ІСТОРІОГРАФІЯ ТА ДЖЕРЕЛОЗНАВСТВО

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FEATURES OF ANCIENT ROMAN JURISPRUDENCE OF THE CLASSICAL PERIOD AND ITS PLACE IN THE HISTORY OF THE STATE OF ANCIENT ROME

The political thought of ancient Rome was influenced by ancient Greece, and was largely based on the achievements of Greek thinkers. However, politicians and philosophers of the Roman state made a significant contribution to the study and organization of political life in society. One of the great merits of ancient Roman political thought was the creation of an independent science – jurisprudence, which became a scientific expression of the legal consciousness of the Roman people.

S. Utchenko, considering the history of political teachings of ancient Rome, emphasizes that first of all such an analysis should take into account two problems that were of great importance for the history of ancient Rome (Utchenko, 1977). This is, first of all, the problem of the polis as a foundation not only for all political theories of antiquity, but also for all ancient value systems in general. This position is important not only for understanding the great role of "polis" ideas in the worldview of Roman theorists, but also for understanding the causes of the ideological crisis of the last centuries of the Roman Republic, its reflection in some political teachings and, finally, the dependence of the political ideology of the Roman civil society. The second problem is the problem of the identity of the Roman system of values, the identity of Roman culture, which transformed and adapted its assimilated "foreign" (primarily Hellenic) influences. This aspect of the study is important

in the historical and cultural aspect, drawing our attention to the significant contribution of Rome to the syncretic ancient culture that spread throughout the Mediterranean in the first centuries BC, but that was formed earlier.

According to V. Saveliev, Roman classical jurisprudence struck a unique legal system, recognized in the Middle Ages as ratio scripto. Through the efforts of a whole galaxy of brilliant lawyers, the system of private law and its basic legal institutions were formed in the basic elements, including detailed property rights, possession (possessio), obligations under contracts and torts, universal and singular inheritance, and others. These achievements, which have no analogues in the history of law of the ancient world, became possible with the help of developed legal techniques (Savelyev, 2008, p. 108).

Another well-known researcher of Roman jurisprudence and law in general, V. Tomsinov, in support of the above, says that Roman jurisprudence was the first attempt in the field of universal theory of civil law (Tomsinov, 1993, p. 55). The scholar points out that modern jurists often complain about the gaps of the Roman order, often expose some institutions, look with a smile at the ceremony of mancipation, as well as the supposedly ridiculously ancient form of sponsio, but Roman jurisprudence, not ceasing to remain ancient, even centuries later. constitutes our legal heritage and fills our sense of the lawyer.

The purpose of the article is to determine the features of practical and theoretical activities of classical lawyers and their significance in the history of ancient Roman law.

Task:

- analysis of the activities of the most famous lawyers of this period in the history of law of ancient Rome (Gaius (II century BC), Papinian (II-III centuries), Paul (II-III centuries), Ulpian (II-III centuries) and Modestin (II-III centuries);
- as a result of the preliminary task of determining the directions of their practical activities, identifying the main innovations of their jurisprudence, included in the Justinian Code;
- generalization of the significance of their law-making activity within the classical period.

The creation of a treatise on praetorian law and the work of the „Institution" belong to Guy - an influential Roman lawyer. The name and date of birth of the lawyer are not known for sure. However, the time of his life can be attributed to the second century AD, the interval between the beginning of the reign of Hadrian on the one hand, and the beginning of the independent reign of Commodus on the other, ie between 120 and 180 years. Guy did not hold a prominent position, he was a law teacher and writer, but only a theorist. He belonged to the Sabinian school of law, in which he preferred the principality.

Guy's Institutions is a monument to the classical period of the Roman Empire, which has survived almost entirely without correction or insertion (Guy, 1997). The legal textbook had 4 books, each of which was divided into

paragraphs. In the first book, after the introduction to the law of nations and civil law, Guy provides a general system, which she laid the foundation for further presentation, namely: „every right we enjoy applies either to people or to things or actions”. (Gurland, 1894, p. 113). Thus, the entire subsequent statement is divided into three sections: private law, which belongs to the first book, property law – in the second and third books, and lawsuits, which are placed in the fourth book.

The second book teaches the following doctrines: the division and subdivision of things, ways of acquiring corporeal and incorporeal things, division of property, prescription, natural ways of acquiring things in property, whether adults can be alienated, and also by which persons can buy property and other. The third book focuses on inheritance without a will, the property of freedmen, contracts: literal, consensual, as well as obligations under tort: theft, violence, trauma (Gurland, 1894, pp. 115-116].

After completing the third book, Guy moves on to the last – the fourth, which expresses the general doctrine of the types of claims. There is an analysis of the law on law enforcement agencies as security, awards, lawsuits against third parties for the fault of their subordinates or slaves, permanent and temporary lawsuits.

Guy's „Institutions” served as a model guide to the study of law and became the main source for the official code of Roman law compiled by order of Justinian, which went down in history as the „Corpus juris civilis”. Guy's system, characterized by simplicity and convenience in the distribution of material, until the XIX century prevailed in the presentation of law in the West.

Emilius Papinian (150–212) – is an example of Roman jurisprudence, who was a native of Syria. He was educated at the school of Cervidius Scevola, where he studied with the future emperor – Septimius Severus. For his knowledge and success, he was appointed to the position of Treasury lawyer, dealing with court proceedings and resolving disputes that arose between the people and the state treasury. As soon as Septimius Severus came to power, Papinian opened the door to a high state position. Initially, he was appointed head of the department of the Imperial Chancellery, which received complaints, denunciations, inquiries about legal issues. After, he was promoted to the position of praetorian prefect (second person after the emperor). He had the right to control and punish officials, to dispose of food supplies to the army. At the time of the North, the prefect became deputy emperor as supreme judge, having criminal jurisdiction throughout Italy.

As a lawyer, Papinian combined the ethical power of a morally developed personality with Roman depth and sharpness of thought. Among Papinian's works are two collections – „Questions” (has 37 books), in which he developed his basic legal doctrine in polemical form, colliding and analyzing different opinions and views on difficult aspects of law. In the second, sixth, and twentieth books, Papinian considers percentages if a

participant has appropriated or turned to his own needs, belongings, and everything that joins the thing.

It is impossible to miss another work that went down in history as „Answers" (there are 19 books), considering the motives and arguments put forward by the parties, offering specific solutions to their demands and claims. The third, eleventh and twentieth books deal with the topics of mortgages and mortgages, how they are established and agreements between the parties. All these are collections of incidents, thoughts on specific cases that have become the subject of study of students in the post-classical period of Roman law.

In February 211, Caracalla, unwilling to share the throne of the emperor, killed his brother – Geta, demanding that the famous lawyer justify his actions. Papinian, being a moral man, refused to speak before the Senate in favor of the killer. To which he replied to his brother: „Justifying murder is no easier than committing it" (Nersesyants, 2004, p. 105). For this he paid with his life, Caracalla in 212 executed Papinian.

Papinian's contemporaries are Paul and Ulpian. Paul – a prominent Roman lawyer of the first half of the III century. Details of the biography of the lawyer are little known. He studied as a lawyer at the school of Quintus Cervidius Scevola, an ancient Roman politician and scholar. He continued his work under Septimius Severus and Caracalla as an assistant to the prefect of the praetorium, a lawyer advising Papinian in one of the imperial offices and a member of the imperial council. Later, seeing the ambition and diligence of the lawyer, Alexander the Great appointed him and Ulpian prefect of Pretoria. During his career, Paul wrote up to 40 works, which contained a total of about 220 books on praetorian law, civil law, various commentaries on individual laws and more. In addition, much of his "Sentences" have survived, which became the main compendium of law and a textbook for lawyers in the western half of the empire.

The „five books of maxims to the son" were written by Paul at the very end of Caracalla's reign or immediately after his death. The first book contains information on agreements and contracts (I), as well as representatives in court proceedings and prosecutors (II, III), where a woman in her own case is not prohibited from representing her interests in court proceedings. Attention is paid to cases and scoundrels (IV, V) – those who deceitfully impose a case on someone, fugitives (slaves) and defendants (VI A, VI B). About the restoration of the former state, deception, those who are under 25 years old, those who lose the lawsuit, demanding more, security, all litigation is noted from the seventh to the twelfth paragraph (Julius Paul, 1998, p.13-17). Judgments and lawsuits about inheritance or something else are described by Paul in the thirteenth paragraph, stating: „If someone vouched for another, then with the death of the person for whom he vouched, he is released from responsibility" (Julius Paul, 1998, p. 19). Attention is also paid to the establishment of boundaries (XVI), easements (XVII), inheritance distribution

(XVIII), doubling of claims due to objections (XIX), tombs and mourning (XXI).

The second book is devoted to the financial part: things given in debt and oaths (I), contracts (III), pledges (V). The sixth and seventh paragraphs of the book address the issues of the ship's owners, clerks, as well as the Rhodes law, which stipulates that „if goods are thrown away to facilitate the ship, the damage is reimbursed by all passengers, because it was caused for the salvation of all" (Julius Paul, 1998, pp. 30). The nineteenth paragraph of the book deals with marriages, which states that engagements can be entered into between both adults and minors. According to the law, the marriage of those who are under the authority of the father does not take place without his consent, but being concluded does not break up. It is impossible to get married between parents and children (Julius Paul, 1998, p. 39).

The following eleven paragraphs describe women who have reunited with other people's slaves, dowry, covenants and gifts between husband and wife, recognition of children, adultery, release, and appointment of guardianship. No less important, the thirty-first paragraph – theft. Paul is called a thief, a person who deceitfully seizes someone else's thing. Punishment for blatant theft consists in reimbursing four times the value, in addition to the claim about the thing itself (Julius Paul, 1998, p. 53).

The third book covers the issues of the Carboniferous edict (I), the property of the apostates (II), the Fabian formula (III), wills (IV), the Silanian senate consul (V), legates (VI), donations in case of death (VII), and the law. Falcidia (VIII). The fourth book concerns the senate counselors (II, III, IX, X), renunciation of inheritance (IV), claims for invalidity (V), Cornelius' law (VII), inheritance of those who did not make a will (VIII), degrees of kinship (XI) , manumisiah (XII) and the law of Fufi-Kanini (XIV).

The fifth book of the first paragraph is devoted to the cause of freedom: „If someone, out of extreme need or for the sake of subsistence, sold his children, he did not harm their status as free-born, because a free man can not be valued at any cost" (Julius Paul , 1998, pp. 110). In addition, there are issues of statute of limitations as a way of acquiring property (II), what is done in riots (III), insults (IV), sentencing and termination of proceedings (V), interdict (VI), verbal obligations (VII), acquisition of law (X), gift (XI), right of fiscal and people (XII), informers and witnesses (XIII, XV), interrogation of slaves (XVI), about palias (XX), fortune tellers and astrologers (XXI) , rebels (XXII) and laws.

In 426, on the instructions of Emperor Valentinian III in the Western Roman Empire, Paul's works were given binding legal force. They began to have the force of law. Subsequent excerpts from Paul's work accounted for about one-sixth of Justinian's Digest.

Ulpian (170–228) - Roman lawyer, a supporter of natural law. He was born in Tire, having begun his career since the reign of Septimius Severus in Rome, comprehensively and deeply studying law. He held the position of

assessor under the Prefect of Pretoria, who was then the famous Papinian; later he became head of the food department in Rome, head of the imperial chancellery and, finally, under Alexander the Great – prefect of Pretoria. In this position, Ulpian enjoyed great power and influence, but in an attempt to impose stricter discipline in the army, he aroused the hatred of the military, which attributed to him the measures taken by the government and caused their disapproval.

The main purpose of his life was to write an encyclopedia of law, which would comprehensively describe all the issues of legal reality and legal thought of the time. Ulpian made a significant contribution to the development of all branches of Roman law. He was the first to define public and private law, as well as the classical formulation of absolute imperial power, which was later adopted by European lawyers in the era of absolutism (17–18th centuries).

In the concept of the philosophy of lawyers was the idea of justice. As Ulpian notes: „Those who study law must first learn where the word jus (law) comes from; it got its name from justitia (truth, justice), because, as Celsus perfectly defines, law is ars (art, practically realized knowledge and skills, science) boni (good) and aequi (equality and justice)" (Nersesyants, 2004, p. 101). According to Roman jurists, the simplest understanding of justice was to observe equality. Therefore, the first formulation of the principle of justice was reflected in the golden rule, which aimed to „treat people as they treat you".

„Iustitia (truth, justice)", said Ulpian, „is a constant and uninterrupted will to give everyone their right" (Nersesyants, 2004, p. 102). From such a general understanding of legal justice, Ulpian derived detailed „precepts of law", to live honestly, not to harm others, to give everyone what belongs to him. Accordingly, he defined jurisprudence as knowledge of divine and human affairs, knowledge of the just and the unjust.

Ulpian wrote a huge number of works and works, including „Commentary to the Edict" (in 83 books) and „Commentary on Sabine" (in 51 books), written in plain language and addressed not only to jurists but also to all involved in the trial. and administrative activities. Of particular importance are the numerous treatises of Ulpian „On the duties..." of magistrates, dignitaries and governors of the provinces, the main of which – „On the duties of the proconsul" (in 10 books). In them, Ulpian was one of the first in Roman jurisprudence to give an interpretation of administrative and criminal law and at the same time a practical guide addressed to Roman administrators.

Ulpian gave Rome a famous lawyer, his student Modestin, who completed a brilliant constellation of „creators of law". The date of birth and death is not known for sure, he is probably a native of Dalmatia. After moving to Rome, he held the post of prefect of the night watch and at the same time acted as a legal adviser. It is known that he taught law to Emperor Maximinus (235–238).

Modestin is the author of numerous works, excerpts from which were included in the Digests. In the works of Modestin „Pandectae", „Rules" (Regulae), „Answers" (Responsa) are given general reviews of law, in several monographs were developed some questions (the largest of them – „On justification" (De excusationibus), written in Greek). Modestin made a significant contribution to the formulation of some issues of legal doctrine and practice. „All law is created by contract, established by necessity or enshrined in custom". He also expressed his opinion on the law as an important source of law. The law differed from the custom in that it had a clear, written form, while the custom can be considered an unwritten law. Far beyond Rome, the definition that G. Modestin gave to the marriage union was known: „The union of husband and wife, the union of all life, communication in divine and human law" (Bolokhovsky, 2012, p. 313). In 426, the Law on Citation gave its works binding legal force.

Analysis of the main ideas of famous lawyers of the classical period allows to determine the directions of their activities:

- the goals of Roman lawyers, the peculiarities of their thinking and the methodology they develop are determined by the formal process of protection of rights that exist in this period. Neither the praetor nor the judge are lawyers, they have no special education, they are not considered lawyers and do not claim to be. Lawyers help them to resolve issues of law, and the peculiarities of this formulaic process, which existed from the second century BC to the third century AD, is that without lawyers it is difficult to adequately draft procedural formulas. Lawyers advise how to formulate these formulas, how to choose the right formula, and the praetor, and the judge, and the lawyer-speaker, who represents the interests of the plaintiff or defendant, and, of course, the plaintiffs and defendants themselves, they can give advice;
- the second direction of activity of Roman lawyers was to be engaged in interpretation, interpretation of provisions of sources of the Roman law: laws, the praetorian edict and comments to this edict of the most known lawyers;
- the third direction of activity of the Roman lawyers of the classical period is shown that as necessary to develop the right by analogies, by gradual layers. And since the first century AD, the most famous lawyers have the right to give answers on behalf of the emperors themselves, that is, the answers of lawyers also become a source of law, binding on those who apply the law. Of these three most important activities, Roman lawyers formulate their art.

To this should be added the fact that the practical nature of the work of Roman classical jurists contributed to the development of their special technique. Roman jurists used a number of techniques and methods from the arsenal of legal techniques to form typical cases, the introduction of legal practice of principles and legal rules (regula), finally, in the creation of new legal institutions.

When teaching cases, Roman jurists usually followed a certain order, based on the praetorian edict, in order to determine claims or other procedural means (exceptions). It should be noted that in the decisions made by classic lawyers, formal or procedural means are closely related to the rules of substantive law.

The incidents used by the Roman classics often, from their repeated use, became typical (exemplary) incidents or models for solving similar incidents. Experts note that the study of cases allows us to notice that lawyers mention the same cases with excessive frequency and that in their works the same case can be presented in different versions.

Through the efforts of Roman jurists, jurisprudence became the foundation of all further development of legal science. Roman jurisprudence, as the art of good and just, can hardly be called a science both in the ancient and in the modern sense. Some glimpses of what will become a science in the future are noticeable only at the very end of Antiquity, during the period of Justinian classicism, when public schools were founded in Beirut, in Constantinople, when Justinian is reforming legal education, law professors begin to teach at these schools at public expense.

The Code of Justinian included such parts as the Institutions (Guy's Institutions used, as well as the works of Ulpian), the Digests (or Pandects), and the Code of Justinian. In this case, it should be noted that in the famous Digests of Justinian, 20% of the volume were quotations from the works of Paul, 40% – Ulpian. In general, this collection of Roman laws and works of lawyers served as the main source for the study of Roman law and Roman legal literature. On its basis, the reception of Roman law in the countries of feudal Europe.

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Окорокова В. В., Койчева О. С. Особливості давньоримської юриспруденції класичного періоду та її місце в історії держави Стародавнього Риму

Стаття присвячена дослідженню історії римської юриспруденції у часи її розквіту. Наукова новизна виражається у аналізі ідей, які були розроблені такими юристами зазначеного періоду як (Гай (II ст. до н.е.), Папініан (II–III ст.), Павло (II–III ст.), Ульпіан (II–III ст.) та Модестін (II–III ст.). Не дивлячись на велику значущість праць зазначених правознавців, їх вивчення не відрізняється значною кількістю досліджень. Крім того, компіляційний характер праць пізніших авторів розкриває місце кожного з них в тогочасній правовій системі взагалі.

У статті вказується на наступність в історії римської юриспруденції, що проявляється у поступовому оформленню юриспруденції в окрему галузь, яка має свої потреби та вимоги щодо діяльності правознавців, їх навчання тощо. В цьому вбачається еволюція юриспруденції від закостенілої традиційної системи квіритського права до більш мобільної системи цивільного права, яка була пристосована до нових соціально-економічних та політичних умов Стародавнього Риму. Автори звертають увагу на те, що саме діяльність юристів стала тим визначальним етапом, який заклав основи для подальшої трансформації правової системи, її рецепції у деяких західноєвропейських країнах подальших історичних епох.

Ключові слова: Інституції, Кодекс Юстиніана, квіритське право, юриспруденція.

Окорокова В. В., Койчева Е. С. Особенности древнеримской юриспруденции классического периода и ее место в истории государства Древнего Рима

Статья посвящена исследованию римской юриспруденции во времена ее расцвета. Научная новизна выражается в анализе идей, которые были разработаны такими юристами указанного периода как (Гай (II ст. до н.э.), Папиниан (II–III ст.), Павел (II–III ст.), Ульпиан (II–III ст.) и Модестин (II-III ст.) Несмотря на большую значимость работ указанных правоведов, их изучение не отличается значительным количеством исследований, кроме того, компиляционный характер работ более поздних авторов раскрывает место каждого из них в правовой системе того времени вообще.

В статье указывается на преемственность в истории римской юриспруденции, что проявляется в постепенном оформлении юриспруденции в отдельную отрасль, которая имеет свои потребности и требования по деятельности правоведов, их обучение и т.д. В этом усматривается эволюция юриспруденции от закостенелой традиционной системы квиритского права в архаический период истории Рима к более мобильной системе гражданского права, приспособленной к новым

социально-экономическим и политическим условиям Древнего Рима. Авторы обращают внимание, что именно деятельность юристов стала тем определяющим этапом, который заложил основы для дальнейшей трансформации правовой системы, ее рецепции в некоторых западноевропейских странах дальнейших исторических эпох.

Ключевые слова: Институции, Кодекс Юстиниана, квиритское право, юриспруденция.

Okorokova V. V., Koicheva O. S. Features of ancient Roman jurisprudence of the classical period and its place in the history of the state of Ancient Rome

The article is devoted to the study of Roman jurisprudence during its heyday. Scientific novelty is expressed in the analysis of legal innovations that were developed by such lawyers of this period as (Gaius (II century BC), Papinian (II–III centuries), Paul (II–III centuries), Ulpian (II–III century) and Modestin (II–III centuries). Despite the great importance of the works of these jurists, their study does not differ significantly from a number of studies.

The article points to the continuity in the history of Roman jurisprudence, which is manifested in the gradual registration of jurisprudence in a separate field, which has its own needs and requirements for the activities of jurists, their training and more. Historical and legal analysis of the activities of these lawyers indicates a certain evolution of jurisprudence from the rigid traditional system of queer law to a more mobile system of civil law, which was adapted to the new socio-economic and political conditions of ancient Rome. Jurisprudence gradually in the conditions of imperial Rome is made out in separate legal institute that provides not only consultations on these or those transactions, but also legal protection.

The authors draw attention to the fact that the activity of lawyers was the defining stage that laid the foundations for further transformation of the legal system, its reception in some Western European countries of subsequent historical epochs.

Keywords: Institutions, Justinian's Code, queer law, jurisprudence.

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