. Besides their common construction, the major tracts of Chapter X of the *Sobornoe Ulozhenie*, on the judiciary, is equivalent to Books III–VI of the *Justinian Code*.

The *Sobornoe Ulozhenie*'s provisions on witnesses also follows the major requirements for witnesses prescribed by the *Digests*: (i) an age limitation (persons 20 or more years old could be witnesses); (ii) persons with certain physical or mental disorders could not be called; (iii) children could not testify in their parents' cases; (iv) slaves generally could not testify; and (v) witnesses could not testify if they had a hostile relationship to one of the parties.¹⁷ Following Russian tradition, the *Sobornoe Ulozhenie* set a thirty year statute of limitations for bringing civil claims. For the first time, the *Sobornoe Ulozhenie* introduced the Roman law institute of servitude into Russian legislation.

In summary, Roman legal influence on the Russian legal system, from the 10th century until the reign of Peter the Great, generally was rendered through the Byzantine Empire, where, until the 15th century, Roman law continued to be implemented. Roman and Greek legal norms were of a subsidiary, auxiliary nature for the developing Russian legal system. The Russian priesthood also included many Greek priests who were familiar with both Canon law and civil Byzantine legislation. Thus, the priesthood were the most active followers of the Roman tradition. Traces of Roman law's implementation can be most vividly seen in the legal documents of the Russian Church, while less influence is seen when examining secular civil legislation.¹⁸

2. Western Europe's Influence on Russian Legislation

A new stage of Roman law influence on Russian law started with the rule of Peter the Great (Peter I) (1682–1725). Peter's reforms changed Russian legislation substantially. During this period Roman law began to come to Russia through Western Europe and West European legal norms started to have a great influence on Russia.

Peter's acquaintance with Western laws, led him to issue decrees and regulations mirroring some of the Roman law institutes that had caught on in Western Europe. Roman legal elements can be seen, for example, in the trade ordinance (*Torgoviy Ustav*), the Sea Ordinance (*Morskoy Ustav*), the Craftsmen's Ordinance (*Remeslennyi*

¹⁷ Дигесты Юстиниана: Избранные фрагменты в переводе и с примечаниями И.С. Перетерского [*Justinian's Digests: Selected Fragments in Translation and with Notes by I.S. Pereterskiy*] 361–366 analyzing *Sobornoye Ulozheniye* (Ch. X, Art. 181) and *Digests* (Moscow: Nauka, 1984).

¹⁸ Салозубова Е.В. Римский гражданский процесс [Elena V. Salogubova, *Roman Civil Procedure*] 25 (Moscow: Gorodets, 2018).

Ustav), the Military Ordinance (*Voinskiy Ustav*) in its norms on the judiciary, on defendants and on evidence, the Religious Ordinance (*Dukhovnyi Ustav*) and the *Reglament Kommerts-kollegii* also reflected Roman law.¹⁹ Peter's legislative reforms also resulted in eleven new types of contracts coming into use in Russia. These included purchase and sale contracts; donation; lease contracts; contracts for deposit, credit, rent, and storage; as well as partnership agreements. Finally, Roman law also significantly influenced Russian family law. Many norms of Roman matrimonial law were incorporated into the Russian legal system, including the description of marriage given by the Roman lawyer *Modestinus*.²⁰

At this time, Russia, formerly largely sequestered from Western influence in its legal and governmental institutions, turned outward and started to take from and follow Western norms. Russian historian K. Nevolin stated:

Before Peter the Great, the Russian nation, living in close unity with nature, created its rules of life itself with a little influence from the Eastern world and with even less influence from Western traditions.²¹

Added another well-known historian, F. Leontovitch,

Russian law from the time of Peter the Great actually started to obey the rules of Western European legal systems, which is the main difference of [this time] with the law that existed before the great emperor of Russia.²²

In short, Roman law had a constantly increasing influence on the structure of the Russian legal system. This started in the period prior to Peter the Great and increased greatly in form and tempo during his reign. During Peter's reign this influence started to be seen in many fundamental provisions of Russian law.

Roman law's influence can also be seen during the epoch of Catherine II (1762–1796) and Emperor Alexander I (1801–1825). At the time of ruling of Catherine II the draft of the new *Ulozhenie* was prepared. The Empress, in an instruction entitled Instruction to Legislative Commission on Draft of a new *Ulozhenie* ("*Nachertanie o privedenii k okonchaniyu komissiey proekta novogo ulozheniya*"), which contained

¹⁹ Энгельман И.Е. Курс русского гражданского судопроизводства [Ivan E. Engelman, *The Course of Russian Civil Procedure*] 48 (3rd ed., Yuryev: Tipografiya K. Mattisena, 1912).

²⁰ Попов Н.А. О значении германского и византийского влияния на русскую историческую жизнь в первые два века ее развития // Московские университетские известия. 1871. № 1. С. 145 [Nil A. Popov, *On the Significance of Influence Caused by Germany and Byzantine on Russian in First Two Centuries of Russian History*, 1 *Moskovskie universityetskie izvestiya* 145 (1871)].

²¹ Неволин К.А. Энциклопедия законоведения. Т. 2 [Konstantin A. Nevolin, *Encyclopedia of Law. Vol. 2*] 98 (Kiev: Universitetskaya tipografiya, 1840).

²² Леонтович Ф.И. История русского права [Fyodor I. Leontovich, *History of Russian Law*] 11 (Odessa: Imp. Novoros. un-t, 1869).

the working guidelines for the Commission drafting the *Ulozhenie*, ordered that it should follow the institutional scheme of Roman law. Also, the description of the term “contract” was taken from Roman law.

The text of the *Ulozhenie* that Catherine had commissioned was never approved, and thus did not become law; however, its contents were used to further future legislative work. Thus, the Roman law concepts it contained were, nonetheless, carried forward through this abortive legal reform effort.

Under the reign of Alexander I, a Legislative Commission under the Russian Ministry of Justice, headed first by Baron Rosenkampf and later (from 1809) by a famous politician Mikhail Speranskiy, was formed to prepare a new *Grazhdanskoe ulozhenie* (analogous to a civil code). The Legislative Commission headed by Baron Rosenkampf created an unsuccessful draft of the *Grazhdanskoe ulozhenie* which copied the Napoleonic Code of 1804.

After that Speranskiy was appointed to head the Commission. He was ordered by the Emperor to leave the continuation of the work on the *Grazhdanskoe ulozhenie* and started the creation of the *Svod zakonov Rossiyskoy imperii* (hereinafter *Svod zakonov*). The drafting of *Svod zakonov* was fraught with conflict over the extent to which Russia should follow European norms. Mikhail Speranskiy was notoriously against European influence. In his words,

With the knowledge of Roman law sources and Roman language it is possible to draft legislation directly from them without the necessity to copy foreign laws and study in German or French universities.²³

Nonetheless, the *Svod zakonov* was also influenced by the Napoleonic Code and European envisionments of Roman law.

During this period (middle 18th–19th centuries) University law faculties were formed in Russia. As the education in these faculties was modelled on Western Europe, they became active followers of Roman law concepts and traditions, helping to further spread Roman law norms throughout Russia.

The government of Alexander II (1855–1881) undertook considerable reforms of the Russian court system, including civil and criminal procedure. Civil procedural reform, especially, reflected Roman law. In 1864, Alexander passed the *Ustav grazhdanskogo sudoproizvodstva* (hereinafter *Ustav*) – analogous to a code of civil procedure which was based on the experience of the French Code of Civil Procedure of 1806.²⁴

The *Ustav* introduced major Roman civil procedure principles into Russian law. For example, it introduced the Roman principles of optionality, adversary character of the judicial process, publicity of the trial and oral nature of judicial proceedings.

²³ Gulyaev 1894, at 9.

²⁴ Судебные уставы 20 ноября 1864 года [*Judiciary Charters of 20 November 1864*] 50–60 (St. Petersburg: Gosudarstvennaya kantseliariya, 1866).

The *Ustav* generally adopted the Roman evidentiary system. For example, the Roman principle of *onus probandi* was accepted. Roman provisions on witness testimony, which had been included in the *Sobornoe ulozhenie* of 1649, were copied with some changes into the *Ustav*. Additionally, list of persons who could refuse to testify (that included close relatives of the sides) was, while not directly copied, nonetheless conceptually influenced by Roman law. Some oaths used in Roman law were also incorporated into Russian law – the *jusjurandum voluntarium* and the *jusjurandum necessarium*.²⁵

The *Ustav* also adopted the Roman division of written evidence into public documents (*publicum tabulae*) and private documents (*instrumenta privata*). Roman rules on treating trade books as documentary evidence were accepted by Russia, together with rules on presumptions (*praesumptio*): *nemo ignorantia juris rescuare potest; quisque praesumitur bonus, donec probetur contrarium*.

Rome's influenced the *Ustav* in more than more evidentiary rules: major procedural institutions were adopted. The creators of the *Ustav* borrowed the Roman rule of judgement rendered against defendant in his absence (judgement by default), and the institute of appeal. The idea of dividing litigants' representatives into voluntary representatives and those "listed by law" (parents, guardians and close relatives for example) came from Rome. The *Ustav* also included the Roman preclusion against certain persons, for instance priests and government officials, acting as representatives of a party.

Roman law also greatly affected the development of procedural terminology in Russian law. The meanings of the terms "claim," "evidence," "representation of the sides," and "appellate procedure" were influenced by Roman norms. Russian legal science started using Roman names for claims such as *actio negatoria*, *actio vindicatio* and *actio praedicia*.²⁶

Roman civil procedure authorizes the use of presumptions, while Roman law distinguished two kinds of presumptions: legal presumption and the factual presumption. Legitimate presumptions are assumptions that are directly or indirectly enshrined in the law and therefore have legal significance. The factual presumption is the assumption, not expressed in the law, and therefore do not have legal value.

Legal presumption of the Roman law:

The presumption of paternity – a child born in a legal marriage, recognized as legal, his father was considered the husband of his mother.

The presumption of good faith, which was that everyone, until proven otherwise, was considered a good citizen.

²⁵ Малышев К.И. Курс гражданского судопроизводства. Т. 1 [Kronid I. Malyshev, *The Course of Civil Procedure*. Vol. 1] 301–306 (St. Petersburg: Tipografiya M.M. Stasyulevicha, 1876).

²⁶ Васильковский Е.В. Курс гражданского процесса. Т. 1 [Evgeniy V. Vaskovskiy, *The Course of Civil Procedure*. Vol. 1] 606 (Moscow: Izdaniye Br. Bashmakovyykh, 1913).

The presumption of knowledge of the law – no one can be dissuaded by ignorance of the law.

The *Ustav* established the possibility of using lawful presumption, but did not allow for the existence of factual presumption.

The rules of Roman law contained important provisions on procedural representation. Under Roman law, certain categories of persons were prohibited from being represented in court on the grounds of deprivation of their honour. Under Roman law, there were two groups of persons deprived of their honour:

1) persons who have committed any dishonorable act or engaged in certain activities. To this group were: wife, caught in adultery; widows married prior to the expiration of the mourning period; persons who were simultaneously in two marriages or betrothals; persons who lead a dissolute life or were pimping. By profession, the first category included gladiators, actors, loan sharks, soldiers;

2) persons who have lost honor after a judicial sentence or been discharged from service.

Shame in Roman law remained for life.

The *Ustav* borrowed certain provisions of the Roman law on procedural representation. Roman law established the institution of legal representatives who, in the process, defended the interests of minors, the mentally ill and the wasteful. One of the forms of legal representation under Roman law was guardianship over the property of persons who themselves were not able to manage it. The *Ustav* also provided for legal representation. Legal representation under the *Ustav* took place in relation to minors, as well as persons suffering from mental or physical illness. A special kind of representatives in Rome were *defensory*, persons who did not receive any specific powers, assumed the protection in court of the interests of the absent parties.

The difference between representation and law enforcement was that the representative acted as a procedural backup of the party, i.e. he assumed the conduct of another's case. Lawyers and speakers were not procedural representatives. They participated in the process to assist both the parties to the dispute and the court itself with their advice and speeches. The *Ustav* also provided for the possibility of conducting a case through a representative. Representatives can be attorneys, which established the moral and mental qualifications.

The jurors performed two functions: on the one hand, they acted as representatives of the proceedings, and on the other hand, acted as law enforcement officers, i.e. assisted the court.

The Rome regulations provided for two types of power of attorney: a special power of attorney, which defined all powers individually and a General power of attorney, which contained the authority to conduct litigation. The Charter of civil procedure also provided for two types of powers of attorney. The Charter allocated special powers (the right to appeal, termination of the case by settlement agreement,

election as an intermediary for arbitration proceedings, the right to transfer powers to conduct the case to another person), which were to be specified in the power of attorney separately.²⁷

In sum, from the time of Peter the Great, Roman law became influential on Russian civil legislation without significant pressure from the Church. The cause of this influence was the Russian royal family's and legislature's increasing acquaintance with Western European civil legislation, including the French codes. The Digest-based Pandects doctrine influenced law in general and, most significantly, affected the formation of civil law and civil procedural theory in Russia. This influence is seen most prominently in the second half of the 19th century.

3. Soviet and Modern Periods of Development

After the October Revolution of 1917 traces of Roman law in Russia almost completely disappeared, as there were fundamental changes in the Russian legislation, which was completely updated. Nevertheless, not all the valuable heritage of the past has been forgotten. Something was perceived by the Soviet law of the new country.²⁸

After 1917, opinions were expressed about the rejection of some of the principles in legal proceedings as purely bourgeois and therefore alien to proletarian law and proletarian justice with a revolutionary sense of justice. These included, for example, a formal prosecution, transparency, adversarial process, the right to protection, etc.²⁹ Attempts were made to abandon some of the basic concepts in law by referring to them as bourgeois, for example, the concept of guilt. However, as noted by P. Stuchka, one of the most prominent Marxist theorists in the field of law, in-depth scientific formulation of these issues forced the creators of the new socialist justice to conclude that these legal principles are cultural gains that should be preserved by socialist law.³⁰

In the conditions created by the socialist revolution, the relative independence of law was eroded and its structure underwent fundamental changes. The division into private and public law disappeared. Different in their settings and methodology of

²⁷ David Johnston, *Roman Law in Context* 128 (Cambridge: Cambridge University Press, 1999).

²⁸ Черниловский З.М. Социалистическое право переходного периода: проблема преемственности // Советское государство и право. 1977. № 10. С. 27–36 [Zinovy M. Chernilovskiy, *Socialist Law of Transition: The Problem of Continuity*, 10 Soviet State and Law 27 (1977)].

²⁹ Вершинин А.П. Упрощение и ускорение советского гражданского процесса: опыт теории и практики (20-е годы) // Вестник Ленинградского университета. 1988. № 2(13). С. 60–64 [Alexander P. Vershinin, *The Simplification and Acceleration of Soviet Civil Procedure: Experience of Theory and Practice (1920s)*, 2(13) Bulletin of the Leningrad University 60, 60–64 (1988)].

³⁰ Стучка П.И. Избранные труды по марксистско-ленинской теории права [Pyotr I. Stuchka, *Selected Works on Marxist-Leninist Theory of Law*] 436 (Riga: Latv. gos. izd-vo, 1964).

the bourgeois school of law descended from the stage, and with them a large part of the designs, concepts and definitions.

1920s were a period of revolution in law and in the science of law. Some elements of the old law that were initially taken, either ended up dying off, or have held on longer and were transformed to fit the modified socialist society. Under the influence of the revolution, with the right to change its former shape and design, new institutions, born of the planned economy and new forms of legal regulation, were caused by the new type of Federal state. Nevertheless, in the special fields of law and legal doctrine, it is possible to observe the dialectical perception of some elements developed by the previous theory and practice: presumption, concepts, terms without which it is impossible the functioning of the law, methods and techniques of interpretation of the rule, its structure, the law in time and space, division of treaties into real and consensual, complicity, and so on.

The first Civil Code of the RSFSR of 1922, was first made known by the old school lawyers (Krasnokutskiy, Wolf, etc.). Apparently, because of this, the Code was created with reliance on Pandect system. Unfortunately, later the old school lawyers were removed from work in the legislative Commission. Describing the first Soviet Civil Code, P. Stuchka wrote:

Our Code in view of short term of its production was necessary almost entirely and literally to write from the best samples of civil law of the West; we could not set the goal to create something original, because then we in the civil sphere could not determine exactly the limits of the final retreat or give new forms of construction.³¹

The advantages of the Pandect system were taken into account in developing the RSFRS Civil Code of 1922.³² Some of these advantages were used in the creation of the later Soviet legislation.

In the early years of socialist legal science, some theorists denied continuity between historical types of law, and especially between bourgeois and socialist. To some extent, this process of forced separation can be compared with what happened in the 19th century in Germany under the influence of the historical school of law. In case of Germany, law was not, as argued by F.C. von Savigny, purely a construct of reason, as the natural lawyers had presented it, but a product of the tradition and ethos of a particular society. Each nation's institutions, such as its language and its law, reflect this popular character and should change as society changes. Legislation

³¹ Стучка П.И. 13 лет борьбы за революционно-марксистскую теорию права: Сборник статей (1917–1930) [Pyotr I. Stuchka, 13 Years of Struggle for the Revolutionary Marxist Theory of Law: Collection of Articles (1917–1930)] 125 (Moscow: Gosyurizdat, 1931).

³² Давыдов В.И. Проблемы кодификации гражданского законодательства [Vladimir I. Davydov, Problems of Codification of Civil Legislation] 7–9 (Kishinev: Shtiintsa, 1973).

is too blunt an instrument for legal development, which should be shaped by custom and practice in the early stages of society and by juristic debate as society becomes more developed. Law grows "by internal silently operating forces, not by the arbitrary will of a law-giver." In the early period of a society, law is not sufficiently technical to be put into the form of a code; in the declining period of a society, the expertise for creating a code is lacking. The only possible period is the middle period, when there is maximum popular participation and a high level of technical expertise, expressed not by legislators but by academic jurists. But precisely because of those factors, such an age has no need of a code.

Savigny's scheme of legal development was clearly a generalisation of a view of Roman legal history which saw the law of the republic as undeveloped, regarded Justinian's law as the product of a society in decline and identified the classical period as that of maturity. Ignoring the traces of disagreement among the classical jurists, F.C. von Savigny held that, far from engaging in polemics, their works show far less individuality than other types of writing; "they all cooperate, as it were, in one and the same great work." Their whole mode of proceeding has the certainty of mathematics. So they were able to introduce new institutions without jettisoning the old: "a judicious mixture of the permanent and progressive principles."³³

F.C. von Savigny did not seek to apply his scheme of legal evolution to all societies but only to the "nobler nations," a category which for him clearly included not only the Romans but also the Germans. There were, however, difficulties in applying his scheme of continuous historical development to German legal history in view of the break caused by the reception of Roman law. Savigny regarded this as the result of internal necessity. For Germans there was no alternative to adopting Roman law in the 16th century. Roman law was not a national but a super-national law, which, he declared, could no more be considered an exclusive national possession than could religion or literature.³⁴

Vladimir Morozov wrote:

Soviet law as a legal institution does not know succession in principle... Succession in Soviet law can be said only within a very limited framework, and during the initial period of Soviet power. Thus, the Soviet state allowed the use of some bourgeois law in the struggle for a new revolutionary order at an early stage of its development.³⁵

³³ Савиньи Ф.К. фон. Система современного римского права. Т. 8 [Friedrich Carl von Savigny, *System of Modern Roman Law*. Vol. 8] 590 (Moscow: Statut, 2015).

³⁴ Peter Stein, *Roman Law in European History* 118 (Cambridge: Cambridge University Press, 2010).

³⁵ Морозов В.П. Правовые взгляды и учреждения при социализме [Vladimir P. Morozov, *Legal Approaches and Institutes in Socialism*] 39 (Moscow: Izd-vo Mosk. un-ta, 1967).

At the present stage of development of the Russian system of law and civil procedural law, in particular, it is impossible to say that there is a direct borrowing of the norms of Roman law. But the principles of civil procedure that exists under the current Civil Procedure Code were borrowed from previous Russian legal acts. But, of course, many of them originate in the Roman legal tradition, as shown earlier.

It is worth paying attention to the influence of stage that separated *in jure* and *in judicio* stages of the Roman formal process *litis contestatio*.

Litis contestatio as a procedure had both private law and public law aspects. It was in the way that the litigants, the plaintiff and the defendant, agreed to pursue the dispute on the basis of the Pretoria formula.

Litis contestatio had in the ancient Roman civil procedure three meanings for the parties and the magistrate:

- 1) innovator: the obligation existing between the plaintiff and the defendant ceases, in exchange for which there is a new obligation – to obey a court decision;
- 2) preservative: claims will be treated as they existed at the time of fixing the subject matter of the lawsuit;
- 3) exclusive: with the witness of the litigation comes a time when it will be impossible to repeat the dispute on the same subject.³⁶

The impact of this procedure on Russian civil procedure can be seen in the following:

1) in modern designs of a stage of preparation of the case for trial (the judge in this case is analogous to the ancient Roman praetor). The initiation of civil proceedings by the court is a kind of contest, during which the court records the basis and subject matter of the claim, as well as all the essential aspects of the dispute. It follows that the identical claim (on the same basis and subject matter) will not be considered in the proceedings;

2) in the grounds of various judicial conciliation and conciliation procedures, which is clearly observed in the development of private law and private law methods of the process. It is the emphasis on the private legal beginning of *litis contestatio* that gave birth to the modern theory of procedural agreements in the French procedural doctrine, which was developed and applied in the Russian Federation.

It should also be noted that the *litis contestatio* procedure has influenced the development of the theory of correlation and joint and several obligations. In the 19th century German Pandects tried to explain the termination of obligations of one joint and several obligor making *litis contestatio* with the creditor to another obligor under the same obligation. These theoretical arguments of German jurists were helpful and the basis for the development of solidar obligations in Russia.

Some borrowing can also be found in the area of evidence and proof. In Rome, there was a clear and comprehensively developed system of evidences,

³⁶ Тололаева Н.В. Модель пассивных солидарных обязательств // Вестник гражданского права. 2016. № 2. С. 9 [Natalia V. Tololaeva, *Passive Solidary Obligations Model*, 2 Civil Law Review 7, 9 (2016)].

subsequently perceived by Russia. The subject of proof in the Roman civil trial were only controversial facts. The burden of proof lay with both the plaintiff and the defendant, depending on which party supported its arguments. In the Digests of Justinian, you can find a quote from the sayings of Paul, indicating that the proof rests on who asserts, not on who denies. In fairness, it should also be noted that the same lawyer makes an exception for cases of release from the power of the father. Confirmation of this borrowing can be found in the *Ustav*: the plaintiff must prove his claim. The defendant objecting to the plaintiff's claims must prove his/her objections.

In Rome, approximately at the end of the 1st century, began to be consolidated in the practice of proving the idea, which will later be called the formal theory of evidence. It consists of the fact that the judge is not free to assess the evidence at his discretion, as the normative acts previously defined by the meaning of a particular evidence in the case.

The system of formal evaluation of evidence, which replaced the court fights in continental medieval Europe, reflected purely mathematical (numerical) jurisprudence. The law usually specialized in regulating how many non-conflicting witnesses were required to confirm different categories of assumptions (proposition) and to determine exactly how many witnesses of a particular class and gender were required to refute the testimony of one higher-level witness. It was a medieval law brought up on the abstract concepts of scholasticism, striving for mathematical accuracy in order to avoid the risk of irrational and subjective resolution of the case.

Number of phenomena that make up the subject of the theory of formal evidence is present in modern Russian civil procedure: evidentiary presumption; circumstances that were not a subject to proof and are considered established; rules of admissibility and relevance; rules of collection, research and evaluation of certain types of evidence; the necessary evidence; evidence with increased force of persuasion and rules of prejudice. All of these rules are designed to work to help the court, the parties, and it is unlikely that civil procedure will benefit if these designs are excluded.

Conclusion

In conclusion, this article is intended to initiate more fundamental analysis of the impact of Roman law on Russian civil procedure. We accomplished this by examining Byzantine, Tzar, Soviet and Modern periods and the ways in which the laws were influenced by Roman law during those periods.

The author's position is that Roman law impacted Russian civil procedure by Russian law using borrowed institutions, and many of the principles and norms that have their origin in the Roman legal sources. It is also affected by the fact that the Russian legal system belongs to the continental legal family, the cornerstone of which is Roman law and Roman legal tradition.

Throughout the history of its development, Russian law gradually borrowed such legal structures as procedural representation, the principle of adversarial dispositivity, as well as the institute of various types and forms of procedural evidence.

Russia's close diplomatic and economic contacts with the Byzantine Empire predetermined the development of the Russian legal system in general and civil procedure in particular. Today, Roman law has a great influence on the theory of civil procedure. Also study helps in the correct understanding of the existing rules of Russian civil procedure.

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