

## CURRENT ISSUE

WHAT ROMAN LAW TEACHES US: MODERN PROBLEMS,  
ANCIENT IDEAS*Pázmány Summer Law School 2023*

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From July 17<sup>th</sup> to 28<sup>th</sup> 2023, the Faculty of Law and Political Sciences of Pázmány Péter Catholic University in Budapest hosted a Summer School on Roman Law, whose title and motto was: “What Roman Law Teaches Us: Modern Problems, Ancient Ideas”. It brought together 20 undergraduate and graduate students from 10 countries: Canada, the Czech Republic, France, Georgia, Kenya, Poland, Slovenia, Spain, the United Kingdom and the United States. Classes were held daily in some of the most beautiful halls of the Faculty in the heart of historic Pest.

The organisers opted for a workshop format for the Summer School’s classes, due to the varying level of knowledge of Roman law among the participants and their different legal backgrounds, coming from countries of common or civil law tradition. With this in mind, the choice of topics for the course, which aimed to look at contemporary issues of interest through the prism of Roman law and the European legal tradition, proved important. This diversity of legal experiences proved to be a cause for participants to ask themselves the most fundamental questions concerning not only Roman law, but also the history, theory and axiology of law. For the participants, the Summer School thus became an arena not only for acquiring knowledge, but also for exchanging experiences and broadening their legal perspectives.

The opening class of the Summer School was given by Professor Viola Heutger, Rector of the University of Aruba, titled “Bi-lingual education and student exchange in the past”. In this way, participants were introduced to ancient methods of teaching law. A particular emphasis was placed on the example of the Constantinopolitan school of law in the fourth and fifth centuries AD, as described by imperial constitutions from the Theodosian Code or those contained in Justinian’s compilation

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(C. Th. 14,9,3pr–1, C. 11,19,1–4). It was not difficult to see that there were clear points of commonality between the way the law is taught today and the past examples cited. These can be boiled down to three issues: 1) the student-teacher relationship, 2) the library and 3) the analysis of written texts. Various changes in the way law is taught, technological advances and the nationalisation of higher education have only modified, but not removed, these three anchor points for a good law school. Indeed, the participants themselves confirmed that this was the case based on their own experiences, noting that despite the vast differences in the organisation of higher education in their countries, these points are indeed common to all.

The lecture of the Summer School's second day of the Summer School was conducted by Assoc. Prof. Grzegorz J. Blicharz of the Jagiellonian University in Krakow., with the subject: „Sharing Services in Platform Economy and Roman Law: Dignity of Work”. The participants were exposed to a wide range of source texts, dating from both Roman and contemporary times, selected and organised in a way to analyse them by a comparative method and to understand similarities between contemporary and past issues. The main fragments of the Digest discussed were D. 16,3,1,9 (Ulp. 30 *ad ed*) and D. 38,1,25 (Iulian. 65 *dig.*). First of all, Professor Blicharz sought to demonstrate that parallels can be drawn between the situation of freedmen in Roman law and workers employed via modern online platforms, the most popular of which are used to deliver food and provide transport services. Indeed, the freedman's somewhat intermediate status (with regards to the prestation of *operae* to his *patronus*) between a free man letting his services and a slave working for his master was used as a possible model of comparison to distinguish the status of a contractor working for a digital services platform from that of a true independent contract and an employee. The two situations, despite being separated by almost two thousand years and involving drastically different societal and human values, still have the following in common: first, the value of freedom and independence in the prestation of work as well as in the choosing of the means to perform that work; and second, the extent of protections and norms to safeguard the worker's security and dignity. The conclusion of these reflections was that technological developments do not absolve the need to weigh up the dignity of the human person, particularly in the context of employment. This also became the basis for looking at the development of the concept of dignity in philosophy and law.

The third day of classes was devoted to a historical perspective on the issue of slavery. The class, entitled “Slave Labour in Ancient Rome”, was led by a retired professor from the University of Trier, Elisabeth Herrmann-Otto. Participants had the opportunity to structure their knowledge of slavery in ancient Rome. The ways of falling into slavery and the possibility of being freed were presented from the point of view of Roman law, more specifically as laid down by Marcianus in fragment D. 1,5,5,1. A strong emphasis was placed on the philosophical definition and justification of ancient slavery by Greek and Roman philosophers, especially Aristotle and Seneca. Moreover, the differences between slavery in ancient Rome and that which occurred later, particularly in the United States, were noted and discussed. In addition to the theoretical introduction, Professor Hermann-Otto brought the participants to work with various source texts, not only juridical, but also historical and philosophical,

concerning slavery in Ancient Rome, which was an opportunity to come into direct contact with the thought of the ancients.

The final day of the content classes of the first week of the Summer School was held under the title: “Recycling the Roman Law by moral theologians, circa AD 1500”, given by Professor Jeroen Chorus, Professor Emeritus of the University of Leiden and judge of the Dutch courts. The class introduced participants to a little-known area of reception of Roman law. While it is well known that *Ecclesia vivit lege Romana*, i.e. that canon law took over the rules and principles of Roman law and based a large part of its solutions on it, it is not such common knowledge that moral theology also made use of Roman law in order to resolve moral questions, outside of the ambit of legal obligations. To illustrate this phenomenon, Professor Chorus used analysed examples from the *Quaestiones quodlibeticae* of Adrian of Utrecht, a Dutch moral theologian of the Renaissance period who was later elected Pope Adrian VI. Two particular questions were analysed: the first one was whether a judge could pronounce a sentence based not only on facts alleged and proved at trial, but also on what his own conscience dictated (especially in cases where the judge had a certain personal knowledge regarding the case) (*sexta quodlibetica*); the second one was whether it was moral for a judge to accept remuneration for the performance of his services (*decima quodlibetica*). It was not only curious, but very fascinating to learn how the XVIth century moralists used Roman law sources to corroborate their arguments, but using their *legal* and *authoritative* value by virtue of them being the law in force, but rather appealing to their persuasive and logical value, complementing passages from Sacred Scripture and the *Corpus iuris canonici*.

On the first day of the second week of classes, Summer School participants had the chance - via an Internet connection - to be guests of the University of St. Thomas, Minnesota. That day’s lecture was given by Professor Charles J. Reid, who focused on the concept of state and law in the thought of the ancient philosophers, particularly Plato and Cicero. Professor Reid delved in-depth in the constitution of the Roman state both through a historical analysis of its development, as presented by Cicero, more particularly in his treatise *De republica* (and by Livy in the first books of his *Annales ab Urbe condita*, to a lesser extent), as well as Cicero’s moral judgement on the virtues and the harmony that sustained the Roman state. The class concluded by a case study of the moral reforms of Emperor Augustus that concerned family relations, specifically the Emperor’s underlying moral and practical causes, his desired goals in pursuing such reforms, and their significance for the nature of family relations which were the basis of the Roman state. The class was an opportunity for participants to learn not only about the broad perspective underlying legal thought in antiquity, but also about the way classes are conducted at universities in the United States. Attention was drawn to the large number of supporting materials and source texts provided by Professor Reid, but also to the interactive way in which the classes were conducted, even in an online format.

Next day’s class was held under the title: “Philosophy and Practice. The Role of *rerum natura* in Roman Legal Thinking”, led by Professor János Erdódy from Pázmány Péter Catholic University. The first part of the lecture was devoted to the role and importance of Roman law for the modern world. Participants had the opportunity

to consider why Roman law was so successful that it became global law, next to public international law and canon law. Professor Erdődy also explained the metaphoric importance of three hills – Acropolis, Capitol and Golgotha for European culture and civilisation. He further offered an impressive overview of the birth, development and culmination of Roman law, from the foundation of Rome to Justinian's time, explaining the origins of various Roman magistrates, the distinction between *ius civile* and *ius praetorium*, the Proculian and Sabinian schools, and the evolution of the nature of the Roman state, from kingdom to republic to empire. In the second part of the course, the concept of *rerum natura* was dealt with: what does it actually mean that things have a nature? The participants tried to answer this question using the experiences of their own cultures and using the thoughts of various philosophers and lawyers, based on selected excerpts of their works, with a focus on the fragments D. 22,1,28,1 (Gai. 2 *rer. cott.*), D. 39,3,2pr (Paul. 49 *ad ed.*) and D. 8,5,8,5 (Upl. 17 *ad ed.*).

The theme of natural law was continued on the next day by professor Nadja el Beheiri, also from the Pázmány Péter Catholic University. The title of her lecture was: "Gender and the Roman Legal Tradition". The basis for the discussion about gender in law was the concept of natural law. The participants learned about different ways of thinking about what natural law is. The history of the understanding this concept was presented in a systematic way, which allowed the participants to create the broadest possible picture: starting from Plato and Aristotle, professor el Beheiri offered a succinct, yet very rich and copious overview of the history of ideas surrounding natural law, namely reason, nature, and *idea*, and explained the main contributions of Saint Bonaventure, Okham, Francisco de Victoria in this area, ending with Hans Kelsen, thus bringing the discussion into the juridical field. Thanks to this very informative outline, it was easier to understand how the concept of gender, intrinsically linked to the idea of nature, was understood at different times. The participants understood how dangerous it is to incur the mistake of anachronism in the study of history of law and philosophy. The very title of the course turned out to be a great example of why some legal topics are used today to achieve political or ideological goals, and why those same uses are simply dishonest from a scientific point of view.

The last day of Summer School classes was held under the title: "How different ideas on personhood influence rights thinking in Africa". Classes that day were led by Professor Cecil Abungu Abungu from the Strathmore Law School in Nairobi. He showed the participants that in African countries the theory and philosophy of law brought by the colonisers is still under the influence of the old African philosophy. This most often manifests itself in the most basic issues, such as the concept of humanity and personality, or rights and duties. The participants were acquainted with the thought of the most important African philosophers who dealt with indigenous local philosophy – Kwame Gyekye and Ifeanyi Menkiti. This perspective allowed for a broader look at the reception of the European legal tradition in different legal orders.

In addition to the main academic activities as summarised above, the participants had the opportunity to attend two so-called lunch time lectures. The first one was conducted by Professor Bastiaan David Van der Velden from the Open University of the Netherlands. Professor Van der Velden presented the history of legal justification of slavery in the early-modern era in the Netherlands, as well as the contemporary

legal solutions in force in the Kingdom of the Netherlands for pressing issues that remain after slavery and the old colonial regime were abolished, with particular attention paid to the status and the legal systems of overseas territories, and he explained how difficult it was to create a harmonious and well-functioning legal order for such diverse societies. The second of the additional lectures was given by Dr. Amit Upadhyay from the O.P. Jindal Global University. It concerned the differences between common law and civil law with particular emphasis on the Indian perspective. It was also an opportunity to exchange experiences between those participants who came from common law countries: Canada, Great Britain, Kenya and the United States.

In addition to workshops and lectures, participants also took part in a Moot Court, which was based on a passage by Gaius – D. 41,1,7,7 – regarding specification. This experience turned out to be very instructive, because on the one hand, the participants had to prepare themselves in the field of Roman law to solve the case, but on the other hand, they were also asked to prepare solutions according to their native legal orders. This made it possible to understand how legal thinking developed in different areas of the world. Furthermore, this experience allowed the participants to realise that the vast majority of modern legal solutions are firmly grounded in Roman law.

The didactic process within the Summer School ended with a written exam, in which the participants faced the tasks of creative answers to a few open questions regarding the influence of Roman law in contemporary law. After checking the written submissions by the examiners, a final ceremony took place, where participants were presented with certificates of participation in the Summer School.

The organisers of the Summer School also made sure that, in addition to the didactic classes, the participants could get to know themselves and the country in which they lived for two weeks. The occasion for this were three organized trips. The first of them allowed to get to know Aquincum, the ruins of a Roman city located in today's Budapest. The participants were shown around the city, saw the authentic Roman urban layout, preserved memorabilia, including wonderful sarcophagi and a reconstructed Roman house. The dedicated guide brought the Roman history of Pannonia closer to everyone, but also the history of the discovery of Roman remains and their conservation in Hungary.

Another organized trip allowed the participants to get to know Visegrád, the late medieval capital of Hungary. It was an opportunity to learn about the history of Hungary as well as the history of cooperation between Central European countries, for which the city is symbolic due to the fourteenth-century Congress of Visegrád. The last trip took place after the certificate awarding ceremony and allowed the participants to spend the last day together at Lake Balaton.

Pázmány Summer Law School 2023 was an informative and integrating event, which made possible to make many long-lasting academic friendships and gain plenty of fresh and enriching experience. Gathering participants from so many different legal orders and with very different levels and backgrounds in Roman law could have seemed to be a risky endeavour. At the end of the day, however, it is clear that the experiment was resoundingly successful, and, as we hope, will provide inspiration for similar future events in the field of Roman law!

