The History of the Roman Civil Process as a Universal Model of the Evolution of the Rules of the Ancient World

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ABSTRACT

The article examines the main stages of the evolution of the civil process in Ancient Rome. On the basis of extensive legal, historical and cultural material, it has been proved that the evolution of Roman procedural law reflects the general laws of the development of the legal order of the Ancient world. The author highlights three major trends in the historical dynamics of civil proceedings in Rome: first, the strengthening of the role of the state; secondly, the unequal ratio of the formal and semantic aspects of the civil process at various stages of its evolution; third, the modification of the form of claims.

As shown in the work, the form of claims provided for by Roman private law has evolved from the commission of non-verbal actions to oral statements and written documents. The trends considered are due to the general cultural patterns of the evolution of Roman private law and typologically identical legal orders of antiquity. The work highlights two such patterns: firstly, the transition from non-verbal gesture communication, first to oral speech, and then to written communication in the legal sphere. Secondly, a phased transition from regulation, carried out mainly based on the subjective rights and obligations of the participants, to normative regulation.

According to the author, the visual manifestation of these patterns in the Roman civil procedure makes it a universal model for studying the evolution of the legal order of the Ancient world.

Keywords: Roman private law, civil process, juridical communication, court proceedings, lawsuits

1. Introduction

This essay examines the stages of the Roman civil practice history in order to identify the universal principles that determine the evolution of law. The relevance of this research has two aspects: historical and general theoretical. The Roman private law, being the most famous and well-covered system that clearly reflects the specifics of the legal order of the Ancient world, has been well-documented and comprehensively analyzed in the publications of scholars who believe it to be the key to understanding the processes that influenced the formation of modern legal systems.

It is known that legal proceedings were central to the Roman private law. This circumstance, due to the particulars of the ancient legal mentality, for which the very existence of subjective rights was traditionally inseparable from their legal remedies, made the dichotomy of substantive and procedural law (inherent in the modern legal order) irrelevant.[1] It seems that this is the reason for the special attention to the procedural forms of both Roman lawyers and later authors who scrutinized the system of Roman private law through the prism of legal proceedings. Moreover, the doctrinal design of the system was based on the peculiarities of the judicial protection of subjective civil rights. Thus, one of the criteria of the dualism between *ius civile* and *ius honorarium* in the substantive aspect was the subject gradation of civil and praetorian claims, which allowed Giuseppe Grosso to assert that in Ancient Rome "material law arose as a manifestation of procedural means directly promised and provided by the praetor"[2]. In our opinion, the procedural orientation of Roman private law was not its unique feature, but it characterized, to a certain extent, all the rules of law of the Ancient world.

The stages of the Roman civil practice development is well-covered and well-documented in different sources, which from the moment of its inception to the later forms, makes it a convenient model for identifying the common features inherent in judicial systems at the same stage of evolution, and not only in static manifestations, but also — which is especially important — in dynamics. The study of the genesis and principal trends in the development of procedural law in Rome can contribute to the reconstruction of judicial procedures in those ancient societies, which lack sufficient material evidence for detailed and empirically substantiated conclusions.

First of all, it is the legal order, which, like ancient Greek law, effected the formation of Roman private law, including procedural law, and at the same time were influenced by it. This, of course, in no way implies the leveling of differences noted in the literature between ancient Greek and Roman law[3],

[1] For more details see: Santucci G. Die rei vindicatio im klassischen Römischen Recht: ein Überblick // Fundamina. 2014. Vol. 20. No. 2. P. 834; Dozhdev D.V. Roman Private Law. Issue 3, as amended. M. : Norma, INFRA-M, 2013. P. 197.

[2] Grosso G. Lezioni di storia di diritto romano. 3 ed. Torino : Giappichelli, 1955. P. 286.

[3] See: Surikov I. E. Problems of Early Athenian Legislation. Moscow: Languages of Slavic Culture , 2004. P. 16.

whose qualitative originality makes direct analogies and parallels impossible. It is more appropriate to try, with a great deal of care, of course, to single out the universal features inherent in the corresponding legal order, which, with all the dissimilarity in specific details, belonged to the same cultural and historical type.

In turn, the typological analysis carried out on the factual material provided by Roman law and other legal orders of the Ancient world, is intended to serve the solution of a more general problem, namely, the knowledge of the trends in the development of law in a broad diachronous retrospective, where the efforts of jurisprudence, cultural anthropology, historical science and other humanitarian disciplines that do not limit their subject field to factual descriptions, but try to come to generally valid conclusions, are ultimately aimed at. No wonder, that sophisticated expert in Roman law S.A. Muromtsev saw the main objective of the legal science[4] in the knowledge of universal laws, which was supported by a number of modern authors, at least those who do not confine themselves to pure dogma[5].

The cognitive relevance and heuristic value of the generalizing approach using universals, more or less inherent in different cultures and their corresponding legal order, raises doubts only at the most superficial glance, which cannot see the forest for the trees.

Meanwhile, its significance was not denied even by authors who are extremely cautious about generalizations, such as, for example, American anthropologist F. Boas, according to whom, "a critical assessment of what is generally significant for all mankind, and the demarcation from what is specific to individual cultural types, becomes the subject of the greatest importance in the study of society"[6]. Among other things, the study of the evolutionary dynamics of law makes it possible to formulate a number of conceptual provisions concerning the concept and essence of the latter, making the evolutionary approach a productive methodological basis not only in the historical, but also in the theoretical and legal terms.

Being a component of the culture, the law, similarly to other cultural phenomena, performs a communicative function, consisting in the exchange of information which contributes to creation of social institutions. The most important feature of legal communication is its inherent regulatory impact on the behavior of individuals[7]. The information media in the law are rules featuring the semiotic nature. However, it would be wrong to reduce the whole variety of semiotic means of legal communication, as is sometimes done, exclusively to the normative component.[8] In the diachronic retrospective, no less, if not more important, role was played by the subjective rights and obligations of participants in legal communication. Under the conditions of the underdeveloped normative dimension of Roman law, the unhindered exercise of subjective rights and their judicial protection became the priority tasks of the rule of law, on the solution of which its stability and viability depended. It seems that Roman private law, with its syncretism of substantive, procedural and legal elements, serves as a good example of the rule of law in which the behavior of individuals was effectively regulated with the help of their subjective rights and obligations, even in the absence of general rules.

2. Arbitrariness in the Law of the Ancient World

One of the most notable features of Roman private law was the presence of highly developed forms of procedural protection of rights, which in many respects laid the foundation for modern civil practice. Moreover, in a situation where the main, if not the only, means of constructing the rule of law were subjective rights and obligations, a special problem was giving them relevance for the participants who did not initially participate in the legal relationship where these rights and obligations arose.

Inevitably, the conflicts in interpretations of the semantic context of mutual legal claims, which are fraught with denial of law as such, created the need for the protection of subjective rights that are ef-

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[4] See: Muromtsev, S. A. On the Conservatism of Roman Jurisprudence // Muromtsev S. A. Selected Works on Roman and Civil Law. M. : Statut, 2002. P. 211.

[5] See: Belov, V. A. Subject-Methodological Problems of Civil Science // Civil law: Actual Problems of Theory and Practice / under total. ed. V. A. Belova. M. : Yurayt-Izdat , 2007. Pp. 158–159.

[6] Boas F. Some Problems of Methodology in the Social Sciences // Boas F. Race, Language and Culture. New York : The MacMillan Company, 1940. P. 261.

[7] See: Krawietz W. Juridische Kommunikation im modernen Rechtssystem in rechtstheoretischer Perspektive // Rechtsphilosophie im 21. Jahrhundert / hrsg W. Brugger, U. Neumann, S. Kirste. Fr. a. / M. : Suhrkamp, 1998. P. 197–200; Van Hook, M. Law as Communication. SPb. : ID SPBGU, OOO «Universitetskii izdatel'skii konsortsium», 2012. Pp. 29–31.

[8] Polyakov, A. V. Normativeness of Legal Communication // Polyakov A. V. Communicative Legal Understanding: Selected Works. SPb. : Publishing House "Alef-Press", 2014. Pp. 158.

fective for all cases of its potential violation. In the modern legal order, the main form of protection of rights is judicial protection (Article 11 of the Civil Code of the Russian Federation), along with which administrative protection and self-defense are applied (Article 14 of the Civil Code).[9] In the legal literature, there is a widespread opinion that judicial activity, not only today, but also at the early stages of legal evolution, is the exclusive prerogative of the state, and therefore it became necessary to consider the ways for protecting rights that preceded their judicial protection. Even the pandectists put forward the hypothesis of "arbitrariness" as a historically primary situation for the protection of law[10], which was subsequently consistently developed by R. Jhering[11]11. Such a naive evolutionist attitude, obviously, did not take into account the complex nature of human behavior as a self-organizing system containing a semantic basis correlated with subjective meanings expressed by the behavior of other individuals.

At the heart of the coordination of the meanings that motivate the behavioral acts of subjects, including specifically legal meanings (freedom, justice, formal equality, etc.), is, in the words of A.V. Polyakov, the mutual recognition of individuals as equal participants in legal communication, whose legally relevant claims become binding on other individuals[12]. A necessary prerequisite for such mutual recognition is the presumption of the rationality in the behavior of other persons shared by all participants in legal communication, from which the axiological characteristics of the latter follow.

Given such an assumption, any conflict generated by a collision of opposing interests must be eliminated using legal procedures, which include judicial (claim) protection of rights. Legal regulation of human behavior with its inherent tools for reconciling interests and resolving behavioral conflicts can be considered as a kind of continuation — at a higher evolutionary level — of the mechanisms of self-organization and achievement of dynamic homeostasis, acting in natural, including biological, systems.[13]

Unfortunately, some modern scholars who, to one extent or another, have perceived the doctrine of arbitrariness as the primary way of implementing and protecting the right, sometimes tend to draw conclusions on this basis that are not supported by historical evidences.[14]

This is the case, in particular, with the underdevelopment of the legal regulation tools in early state communities, similar to the ancient Greek policies in the Dark Ages (11th — 8th centuries BC) or Rome during the first kings' reign. Meanwhile, the apparent primitiveness did not at all testify to the inefficiency of these tools, which fully corresponded to the historical tradition, social organization and level of cultural development of the community. Moreover, the monuments preserved indications that already archaic legal orders, including the legal order of Early Rome, had well-formed judicial procedures for the protection of subjective rights and resolution of emerging contradictions.[15] This suggests that the origins of judicial procedures should be sought in a pre-state organization that possessed mechanisms for resolving conflicts and achieving social balance, which were developed in the early state communities of the Ancient world.[16]

A textbook example of this is the scene of the court described by Homer, depicted on the shield of Achilles, where in the assembly of the people (ecclesia) the assessors decide a civil litigation, making a decision on the basis of the arguments of the parties (Il.XVIII, 497-508).[17] There are hardly sufficient grounds to see a later insertion in this eloquent episode, guided by a priori ideas about the absence of a developed system of legal proceedings in the Homeric era. It is much more appropriate to assume

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[9] Civil Code of the Russian Federation. Part 1 // Collection of Legislative Acts of the Russian Federation. 1994. No. 32. Art. 3301; 2019. No. 1. Part 1. Art. 7482.

[10] See, in particular: Baron, Y. The System of Roman Civil Law: In 6 vols. SPb. : Ed.R. Aslanov "Legal Center-Press", 2005. Pp. 233– 234.

[11] See: Jhering, R. Spirit of Roman Law at Various Stages of Its Development. Part 1 SPb. : Pub. V. Bezobrazova and Co., 1876. P. 95.

[12] See: Kovkel, N. F. Review of the First International Legal Philosophy School in the Republicof Belarus // Proceedings of the Institute of State and Law of the RAS. 2019. Vol. 14. No. 6. P. 198.

[13] Fore more details, see: Knorozov, Yu. V. On the Classification of Signaling // Basic Problems of African Studies. M. : Nauka, 1973. Pp. 324–334; Ershova, G. G. Anthroposystem: Communicative Models and Regulated Integration // Historical Journal: Scientific Research. 2012. No. 4. Pp. 11–25.

[14] See: Sinyukov, V. N. Digital Law and Problems of Gradual Transformation of the Russian Legal System // Lex Russica. 2019. No. 9 (154). P. 10.

[15] See: Loginov, A. V. Judicial Scene on the "Shield of Achilles" in the Iliad and the legislative actio sacramento process // Judicial reform in Russia: past, present, future: Collection of reports of the VII International Scientific and Practical Conference. M. : Publishing house of Moscow State Law Academy named after O. A. Kutafi, 2015. Pp. 144–147.

[16] See: Maltsev, G. V. Revenge and Retribution in the Ancient World [Mest' i vozmezdie v Drevnem mire]. Moscow : Norma — INFRA-M, 2012, P. 101.

[17] Fore more details, see: Bonner R. J., Smith G. The Administration of Justice from Homer to Aristotle. Vol. 2. Chicago : University of Chicago Press, 1938. P. 117 f.

that such procedures were spontaneously formed in early state or even in pre-state communities, being elements of the system of public self-government, which only later received state power.

Moreover, the mechanisms for the judicial settlement of private disputes that had developed in the late clan community were borrowed by the early state legal order in a practically unchanged form, as evidenced by the ancient *legis actio sacramentum in rem* procedure.[18] It is no coincidence that even those researchers who treat the institutions of blood feud as a universal alternative to legal proceedings that took place at the initial stage of the evolution of the rule of law do not deny that at this hypothetically reconstructed stage, blood feud and unauthorized reprisal against the offender were not practiced in all cases, but only where conciliation and litigation were either not applied[19] or did not achieve the desired result[20]20.

According to sources, this was the case in the early Roman community, where the custom of blood feud retained its importance until the beginning of the Republic. The most famous examples of its manifestation described by ancient authors were the murder of the Curiatii brothers in a duel with Publius Horace, later rethought as a military feat (Liv. I. 24–26; Dionys. III. 2–31; Flor. Epit. I. 1; Lyd. de mens. 4. 1), the murder of Romulus (Plut. Rom. 27. 5), the death of Tullus Hostilius under mysterious circumstances (Liv. I. 31), the death of the kings Tarquinius Priscus and Servius Tullius (Liv. I. 42; Dionys. IV. 40) and, finally, the expulsion of representatives of the gens Tarquinia from Rome. It is noteworthy, however, that all of the above cases, to one extent or another, had their reasons for struggling for power in the community or military and social conflicts, without affecting the private sphere, where disputes began to be examined in court early enough.

Archaeological evidence of the above is the legal proceedings in Ancient Egypt, which were transformed simultaneously with the processes of the historical development of the most ancient Egyptian civilization.[21]

As noted by I.M. Lurie: "The Egyptian trial, its rite, dates back to the initial periods of Egyptian history. Having arisen as a court-competition, traces of which are clearly preserved, for example, in the "The Contendings of Horus and Seth", in which the gods act rather not as judges, but as arbiters, seeking to reconcile the irreconcilable claims of opponents"[22]. Thus, with all the paucity and limited information available, there is some reason to believe that the ancient Egyptian procedural law, having arisen on the basis of sacramental and mythological rituals, initially had a precedent character, and the judgments made, becoming part of the unwritten (and then written) legal tradition, served as standards for all specific life situations, typologically similar to the one about which the corresponding decision was made.

A typical example of this method of lawmaking is modern Anglo-Saxon common law corresponding to a later stage of evolutionary development. At the same time, it can be stated that the common law in its reliance on precedent is not an exception, since any lawmaking, as well as protection of rights, at a stage when legal facts and the subjective rights and obligations generated by them were the basis of the rule of law, could only have a precedent nature.[23] Even in modern conditions, the construction of new areas of legal reality can be carried out using precedents, which, in our opinion, takes place, for example, in private international law[24]. All the more significant is the role of the judicial precedent in the coordinate system set by the associative (pre-predicative) legal thinking, given the high degree of ritualism of judicial procedures, which determines their suggestive impact on participants in legal communication.

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[18] See: Bonner R. J. Administration of Justice in the Age of Homer // Classical Philology.1911. Vol. 6. P. 28; Cantarella E. Violence privee et le process // La violence dans les mondes grec et romain / Ed. J.-M. Bertrand. Paris : Annee d'edition, 2005. P. 345–346.

[19] See: Barton R. E. The Kalingas: Their Institution and Custom Law. Chicago : University of Chicago Press, 1949. P. 221.

[20] See in particular: Edwards M. W. The Iliad: a commentary / Ed. G. S. Kirk. Vol. V. Cambridge : Cambridge University Press, 1991. P. 214–216; Nagy G. Homeric Responses. Austin : University of Texas Press, 2003. P. 77; Benveniste, E. Dictionary of Indo-European social terms. M. : Progress-Univers, 1995. P. 379.

[21] See: Chehata Ch. Le testament dans l'Egypte pharaonique // Revue historique de droit française et etranger. 1954. Vol. 31. P. 3 ff.

[22] Lurie, I. M. Essays on Ancient Egyptian Law of the 16th–10th Centuries B. C. L. : Ed. State Hermitage Museum , 1960. P. 112.

[23] See: Arkhipov, V. V., Polyakov A. V., Timoshina E. V. Adaptation of Precedent Legal Systems Experience to The Russian Legal System: a Problem Statement // News of Higher Educational Institutions. Jurisprudence. 2012. No. 3 (302). Pp. 113–134.

[24] See in particular: Golub, K. Y. Judicial Precedent in the Systems of International and European Law // Izvestiya of Saratov University. Series: Economics. Management. Law. 2007. Vol. 7. No. 1. Pp. 92–96.

3. Cultural and Anthropological Prerequisites for the Emergence of Judicial Procedures in Roman Law

It will not be an exaggeration to assert that the anthropological prerequisites for judicial procedures in all cultures, including ancient Roman, are inherent in the nature of human himself as a biosocial being. Genetically, judgment, as well as other rituals practiced at an early stage of social evolution, goes back to games that are widespread not only in human but also in animal communities[25]. The playful nature of legal, including judicial, rituals, first disclosed by J. Huizinga[26], should be taken into account when considering both the origin of judicial procedures used in the Roman civil procedure and the evolution of legal communication in this area. In the pre-state and early state legal order, judicial rituals, closely approaching magical practices, were aimed at establishing the will of the gods and other supernatural forces. It can be argued that in the coordinate system set by the associative-shaped legal thinking, judicial procedures were a kind of divination rituals, which was already important in primitive cultures.

The Gods' will was determined by taking an oath and, in the future, through judicial fights, the simplest type of which was casting lots designed to determine the winner in a dispute. It is no coincidence that in many ancient languages, including ancient Greek and Latin, the words 'right' and 'justice', among other things, had the meaning of fate and lot. These are, in particular, the ancient Greek *τύχη* — 'chance', 'fate', 'coincidence', *μοῖρα* — 'fortune', 'fate', 'destiny', etc., and semantically interconnected *τό μέρος* — 'part', 'fate', as well as *ὁ κλῆρος* — 'fortune', 'fate', 'inheritance', *κληρόω* — 'determine by throwing lots'[27]27. This is also the origin of the noun *ὁ καιρός* which means 'proper measure', 'norm', and the adjective *τό καίριον* which means 'proper', 'correct', 'exact', directly pointing to the legal aspects of judicial rituals. The legal vocabulary of the ancient Greek language is closely related to the considered meanings, first of all, the noun *δικάζειν* which means 'weighing on the scales', and the verb *δικεῖν* which means 'to throw', 'to throw lots', from which the noun *δίκη*, which became the theonym of justice, is etymologically derived.

The Latin word *iustitia* has the same semantics and meant not only 'justice', but also 'throwing lots', 'taking an oath', etc. In Roman legal texts, the nouns *iuramentum* (oath), *iusiurandum* (oath), the verbs *iurare* (to swear), *iurgare* (to quarrel, to sue), the adjective *iuratorius* (oath), and the adverb *iurato* (by oath) are often found in appropriate meanings. Thus, the rites of justice were originally magical rituals, which consisted in taking an oath and subsequent judicial fights.

Naturally, under these conditions, a procedure was needed to equalize the strengths of physically unequal opponents and required the presence of a 'third party' in the competition, monitoring the fairness, that is, procedural correctness, of the duel. This arbiter initially might not have power over the litigants, since his task was not to pass or execute a sentence, but only to prevent abuses that ultimately turned the legal proceedings into promulgation of the 'fist law'. Obviously, in the presence of procedural (initially ritual and magical) requirements and in the presence of an arbitrator, there could be no question of arbitrariness of the disputing parties.

Oath-taking and ritual duels as primary forms of judicial procedure were practiced in many legal orders of the Ancient world. They were used in ancient Egyptian civil and criminal proceedings, along with other means of proof, up to the New Kingdom (16th — 11th centuries BC)[28]. Similar oaths were provided for by Old Babylonian and Old Testament law[29]. It is noteworthy that in ancient languages, taking a judicial oath was indicated by the sign of a palm or a raised hand, the semantics of which, among other things, included the meanings of performing religious rituals, casting incantations, as well as exercising personal and economic domination[30], such as Sumerian *zi* (oath), Old Babylon. *niš* (oath, raising hands), Old Egyptian *ᶜr.ḳ* (to swear).

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[25] See: Osvetimskaya, I. I. Game as a Method for Increasing the Efficiency of Legal Thinking // Russian Journal of Legal Studies. 2019. Vol. 6. No. 3. Pp. 89.

[26] See: Huizinga, J. Homo Ludens. Articles on the History of Culture. M. : Progress-Tradition, 1997. Pp. 85–94.

[27] In the law of Athenes in 5th — 4th BC, this was the term for land plots received at allocation of common lands or as award for military service. Fore more details, see: Cargill J. Athenian Settlements of the Fourth Century B. C. Leiden : Brill, 1995. P. 194; Moreno A. The Attic Neighbour. The Cleruchy in the Athenian Empire // Interpreting the Athenian Empire / Ed. by J. Ma. London : Duckworth, 2009. Pp. 211– 221.

[28] See for example: Spiegelberg W. Studien und Materialen zum Rechtswesen des Pharaonenreiches der Dynastien XVIII–XXI (c. 1500–1000 v. Chr). Hannover : Comissions — Werlag der Hahnischen Bucchandlung, 1892. P. 76 f; Seidl E. Einführung in die ägyptische Rechtsgeschichte bis zum Ende des neuen Reiches. Glückstadt : J. J. Augustin, 1951. S. 38; Lurie, I. M. Essays. P. 112.

[29] See: Price J. M. The Oath in Court Procedure in Early Babylonia and the Old Testament // Journal of American Oriental Society. 1929. Vol. 49. P. 23.

[30] See: Marr, N. Ya. Ishtar (From the Goddess of Matriarchal Afro-Eurasia to the Heroine of Love in Feudal Europe) // Japhetic Collection. Issue 5. L. : Publishing House of the Academy of Sciences of the USSR, 1927. P. 110.

The Old Greek *χειρός* (hand), in the set expression *ἐμβάλλειν χειρός πίστιν* (give a hand as a sign of fidelity [oath]) (Soph. Philoct. 813), and Latin *manus* (hand), which was polysemic and was used in various phrases to denote 'taking an oath', 'an oath of office', 'taking possession of an object', 'domination' (including economic), 'belonging', 'possession', etc. had the same use. In the Baltic and Slavic languages, this word is an element of the etymological group formed, apparently, back in the period of Indo-Germanic linguistic unity, where, along with Lithuanian *rankà* (hand) and Latvian *rùoka* includes Swedish *vrà* (angle), Norse *vrangr* — 'curve', 'oblique', Middle Low German *vrange* — 'arc'[31], which had common semantics from Slovenian *kolnem*, *kleti* — 'curse', Polish *klne*, *klač* — 'curse', Old Latvian *klentet* — 'curse', and Old Prussian *klantemmai* — 'we curse', whose meaning, according to M. Vasmer, was associated with the fact that "when pronouncing oaths, the hand touched the ground"[32].

The general significance of the considered linguistic material is illustrated by the example of the hieroglyphic writing of the ancient Maya, where many hieroglyphs, including those that conveyed social-political vocabulary, were outlined with an oval outline. There, researchers trace a reduced image of a palm[33], referring to the so-called 'hand speech', which arose at the initial stage of human communication[34], dating back to the Paleolithic, but was, as the studies of the spouses A. and B. Gardner proved, already characteristic of the higher primates, namely chimpanzee[35]. These are, for example, the signs *la* — 'face', 'lord', *chac* — 'big', *chac'* — 'sky', 'high', *naab* — 'palm', 'space'[36]. Especially noteworthy in this sense is the hieroglyph *ez* — 'witchcraft', which is a realistic depiction of an open palm. Thus, the gestures of linear manual speech and the words of the spoken language that developed on their basis, which had the meanings discussed above, were speech acts, whose illocutionary force consisted in influencing the behavior of communicants[37], which made them suitable for performing rituals of judgment.

Swearing of oaths and the subsequent duel of the parties were important components of the Hittite legal proceedings, and, as the latest research shows, Hittite judicial procedures were largely borrowed from the ancient Greek law of the Mycenaean era[38].

Perhaps such fights included a ritual pursuit, such as that described in the Iliad (Il. XXII. 136 sgg.)[39], which resulted in the sacrifice of the losing side, eventually replaced by the payment of property compensation to the winner[40]. Echoes of such ideas can be traced not only in legal, but also in paleographic evidences, in particular, in a number of Egyptian inscriptions of the Old Kingdom era, where the noun *ma'at* — 'justice' included the grapheme *mȝ*[41], used in the passive voice verb *mȝ'* — 'to sacrifice'[42].

In the Roman civil practice, the life and personal freedom of the defendant are likely to cease to be the subject of litigation quite early, giving way to the property over which the dispute is conducted. The

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[31] See: Streitberg W. Gotisch fraujinond, frauja // Indogermanische Forschungen. Zeitschrift für Indogermanische Sprachund Altertumskunde / hrsg. Von K. Brugmann, W. Streitberg. Strassburg : Karl J. Trübner Verlag, 1892. Bd. 23. Pp. 119–121.

[32] Fasmer, M. Etymological Dictionary of the Russian Language. In 4 Volumes. Vol. II. M. : Progress, 1986. P. 259.

[33] See: Ershova, G. G. Maya: Secrets of Ancient Writing. M. : Aleteya, 2004. P. 121.

[34] See: Marr, N. Ya. Language // Marr N. Ya. Selected works. T. II. Basic questions of linguistics. M. ; L. : Sotsehkgiz, 1936. P. 128.

[35] See: Gardner R. A., Gardner B. T. Teaching Sign Language to a Chimpanzee // Science. New Series. 1969. Vol. 165. No. 3894. P. 670.

[36] See: Knorozov, Yu. V. Writing of the Maya Indians. M. ; L. : Publishing house of the Academy of Sciences of the USSR, 1963. P. 158 and below.

[37] See: Searle, J. R. Classification of Illocutionary Acts // New in Foreign Linguistics. Issue 17. The Theory of Speech acts. Moscow : Nauka, 1986. P. 171 and below.

[38] See: Loginov, A. V., Trofimov A. A., Linko A. V. Retribution from the Proto-Indo-Europeans, Mycenaean and Homeric Greeks. M. : Academia, 2017; Loginov, A. V., Shelestin V. Yu. Court and Punishment in Mycenaean Greece and the Hittite Kingdom. M. : Academia, 2019.

[39] The presence of one more legal symbol in this fragment, i.e. the scales which were used by Zeus for weighing the lots of Achilles and Hector seems far from accidental (Il. XXII. 209–213, translated by Gnedich N.I.): "...Zeus, the providential, stretched out the golden scales, where he threw two lots of Death, immersing in a long sleep: one lot for Achilles, the other for Priam's son. He took it in the middle and lifted: the lot dropped to Hector and heavy lot fell to Hades (καὶ τότε δὴ χρύσεια πατὴρ ἐτίταινε τάλαντα, ἐν δ ἐτίθει δύο κῆρε τανηλεγέος θανάτοιο, τὴν μὲν Ἀχιλλῆος, τὴν δ Ἕκτορος ἱπποδάμοιο, ἕλκε δὲ μέσσα λαβών: ῥέπε δ Ἕκτορος αἴσιμον ἦμαρ, ᾤχετο δ εἰς Ἀΐδαο)", which resulted in Hector's death in the subsequent fight.

[40] See: Hoffner H. A. The Laws of the Hittites. Waltham : Brandeis University Press, 1963. P. 339–340.

[41] See: Gardiner A. H. Egyptian Grammar. 3rd ed. Oxford : Oxford University Press, 1957. P. 516.

[42] See: Zhdanov, V. V. Evolution of the Maat Category in Ancient Egyptian Thought. M. : Modern notebooks, 2006. P. 38.

only exceptions are *legis actiones per manus iniectionem*, that retained a connection with the most ancient forms of legal proceedings, which authorized the claimant to personally kill the defendant. Initially, such property was movable things and real estate, and later a sum of money as a universal property equivalent. With the evolution of the rule of law stimulated by the transition from figurative-associative thinking to conceptual thinking, ritual contests and oaths lose their probative power. It is not the manifestation of the will of divine forces that comes to the fore, but the effective and comprehensive protection of the interests of the subjects of legal communication, which is directly dependent on the development of the judicial procedure.[43]

Legal science and the activities of lawyers in general played a significant role in this transition (Pomp. 1 enchr., D. 1.2.2.5). In the writings of Roman lawyers, the legal order was constructed by understanding and systematizing the rights and duties of its subjects in the context of specific life situations, including situations associated with various kinds of legal collisions. Summarizing the number of typologically similar cases, the prudentes formulated recommendations which served the basis for court decisions.[44] This circumstance was reflected in the ancient political and legal thought which recognized doctrinal positions as obligatory for judges. So, according to Cicero: "If they [i.e. judges] recognize the lawyer's answer as correct and declare that it should be awarded differently, then they say that it should be awarded badly. After all, it cannot be so that one decision on the law should be made in court, another in response to consultations, and so that the one who claims that the right is something that should not be a court decision is considered an expert in law"[45]. The authority of the flow of law, thus, not only acted as a formal basis for making a decision, but also made the subjective rights and the claims enshrined by them binding on subjects who were not participants in a particular legal relationship[46].

4. Stages of Roman Civil Practice Development: General Characteristics

The need to create effective enforcement mechanisms required the participation of state magistrates in the court's activities. The evolution of the civil practice in Rome makes it possible to doubt the correctness of the traditional point of view, in accordance with which legal proceedings initially arise as one of the directions of the public-power activity of the state. On the contrary, the facts indicate that the state did not immediately begin to exercise judicial power, especially in the civil practice sphere, where consideration of judicial disputes and resolution of conflicts for a long time were carried out on a private initiative with minimal interference from the state.

So, if in the early stages of the Roman procedural law development, the participation of an official (in particular, a praetor who was responsible for organizing judicial procedures) was limited only to monitoring compliance with the formal requirements for filing a claim, then with the development of law and order, it became necessary for an official to intervene more actively in filing a claim, and in considering a case.

Although the division of the civil proceedings into two stages (praetor (*in iure*) and judicial (*in iudicio*)) was already typical to the legal process, which developed on the basis of the Laws of the Twelve Tables and was the most ancient type of civil proceedings, the role of the praetor was mainly reduced to solving three problems.

First, on behalf of the Roman people, the praetor assessed the public significance of the legal claims of individuals, deciding whether to give these claims legal (including judicial) protection and what specific remedies should be used. Apparently, this function of praetorian jurisdiction was fundamental, especially at the initial stage of the development of justice in the conditions of the procedural underdevelopment of the latter. The civilian group interested in maintaining the stability of the rule of law, which was threatened not only by private arbitrariness, but also by uncontrolled litigation on insignificant

[43] Fore more details, see: Ando C. Substantive Justice in Provincial and Roman Legal Argument // The Impact of Justice on the Roman Empire. Proceedings of the Thirteenth Workshop of the International Network Impact of Empire (Gent, June 21–24, 2017). Leiden : Brill, 2017. P. 147–148.

[44] See: Kofanov, L. L. The Role of the Responsa of the Roman Jurists in Disputatio Forensis in the Roman Civil Community of the 5th–1st Centuries B. C. // Journal of Ancient History. 2014. No. 4 (291). Pp. 89–90. The obligation of arbitrators in classic and postclassic age to be guided by opinions of the most competent lawers is evidenced, in particular, by the Law of Valentines III dated 07 November 426 (CTh. 1.4.3).

[45] Cic. pro Caec. 24.68: Sin illos recte respondere concedunt et aliter iudicari dicunt oportere, male iudicare oportere dicunt. Neque enim fieri potest, ut aliud iudicari de iure, aliud responderi oporteat, ne cut quisquam iuris numeretur peritus qui id statuat esse ius quod non oporteat iudicari.

[46] See: Kaser M. Das Urteil als Rechtsquelle im Römischen Recht // Festschrift für Fritz Schwing / hrsg. von R. Strasser. Wien : Metzger, 1978. P. 126.

reasons (like the proverbial 'fight over a donkey's shadow'), provided the official with powers that allowed the selection of legally significant requirements, as indicated by the standard wording of *iudicium dabo* — 'give protection' (D. 4.3.1.1; 39.4.1 pr.), or *actionem dabo* — 'give a suit' (D. 42.8.1 pr.), which is available in many provisions of the praetor edict[47].

Secondly, the praetor's duties included the prevention of possible arbitrariness, extrajudicial reprisals and direct violence, which created, especially against the background of still existing obsolete customs of blood feud and collective responsibility, the preconditions for insoluble social conflicts that entail destructive consequences for the rule of law. It is no coincidence that the provisions of the edict contain direct indications of the inadmissibility of such excesses expressed in the words *vim fi eri veto* — 'I prohibit the use of force'[48]. It should be noted that this formula was used as a legal basis for not only judicial, but also extrajudicial protection, in particular, interdict protection of ownership rights.[49]

Conflict situations became especially dangerous when the dispute was not about individually defined things, the possession of which excluded their physical belonging to others, but about generic things characterized by a quantitative trait[50], or about things in common use, like, for example, *ager publicus* (D . 1.8.2 pr.) or running water[51]. In this case, the prevention of potential violence became especially urgent, requiring appropriate action by the public authorities.

Finally, thirdly, organizing the most ancient type of civil proceedings, the essence of which consisted in performing ritual actions and pronouncing phrases provided for by the letter of the law (in this case, the Law of the Twelve tables), a judicial magistrate, first a consul, and then, after the reform of 367 BC, city praetor, ensured the legal correctness of the procedure. And since, unlike the pontiffs, the civil magistrate did not observe the exact reproduction of the religious and symbolic meaning of the judicial ritual by the parties, its role in the legal process was limited mainly to the performance of technical functions[52].

Namely, without going into consideration of the case on the merits, he accepted or rejected the claim guided solely by formal considerations[53]. Guy's words perfectly illustrate the above:

"...if someone looked for a reward for damaged vines, calling them vines, then they answered that he had lost the claim, since he had to call the vines trees, on the grounds that the Law of the Twelve Tables, according to which the claim was filed for cut vines, speaks in general about cut bushes"[54].

As the legal consciousness develops, the formalism of the most ancient civil law, which has found expression in legal proceedings, begins to come into conflict not only with the needs of economic turnover and the property interests of its participants, but also with a sense of justice that presented certain requirements to justice.[55]

The question is, in particular, the need to assist the parties in the legally competent formulation of the claim from its material and procedural points of view. The implementation of these requirements led

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[47] See: Jolowicz H. F., Nicholas B. A Historical Introduction to the Study of Roman Law. 3rd ed. Cambridge : Cambridge University Press, 1972. P. 99 ff., 202; Schiller A. A. Roman Law: Mechanisms of Development. The Hague ; Paris ; New York : Mouton Publisher, 1978. P. 412; Grevesmühl G. Die Gläubierangfechtung nach klassischen Römischen Recht. Göttingen : Wallstein Verlag, 2003. P. 59.

[48] See: Rudorff A. F. Edicti perpetui quae regula sunt. Lipsiae : Hirzelium, 1869. P. 212; Lenel O. Das Edictum perpetuum. Ein Versuch seiner Wiederherstellung. 3. Aufl. Leipzig : B. Tauschnitz Verlag, 1927. P. 461; Betancourt F. Derecho romano clásico. 3a ed., rev. y aument. Sevilla : Universidad de Sevilla, 2007. P. 287, 370.

[49] See: Dernburg, G. Pandekty. T. I. Part 2. Property Law. SPb. : University. pub. 1905. P. 43 and below.

[50] According to Salvius Iulianus (Iul. 22 dig., D. 45.1.54 pr.), "when we are promised generic things, they are divided according to the number (quotiens autem genera stipulamitur, numero fit inter eos divisio)". The later laws gave a similar definition to *res genera*, e.g., in Art. 66 of the Civil Law Code of the USSR, 1922. Fore more details, see: Khaskelberg B. L., Rovny V. V. Individual and generic in civil law. M. : Statut, 2004. P. 47.

[51] According to Marcian's statement (Marc. 3 inst., D. 1.8.2.1): "By virtue of natural law, the following are, surely, common to all: air, flowing water and sea, and therefore the seashore (Et quidem naturali iure omnium communia sunt illa: aer, aqua profluens, et mare, et per hoc litora maris)". In this connection, Ulpian (Ulp. 70 ad ed., D. 43.20.1 pr.) quotes a fragment of the Praetorian interdict, which reads: "I forbid the use of force with the aim of preventing you in this way from diverting the water which is the subject of lawsuit, as you took it away last year not by force, not secretly and not precariously in relation to such (uti hoc anno aquam, qua de agitur, non vi non clam non precario ab illo dixisti, quo minus ita dicas, vim fieri veto)». See: Labruna L. Vim fieri veto. Alle radici di una ideologia. Napoli : Jovene, 1972. P. 247–284.

[52] See: Kocourec A. The Formula Procedure of Law // Virginia Law Review. 1922. Vol. 8. No. 6. P. 439.

[53] See: Khvostov, V. M. History of Roman Law. Ed. 3rd, rev. and add. M. : Type. t-va Sytina, 1907. Pp. 142, 146.

[54] Gai. 4.11: Unde eum, qui de uitibus succisis ita egisset, ut in actione uites nominaret, responsum est rem perdidisse, quia debuisset arbores nominare, eo quod lex XII tabularum, ex qua de uitibus succisis actio conpeteret, generaliter de arboribus succisis loqueretur.

[55] See: Schulz F. History of Roman Legal Science. Oxford : Clarendon Press, 1953. P. 24–29.

to the emergence of a new kind of proceedings at the end of the 2nd century BC, namely *per formulas*, first envisioned in 123 BC (*lex Aebutia*).

In the formulary procedure, while maintaining two stages *in iure* and *in iudicio*, the importance of the official who organizes the consideration of the case at the first stage noticeably increases. Now the magistrate not only accepts claims and appoints a judge, but also participates in the case, formulating the positions of the parties and setting them out in the form of a special order (praetor's formula), which was an order addressed to the judge to decide the case taking into account all the essential circumstances set out in the formula. The participation of the praetor in the formulary procedure made the latter more flexible in comparison with the archaic legislative process, which made it possible to create new legal remedies for the protection of subjective civil rights that would meet the evolving needs of economic life, as well as the notions of justice prevailing in legal consciousness and legal culture.

Thus, having originated as one of the tools for self-regulation used in the pre-state community, the judiciary became a 'branch' of state power, with all the conventionality of this term, in relation to the ancient policy state, which was the Roman Republic of the last centuries BC. The procedural advantages of the formulary procedure, as well as the public-power institutionalization of the judicial system, led to the abolition of the legislative process at the end of the 1st century BC, as a result of the adoption of *lex Iulia iudiciorum privatorum 17 BC*, which ensured a more active participation of the praetor and other magistrates in arrangement of judicial proceedings within the framework of the formal process.

At the same time, the praetor's procedural powers had their limits originating from the very essence of the praetorian empire, which was a 'lesser empire' (*imperium minus*)[56]. First of all, it is the independence of the judge from the praetor when considering the case on the merits at the *in iudicio* stage, which was the reason for the inability of the magistrate to influence the delivery of judgments other than by means of a formula describing the model features of a legally significant situation. In addition, the praetorian jurisdiction was limited by the term for which the magistrate was elected. As a result, a person whose claim was rejected on formal grounds could re-submit it only a year after the new praetor took office. Finally, already in the imperial era, the powers of the praetor come into conflict with the growing authoritarian tendencies, as a result of which this position itself, like other republican magistrates, loses its significance.

Changes in the political structure during the transition from the Republic to the Principate could not but affect the sphere of procedural law, where the extraordinary procedure (*extra ordinem cognitio*) which took shape in the practice of imperial courts[57] at the beginning of the 1st century AD, replaces the formulary procedure. The Princes sought to incorporate civil proceedings into the bureaucratic hierarchy, eliminating the separation between judicial and magistrate powers and eliminating the independence of the judge from the magistrate, which characterized the earlier stages of the evolution of procedural law. This trend became irreversible after the abolition of the *per formulas* procedure in 342, which made the extraordinary procedure the only kind of lawsuit (C. 2.57.1).

In the extraordinary procedure, judicial powers were exercised by imperial officials. As a result, the judicial procedure becomes more formalized, losing its link with the requests and needs of the parties, which cease to play a leading role in the process. Written documents are now the main evidences in the extraordinary procedure, while oral testimony of parties and witnesses is largely deprived of probative value. The priority of written documents and the freedom of the official exercising judicial powers to make decisions at his own discretion create conditions for various kinds of judicial errors discussed by Seneca the Elder, Quintilian, Apuleius and other authors of rhetorical essays who sharply criticized the flaws of the judicial procedure from the standpoint of ordinary legal consciousness (Apul. apol. 27). The mechanism for appealing decisions in higher courts, up to the imperial one, was called upon to compensate for the defects of cognitive legal proceedings. Nevertheless, even this mechanism was unable to resist judicial and bureaucratic arbitrariness.

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[56] Fore more details, see: Martino F. de. Storia della Costituzione Romana. Vol. I. Napoli : E. Jovene, 1958. P. 189, 230; Sanctis G. de. Storia dei Romani. Vol. II. La Conquista del primato in Italia. Firenze : Fb & c Ltd., 2017. P. 407; Stewart R. Public Office in Early Rome. Ritual Procedure and Political Practice. Ann Arbor : University of Michigan Press, 1998. P. 95–137; Bunse R. Die klassische Prätur und die Kollegialitat (par potestas) // Zeitschrift der Savigny — Stiftung für Rechtsgeschichte. R.A. 2002. Bd. 119. S. 29–43; Dement'eva, Vera V. Magisterial Power in the Roman Republic: the Meaning of imperium // Journal of Ancient History. 2005. No. 6. Pp. 46–75; Vlasova, O. A. The Imperium of the Roman Praetor: The Question of Interpretation // Bulletin of the Volga University. V. N. Tatishcheva. 2018. Vol. 1. No. 2. Pp. 5–12.

[57] See: Kaser M. Das Römische Zivilprozessrecht. München : C. H. Beckische Verlagbuchhandlung, 1966. P. 418 ff.; Lipshits, E. E. Law and Court in Byzantium IV–VIII centuries. L. : Science [Nauka], 1976. P. 173.

5. Evolution of Roman Civil Practice and General Historical Patterns of the Dynamics of Law and Order

An overview of the main stages in the evolution of the civil practice in ancient Rome allows us to outline three main trends in its development, which were interconnected and mutually conditioned. The first trend, described in detail above, consisted in the gradual strengthening of the role of the state, which turned the court from an informal procedure of voluntary mediation in the settlement of conflicts into a structural link of the bureaucratic apparatus, exercising its powers[58]. The second tendency consisted in the uneven ratio of the formal and substantive components in legal proceedings at different stages of its evolution. Thus, the legal process was characterized by the unconditional dominance of ritual forms over meaningful moments, which resulted in direct dependence of the outcome of the case on the compliance with ritual prescriptions.

The formulary procedure, in contrast to the legislative process, was aimed at developing the most flexible and effective tools for protecting subjective rights and legitimate interests of the parties, where an official took an active part, speaking on behalf of the civilian group and guided, first of all, by the idea of justice (*aequitas*)[59] opposed to external ritualism of strict law, which found its embodiment in the legal process. As is known, this contradiction of strict and 'fair' law clearly manifested in praetor lawmaking apparently has a universal character, being inherent in any legal order at a certain stage of its evolutionary development. To be convinced of the universality of the opposition between *ius strictu* and *bona fi des* in Roman law, it suffices to recall that a similar controversy took place in Anglo-Saxon law[60] that for a long time was characterized by the dualism of common law and the law of justice, which was formed in the 15th century through the activities of the Court of the Lord Chancellor. We believe that such a dualism was not just the result of the action of social and historical factors, but also constituted a necessary attribute of the logical structure of Anglo-Saxon law in the 15th — 19th centuries[61].

An important prerequisite for these procedural changes was the transition from associative thinking to conceptual thinking, which contributed to the explication of the basic axiological categories that underlie legal communication, including the category of good conscience (*bona fi des*)[62] that was the guiding principle of judicial and law enforcement activity. The importance of axiological foundations for a developed judicial discourse is evidenced, in particular, by the fact that both *aequitas* and *bona fi des* were constantly in the center of attention of Roman theorists of oratory, who, along with lawyers, put a lot of efforts into conceptualizing these concepts[63]. In turn, the extraordinary procedure was characterized by a well-known decline in legal consciousness and a decrease in the general level of legal culture of the participants, which led to the bureaucratization of legal proceedings. Since both the doctrine and the activities of the republican magistrates lose their law-making significance, the developed ways of practical application of the principles of justice and good conscience to specific factual situations go out of circulation, giving way to thoughtless, although in many cases highly technical, adherence to the letter of the law, namely the imperial constitutions, whose pathetic style and numerous appeals to justice often masked the loss of this concept of the actual legal content[64].

Finally, the third tendency manifested itself fully and clearly in terms of the external sign-symbolic form of procedural actions, whose evolution is characterized by the phenomenon of the so-called 'semiotic weakening of a sign'. In a general sense, the semiotic weakening of a sign inherent in legal communication is characterized as follows: "legal institutions have apparently evolved from the complete

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[58] See: Baty Th. The Difference between Arbiter in the Roman Sense and Modern Arbitrators // University of Pennsylvania Law Review and American Law Register. 1917. Vol. 65. No. 8. P. 734.

[59] See: Kipp, T. History of Sources of Roman Law. SPb. : Ed. N. K. Martynova, 1908. Pp. 6–11; Saveliev, V. A. Justice (Aequitas) and Good Faith (Bona Fides) in Roman Law of the Classical Period // State and Law. 2014. No. 3. P. 67; Dozhdev, D. V. Ars boni et aequi in the definition of Celsus: the Right between Art and Science // Proceedings of IGPRAN. 2016. No. 4. Pp. 70–71.

[60] Fore more details, see: Metzger F. Roman Judges, Case Law and Principles of Procedure // Law and History Review. 2004. Vol. 22. No. 2. P. 273–275.

[61] See: Hohfeld, W. N. An Additional Note on the Conflict between Common Law and the Law of Justice // Basic Legal Concepts of Wesley N. Hofeld. SPb. : Alef-Press, 2016. Pp. 160–165.

[62] See: Leesen T. M. Gaius Meets Cicero: Law and Rhetoric in the School Controversies. Leiden ; Boston : M. Nijoff Publishers, 2010. P. 8 ff.

[63] Fore more details, see: Pringheim F. Bonum et aequum // Zeitschift der Savigny — Stiftung für Rechtsgeshichte. Romanistische Abteilung. 1932. Bd. LII. S. 97; Riccobono S. Lineamenti della storia delle fonti del diritto romano. Milano : Giuffre, 1949. Pp. 108–122; Gallo F. Sulla definizione celsina del diritto // Gallo F. Opuscula selecta. Padova : CEDAM, 1999. P. 586.

[64] See: Koptev, A. V. Codification of Theodosius II and Its Preconditions // Ancient Law. 1996. No. 1. P. 253.

identity of the action and the information model towards similarity, when, instead of the identity of the sign and the action, a certain ritual procedure is chosen that imitates the overcome value — action by force ...This understanding of the development of law corresponds to the general tendency of semiotic development — the desire for semiotically weakened action"[65].

It is hardly possible to agree with the final conclusion that the semiotic weakening of a sign in the legal sphere consisted in the transition from physical violence to judicial coercion. Any legal order, even the most undeveloped, has the mechanisms of judicial settlement of disputes. It seems that the semiotic consequences of the weakening of a sign should be sought in the nature of the sign communication itself, which has its own characteristics at different stages of legal evolution. As applied to Roman private law, this meant a transition from the performance of ritual acts at the stage of the legislative procedure to oral judgment used in the formulary procedure, and then to written forms, which became the main means of the extraordinary procedure. Thus, in the Roman civil proceedings, in the course of its evolution, there is a semiotic weakening of the sign of the materiality of the performance of procedural actions, which were transformed from judicial fights into oral judicial pleadings of the parties, and then into written proceedings.

The noted changes have especially deeply influenced the form of claims in Roman law, which seems far from accidental, given that any subjective law in the representation of Roman lawyers had a procedural form of a claim. Thus, according to the well-known definition of Celsius: "A claim is nothing more than the right of a person to demand in court what he is owed"[66]. Accordingly, at the stage of the legal process, a claim as a procedural form of a person's subjective right was a unity of verbal and nonverbal actions provided for by the ritual and enshrined in the letter of the law (first of all, the Law of the Twelve Tables). The formulary legal proceedings differed by the fact that in such proceedings the statement of claim acquired a form free from ritualism. The obligation of the claimant was to inform the defendant orally or in writing of the claim (*editio actionis*)[67], which served the basis for the magistrate to draw up an order for the judge to consider the case, guided by the factual circumstances and the legal grounds set out in the formula.

Only in the extraordinary procedure does the statement of claim acquire the modern form of a written document containing the claim of the claimant or the applicant (cf. item 1, article 131 of the Civil Procedure Code of the Russian Federation, item 1 of article 125 of the Arbitration Procedure Code of the Russian Federation, item 1 of article 125 of the Code of Administrative Judicial Procedure of the Russian Federation)[68]. Note that in modern conditions of digitalization of law and order, and the transition to electronic technologies in law enforcement and judicial activities, a statement of claim is being transformed into an electronic document[69]. The virtualization of statements of claim is a further development of the tendency to weaken the semiotic sign of the materiality of procedural actions, which was already observed in Roman private law.

The evolution of claim forms in the Roman civil practice reflects general trends in the historical dynamics of cultural communication tools, confirming the correctness of N.Ya.Marr's findings stating that,

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[65] Proskurin, S. G. Evolution of Law in the Light of Semiotics // Questions of Philology. 2010. No. 3. P. 108.

[66] Cels. 3 dig., D. 44.7.51: Nihil aliud est actio quam ius quod sibi debeatur, iudicio persequendi.

[67] Ulpian (Ulp. 4 ad ed., D. 2.13.1 pr. — 1) defines the notion *editio actionis* as follows: "Whoever wants to raise a claim must first declare it to the defendant; since the fairest seems to be the order in which the one intending to raise a claim is obliged to declare it to the defendant ... To inform the defendant about the filing of a claim means also to give the opportunity to make a copy or set out the claim in writing and give it or read it. Labeo says that the one who writes the name of his opponent on the board [with the praetor's orders] and states what he intends to sue about, or informs about what he wants to use is also to inform about raising a claim (Qua quisque actione agere volet, eam edere debet: nam aequissimus videtur eum qui acturus est edere actionem... Edere est etiam copiam describendi facere: vel libello compecti et dare: vel dictare. Eum quoque edere Labeo ait, qui producat adversarium suum ad album et demonstrat quod dictaturus est vel id dicendo, quo uti velit)". Thus, in order to bring a claim to the plaintiff, it was enough to indicate its subject, including in an oral statement, as indicated by the lexical forms of the verb *dico* present in the quoted passage. For more details of the procedure for filing a claim in the formulary procedure, see: Kaufmann H. Zur Geschichte des Aktionenrechtlichen Denkens // Juristen Zeitung. 1964. No. 15/16. Pp. 484–485.

[68] Civil Procedure Code of the Russian Federation // Collection of Legislative Acts of the Russian Federation. 2002. No. 46. Art. 4532; 2019. No. 49. Part 5. Art. 6965; Arbitration Procedure Code of the Russian Federation // Collection of Legislative Acts of the Russian Federation. 2002. No. 30. Art. 3012; 2019. No. 49. Part 5. Art. 6965; Code of Administrative Court Procedure // Collection of Legislative Acts of the Russian Federation. 2015. No. 10. Art. 1391; 2019. No.52. Part 1. Art. 7812.

[69] See: Order of Judicial Department at the Supreme Court of the Russian Federation dated 28 December 2016 No. 252 on *Approval of Procedure for Filing Documents in Arbitration Courts of the Russian Federation in Electronic Form, Including in the Form of an Electronic Document*. As revised on 20 February 2018 // Bulletin of Acts on Legal System . 2018. No. 4.

in a diachronic perspective, communication in general (and legal communication, in particular) is a stagewise change of semiosis types leading to the weakening of links between sign designata and their subject referents. So, oral verbal speech emerges based on the non-verbal sign speech and in addition to it, and is further supplemented by written speech. The transitions to each subsequent stage of communication are revolutionary in nature and result in systemic restructuring of all spheres of human thought and culture, including the legal sphere. The history of procedural law of Ancient Rome serves as a particular case and model of evolution of the latter.

6. Conclusion

This essay does not seek to give a detailed historical overview, considering all the changes that the Roman civil practice underwent in chronological order. Its mission is to formulate and empirically substantiate a hypothesis, whose essence consists of two assumptions. Firstly, the civil practice is the most important component of the legal order of Ancient Rome, reflecting the features of not only Roman law, but also other stages of similar legal order of antiquity.

Secondly, the tendencies in the development of the Roman civil practice shed light on the basic general historical laws of legal communication evolution.

Legal communication can be defined as the transfer of information about possible, proper and prohibited behavior, which, in combination with other information processes in society, constructs a social reality. The means of coding information, specifically inherent in law, are speech acts of a semiotic nature, whose content is formed by the rules of law, as well as subjective rights and obligations. It is reasonable to presume that the evolutionary dynamics of legal communication, which in a diachronic retrospective determines the evolution of legal order, is manifested both at the level of external sign expression and in content.

The evolution of sign communication considered on the basis of the Roman civil practice includes three stages. The first, the most ancient, stage is characterized by the predominance of oral speech inseparable from non-verbal (gesture) means of communication implemented in the form provided for by the ritual, failure to comply with which makes the transmitted information irrelevant. This inseparable unity of word and action, which determined all aspects of the rule of law, clearly manifested itself in the legal procedure, whose ritual nature excluded the need for the state to participate in the judicial procedure. This trend is, among other things, due to the lack of well-established and officially recognized documentary evidences of legally significant information. Finally, at the third stage, corresponding to the extraordinary procedure, the relevance of legal communication began to be determined by its written form, which led to the displacement of oral speech to the periphery of the communicative space.

The considered changes in the field of legal communication serve as an important indicator of the formation of the normative component of the rule of law. In the early stages of legal evolution, the underdevelopment of legal rules was due to the syncretic unity of religious, moral and legal imperatives, which received external expression and consolidation in ritual. Since the ritual completely and fully determined the behavior of individuals in all significant spheres of their activity, minimizing the manifestation of the autonomy of the will of individuals in behavioral acts, there was no need for the actual normative regulation of behavior, setting the universally significant limits of individual freedom. In these conditions, the ritual becomes the main regulator, including legal behavior.

As freedom grows, associated with the development of personal self-awareness and the transition from associative-figurative to conceptual thinking, the ritual loses its ability to exert a regulatory influence on legal behavior, due to which the subjective rights and obligations of participants in specific life situations, most often non-documented in writing, become the main regulators. At the same time, on the basis of a set of subjective rights that form the basis for the rule of law, its normative dimension begins to take shape, establishing a generally valid measure of the possible and proper behavior of the holders of subjective rights and obligations.

As noted earlier, the main sources of rule-making in the legal order of antiquity (including the legal order of Ancient Rome) were the activities of lawyers and judicial practice inextricably linked with it, the development of which was significantly influenced by the development of forms of written recording of law. At the same time, as legal communication develops, the rules of law are also consolidated in official texts, primarily in laws and other normative legal acts, which, over time, occupy a dominant position in the system of sources of law. The tendencies considered on the material of Roman private law in one way or another manifest themselves in all legal orders of antiquity, which makes it possible to classify them among the general laws of legal evolution.

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