METHOD OF RECEPTION OF ROMAN LAW WHEN ELABORATING LATVIA'S CIVIL LAW OF 1937 AND EU LAW

Método de recepción del Derecho romano en la elaboración de la 'Ley civil de Lituania' de 1937 y del Derecho de la UE

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Abstract: The report discusses the reception of the Roman law method, which was applied when elaborating Latvia's Civil Law of 1937. Academic research was performed in preparing the table of legal provisions in the section on Property Law (Rights of Things, IUS IN REM), thus demonstrating direct borrowings from Roman law. The process of establishment of the 1864 Baltic Local Civil Law Codes (Part III) is investigated, which provides the information on the usage of legal provisions of Roman law. It is established that the 1864 Baltic Local Civil Law Codes (Part III) are important today, because a majority of the 4636 sections recepted from Roman law were directly (with the method of direct borrowing) included in the 1937 Civil Law of Latvia. Taking into account the above-mentioned fact, the author of the report stresses the importance of the evaluation of Roman law today and its legal roots (as legal source) in Latvia's civil legislation and EU law.

PREVIOUS QUESTIONS

Latvian legal writing from 1918 to 1940 often mentions the positive role of Roman law, especially in the drafting of the 1937 Civil Law, where it was widely represented.

Today, the renewed Civil Law of the Republic of Latvia (1937) is well known in general practice among lawyers, but the presence of Roman law seems to have been forgotten.

This oversight has motivated me to devote this report to the methods of reception or adoption of Roman law (the means by which it was incorporated into the Civil Law of the Republic of Latvia of 1937) and to include, by illustration, a list of those sections of the Property law section directly taken from Roman law.

To do this we must take a historical digression and look, in depth, at the way the 1864 Compilation of Baltic Local Civil Codes (Part III), specifically, in the references of the sections, which provide information about the precise use of Roman law.

The 1864 Compilation of Baltic Local Civil Codes (Part III) is significant today in that a majority of its 4636 sections are recognized as having been directly adapted in the Civil Law of 1937 (a comparison published in 1937 shows precisely which sections of the 1864 Baltic Local Civil Codes are replaced by which sections of the 1937 Civil Law).

In the conclusion of this report I have touched upon the significance of Roman law in the context of a contemporary assessment of EU law.

«…A large number of laws often serves as an excuse for vice, and a state is better ruled if it has few laws that are strictly respected…»
[Rene Descartes, *A Discourse on Method*[1]].

CONDITIONS FOR SELECTION OF A METHOD

There were certain conditions that determined the choice of the authors of the compilation of the 1864 Baltic Local Civil Codes to use the method of direct borrowing (one which was thankless and restricted the freedom of the compilers).

I. F. G. BUNGE'S (1802-1897) ACADEMIC ORIENTATION

F. G. Bunge from the very beginning of his academic work followed the historical jurisprudence school with interest. At the end of the 1820s, a fami-

[1] Dekarts R. «Pārrunas par metodi». // «Zvaigzne». Rīga, 1978, 27. lpp.

liarization with F. K. Savigny's (1779-1862) ideas determined the future course of F. G. Bunge's academic work [2].

At first within the German legal tradition (in the 18th century, later also in other countries), a selective and extensively interpretative use of Roman legal sources got the designation *usus modernus pandectarum* (or, the contemporary use of Roman law).

Representatives of this view –*pandectists*– attempted on the basis of Roman law to create a closed and putatively complete system that would allow legal cases to be decided by logical evaluation [3].

The purpose of the historical method was not to admire Roman law or any other system. On the contrary, the historical method sought to look for the roots of any legal system, attempting to discover the organic principle by which one could discern that which endured from that which belonged only to history [4].

The pandectists sought to discover *the theoretical structure* that was indirectly expressed in the text of the *Corpus Iuris Civilis*, especially in its most significant part, the Digests [5]. Their aim was to connect the ancient legal forms to the social reality of that time, as well as to lessen the differences between academic jurisprudence *(iurisprudentia*) and practical jurisprudence *(iurisperitia).*

F. K. Savigny [6], an authority of the historical jurisprudence school, said that it was still possible to use concepts derived from the Digests to solve the legal problems of his day.

In order to describe F. G. Bunge's academic work that was most closely linked to the codification of the 1864 Baltic Local Civil Codes, one has to mention his writings, which can be grouped as follows:

1) works on legal history [7] that filled a complete lack of such a genre; the collection of Baltic legal sources and their publication;

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[2] *Нольде А. «Очерки по исторіи кодификаціи местныхъ гражданскихъ законовъ при гр. Сперанскомъ. Вып. II. Кодификація местнаго права Прибалтійскихъ губерній». // С.-Петербургъ, 1914, с. 400.*

[3] *Бартошек М. «Римское право: понятия,* термины, определения.» // Москва: Юридическая литература, 1989, с. 237.

[4] Kelly D. R. *The Human Measure: Social Thought in the Western Legal Tradition*. // Cambridge: the Harvard University Press, 1990, p. 246.

[5] Digesta (in Latin) «everything put in order», and ordering of Pandectae, (in Greek) everything taken together, the most important parts of the Corpus Iuris Civilis of 553 A. D.

[6] Stein P. *Roman Law in European History.* // Cambridge: the University Press, 1999, p. 119.

[7] In connection with the 1300th anniversary of the publication of the Digests, F. G. Bunge wrote the brochure «Das romische Recht in den deutschen Ostseeprovinzen Russlands» about the reception of Roman law in Baltic law, a matter that, until the 1833 publication of the work, had not been given adequate attention.

2) the most important academic accomplishment – works on local civil law in the Baltics, where F. G. Bunge appealed for a return to the historical meaning of sources, which had often been abandoned in practice.

F. G. Bunge wrote in his autobiography[8]: «When I start writing a literary work, I first gather all the sources that pertain to the specific subject, and write short summaries of each, which I number. Then I make a systematic summary and under each heading I write the numbers of the corresponding summary. Then I study the writing of germanicists[9] on the subject and only then, when I understand the subject fully, do I start writing a manuscript, returning of course, once again to the sources.»

Thanks to these methods, F. G. Bunge in his courses on civil law achieved a high concentration of materials, a density of exposition and an unusual abundance of references to primary sources. Therefore F. G. Bunge was able to put many phrases from his courses on civil law, with little editing, directly into the text of the compilation of the 1864 Baltic Local Civil Codes (Part III).

F. G. Bunge paid great attention to determining the content of binding local law in the Baltic region, devoting much time to the observation of practice and to historical digressions. A precise explanation of legal norms was one of his significant accomplishments.

F. G. Bunge avoided risky constructs of juridical theory, where the element of personal interpretation always took on a central role, and on issues where his personal viewpoint differed from that accepted in practice, the academic ascribed less importance to his own view.

F. G. Bunge recognized that his knowledge of court practice and customs, which had changed the content of existing sources of law, was insufficient. He therefore asked for the advice and sought out the collaboration of those practicing lawyers and judges involved in relevant legal proceedings in the project to compile these laws.

When starting his work, F. G. Bunge drafted two plans of codification:

1) the first reflected an intent to prepare separate compilations of the law for each territory and one for all of them, codifying general principles of law;

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[8] *Нольде А. «Очерки по исторіи кодификаціи местныхъ гражданскихъ законовъ при гр. Сперанскомъ. Вып. II. Кодификація местнаго права Прибалтійскихъ губерній» //* С. Петербургъ, 1914, с. 408.

[9] Stein P. *Roman Law in European History***. //** Cambridge: the University Press, 1999, p. 118.

[In the 1840s, there were two German schools of history: the Romanists and the Germanists. In the view of the Germanists, Roman law was foreign to German customary law. The influence of Roman law was seen as a virus infecting German customary law and hindering its development.

The Romanists, by contrast (headed by F. K. Savigny), sought the universal principles of jurisprudence embodied in Roman law and to cleanse Roman law of what they considered the decadent influence of other nations' (including the Germans) customary law].

2) the other was the codification in a single collection of the law in force in various territories.

The official choice was made according to the second codification alternative.

II. STRUCTURA NOVA VETERUM LEGUM [10]

In working on a new project for the compilation of laws, the authors usually have considerable leeway to be creative. They do not have to take the existing law into consideration any more than they think is necessary, and any well-argued innovations are accepted.

A different situation arose with the planned codification in the Baltic *gubernya*. The method of codification was clear to F. G. Bunge: the codifiers had not been given the task of assembling a new compilation of civil law, but, rather, the collection and unification [11] of existing laws without any changes whatsoever.

In this regard, his duties differed from that which was possible for any other author of a code. The compilation of the 1864 Baltic Local Civil Codes only in form had to conform to the presentation of the new (existing) law (*structura nova veterum legum*), and the authors of the compilation made every effort to make a complete and precise record of the existing law.

One can suppose that F. G. Bunge was not given any special instructions for carrying out his tasks, not even regarding the main issue –the choice of sources of law and the extent to which they were used– and it was left to him according to his own best judgment.

The sources used by F. G. Bunge for the project of the text of the compilation of the 1864 Local Civil Codes (Part III) can be divided into three categories:

1) academic research on Roman law [12], the Corpus Iuris Civilis, and the civil codes of Prussia and Saxony, from which mainly versions of Roman law are usually directly cited;

2) F. G. Bunge's works on local civil law;

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[10] In English - the new form of the old (in this case, existing) law.

[11] Kalniņš V. «Latvijas PSR valsts un tiesību vēsture. I d.» // «Zvaigzne». Rīga, 1972, 305. lpp.

[12] Arndts, K. A. Von Vangerow, Ferd. Walter, C. Fr. Ferd. Sintenis, Ch. Fr. Gluck, C. F. Muhlenbruch, F. Mackeldey, Fr. C. Savigny, etc.

3) the works of F. G. Bunge's predecessors who started the codification of Baltic law, i.e. the 1839 codification project (later compared to the 1862 codification project).

One has to keep in mind the division of Baltic law into the two basic elements that comprise it –local and Roman law. This is how the primary sources of the articles of the compilation text were grouped: the Roman from academic studies, the local– primarily from F. G. Bunge's works and the 1839 draft (whose chapters he also used to complement the Roman law parts of the text).

III. THE USE OF ROMAN LAW

General law or pandectic law determined the guiding principles of local Baltic law [13], as in the feudal states of Germany. The reception of Roman law as a condition of the legal system was only sanctioned by the changing political authorities in the Baltic provinces, but did not touch the usage, extent or content of the recepted norms, which were not put in order until 1864.

Difficulty arose in determining the precise division between local legal institutions and Roman law, in other words, determining the boundaries of the reception of Roman law. The source of Roman law, formally, remained Justinian's Corpus Iuris Civilis and later versions in canon law, German imperial law and in the form of other elements of general law, but in practical terms, the substance of the law was the form into which it had been reworked by the pandectists. Cases were heard in the Baltic area with formal reference to the *Corpus Iuris Civilis*, that is, to the original sources of Roman law, to the extent that they were not modified by court practice and customs.

Even if a dispute was resolved by formally citing fragments of the Roman law source, in practice and in essence, academic views and interpretation about the particular fragment cited were more important. Therefore, the pandecticist legal monographs, textbooks and handbooks seen as authoritative –were widely used in the Baltic region.

In the courts, the parties used arguments with reference to the works of Roman jurists from the *Corpus Iuris Civilis*, but it was no secret from where the parties got their references, therefore judges, in examining the claims of the sides, tried to check them in the works of known scholars.

[13] Kalniņš V. «Romiešu tiesību nozīme mūsu laikos». // «Jurists». 1939, Nr.7/8.

In drafting the compilation of the 1864 Baltic Local Civil Codes, the authors could have, themselves, borrowed from the scholarly works of the popular pandectists in the form of independent sections, but their doubts that such an approach would divert them from the tasks of compiling what existed were a deterrent. Theses would be something new, and not suitable in all cases to what already existed. Judges, too, in applying Roman law, reckoned *a priori* with the views of the authorities and known, generally accepted writings.

In examining the pandecticists' legal theories, the compilers carefully made sure that the pandecticists' version of the law had not been altered or switched for local customs, local court practice or local legal writings. In cases where alterations were found, there are, in the 1864 Baltic Local Civil Codes, Part III, compilation, retreats from the original pandecticist doctrine.

Scholars of Roman law made a significant contribution to the awareness of local law.

A scholar from the University of Tartu, O. Meikov, contributed an extensive evaluation of the inclusion of Roman law in the project.

Professor Madaj took an especially original approach to the study of Roman law in the Baltic area. He analyzed the extent of the reception of Roman law in the most significant judicial institutions, using a comparison of local and Roman law, as well as making forecasts concerning the influence of the reception of Roman law on the development of local law. Unfortunately, the professor only sketched out the problem, but was unable to provide any results. No one has undertaken a continuation of his work, possibly because in the eyes of local lawyers, the main value of Roman law lies in its comprehensiveness, «completeness» and thus no deeper study was considered needed.

Therefore, the compilation of the 1864 Baltic Local Civil Codes succeeded in including a substantial part of the works of Roman legal scholars and their research that were incorporated in the aforementioned general or pandecticist law.

The references to the compilation of the 1864 Baltic Local Civil Codes show that at least 2882 of 4600 sections were directly or indirectly taken from Roman law [14].

IV. A DESCRIPTION OF THE METHOD

1. The compilers of the 1864 compilation of the Baltic Local Civil Codes (Part III) took some fragments of the *Corpus Iuris Civilis,* the pandectist

[14] *Ibid,* p. 155.

Roman law textbooks and literature and put them in the compilation with no changes whatsoever.

[The direct literal transfer of phrases from the studies of Roman law and textbooks to the compilation of the 1864 Baltic Local Civil Codes (Part III) was rather rare. The necessity, therefore, arose to drop the first words of sentences or to add them, if one and the same phrase occurred in several sections of the compilation.

Literalness was also not followed when it was necessary to define terms or for considerations of style.

If the aforementioned editing somewhat changed the appearance of the phrase and its linguistic polish, then its legal sense and meaning remained unchanged.]

2. The minor editorial corrections of the scholarly works in the compilation of the 1864 Baltic Local Civil Codes proved, in the course of preparing the compilation, to be insufficient. The scholarly writings had to be shortened: to exclude explanations, illustrations of theses, to simplify the formulation of sections, striking individual words and omitting paraphrases.

[The extent and gradation of such changes were different in each particular case. Often the external formulation (though not content) of the selected fragment had to be changed, because in the scholarly work it was found in a completely different stylistic and logical connection than required by the editors of the compilation of the 1864 Baltic Local Civil Codes.

The changes in some places were so significant that the source of the fragment in the text of the 1864 Baltic Local Civil Codes could only be unerringly determined by key words expressing the essence of the legal provision or by individual expressions characteristic of the style of the phrase].

3. The codifiers of the 1864 Baltic Local Civil Codes affirmed their relative independence by significantly complementing and explaining the texts of their selected authors, without shortening them.

[The essence of the complementing was not restricted to purely editorial insertions, mentioned earlier, but, rather, the explanation or complementing of the abstract (general) formulated principles in the text with examples from sources of Roman law or casuistic illustrations from the Digests.

As a consequence, scholarly theses were complemented with words or expressions, which essentially made significant changes in the scope of the provision/norm or incorporated some other feature in its actual composition.]

4. In those cases where the codifiers did not find, in their view, a suitable primary source, they did not strive to edit the sections themselves (which would have been the simplest solution), but tried to assemble the text of the

Civil Laws from fragments of the works of several authors, which were then unified.

[This approach was used rarely. Sections composed of various fragments are found where the original 1864 Baltic Local Civil Codes draft text was improved on the advice of critics, most often by changing the fragments from older Roman law textbooks with scholarly findings from the latest literature on Roman law.

The critics of the draft compilation of the 1864 Baltic Local Civil Codes also used this method to create new sections in the draft.]

In concluding an overview of the method of direct borrowing in the formation of the 1864 Baltic Local Civil Codes, it is possible to *conclude*:

1) in all possible cases, the codifiers treated the texts of scholarly works included in the compilation with great piety (even when the author's ideas could have been expressed more simply by ignoring its wording);

2) the systematic correction of borrowed texts in a predetermined sequence in the end result sometimes changed the character of the legal institution;

3) by examining the compilation of the 1864 Baltic Local Civil Codes as a whole, one becomes convinced that the compilers made a significant effort to gather from different sources not only editorially consistent fragments, but also to form a unified system in terms of theoretical and logical positions;

4) work on the compilation of the 1864 Baltic Local Civil Codes was complicated by the overlay of different legal systems (for example, the unification of Roman and Germanic legal systems);

5) one must admit that there was very limited leeway for innovation by the compilers in terms of Roman legal doctrine. In fact, theoretically, there was none, although in some parts of the compilation one sees the desire of the compilers to synthesize pandectic theory with the realities of their time;

6) by choosing the aforementioned method of presenting the text of the compilation, they were following a known and familiar example – the Digests of Justinian. In effect, they had no other choice: once the new interpreters of Roman law in the Baltic region (the pandecticists) overlaid the primary sources of Roman law with their explanations, and their works gained the status of positive norms (that is, real sources of law), then for the codification of this norms the method of compiling Digests proved useful.

The direct-borrowing method only affirmed that the authors of the compilation of the 1864 Baltic Local Civil Codes worked like the compilers of the

Digests: where possible, taking the legal texts literally, editing out the outdated and excessive, or replacing it with new text, that is, creating interpolations. [15]

In other words, the description of the work of the compilers of the Digests (with some small changes) could be used to characterize the methods of the authors of the Baltic compilation of the 1864 Local Civil Codes.

V. THE CIVIL LAW OF LATVIA OF 1937

Work on a new civil law common to all of Latvia started in 1920 with a commission led by Professor Vladimirs Bukovskis.

The commission initially thought that a unified Civil Law for Latvia could be created by simply reworking Part III of the Baltic Provincial Laws and the 1864 Local Civil Codes, subjecting also the region of Latgale to this jurisdiction instead of Volume X of the Russian Code of Laws.

In this manner, professor F. G. Bunge's compiled code, published in 1864, would become the Civil Law for all of Latvia.

The idea arose in 1935 to at least formally create a completely new Latvian Civil Law, because it was clear that, from a legal standpoint, it was not possible to create a purely Latvian collection of laws that reflected the nation's basic legal principles and customs.

In creating the new Civil Law, two basic principles were respected:

1) that which had withstood the test of time was retained;
2) in bringing in innovations required by the times, it was considered whether they were appropriate for Latvia's circumstances and in general issues, which in Latvia had to be decided as in any other nation; examples were taken from the best of the time in Europe – the Swiss and German Civil Codes.

A large part of Part III of the compilation of the 1864 Local Civil Codes was directly borrowed by the 1937 Civil Law, which is illustrated by an index of comparative sections appended to the 1937 Civil Law of Latvia.

In Part III of F. G. Bunge's compilation of the 1864 Local Civil Codes, there are references to the legal sources used for each section, which provide an excellent possibility for determining in which sections of the compilation of 1864 Local Civil Codes Roman law is present.

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[15] *Interpolare* [Latin] – to alter, change, in historical scholarship; the term is used to describe a word or phrase later inserted into a text that does not belong to the author.

[Regarding the Digests, this term has a narrower and special meaning: it is used for complements, changes or omissions in the legal texts of the classical period made by the commission putting together the Digests.]

The authors of the compilation of the 1864 Local Civil Codes used the direct borrowing method of the Digests, with a direct transfer of sections from Part III of the compilation of the Local 1864 Civil Codes to the 1937 Civil Law of Latvia, to the latter in entire sections, where Roman law was used (though without references to sources of law), also using the direct borrowing method.

The following table contains an index of comparative sections that gives an overview of which parts of the 1864 Baltic Local Civil Codes sections on Property Law were replaced by the 1937 Civil Law section on Property Law. This table only mentions those sections of the 1864 Baltic Local Civil Codes that are directly borrowed from Roman law.

Property Law. IUS IN REM

Roman law in the 1864 compilation of Local Civil Codes (Part III) sections 529 -1690	Roman law in the 1937 Civil Law sections 841-1400
529	841
532, 533	844
534	845
537, 538	846
547	850
548	851
553	855
574, 575	863
576	864
577	865
758	866
583	868
584	869
637	879
640	882
641	883
642	884
643	885
645	887
646	888
648	890
649	891
659	896

Roman law in the 1864 compilation of Local Civil Codes (Part III) sections 529 -1690	Roman law in the 1937 Civil Law sections 841-1400
659	896
661	898
662	899
663, 664	900
666, 667	901
668	902
669	903
670	904
671	905
672	906
673	907
680	910
690	919
707	927
708	928
714	930
715	931
716	932
717, 718, 719	933
723	935
744, 745	952
746, 747	953
752	956
756	959
760, 761	961
767	965
769	966
772	969
779	974
780	975
782	976
801, 802	988
803	989
815, 816	996
817	997
821	1000

Roman law in the 1864 compilation of Local Civil Codes (Part III) sections 529 -1690	Roman law in the 1937 Civil Law sections 841-1400
823	1001
826	1003
827	1004
829	1006
834, 835	1010
836	1011
838	1012
839, 840, 841	1013
872	1037
873	1038
874	1039
875	1040
877	1042
878	1043
897, 898	1044
899	1045
901, 902	1046
904	1048
905	1049
906	1050
907	1051
908	1052
910	1054
912	1055
913	1056
914	1057
915	1058
916	1059
917	1060
919	1061
921	1063
922	1064
927	1067
929, 930, 931	1068
934	1069
935, 936	1070

Roman law in the 1864 compilation of Local Civil Codes (Part III) sections 529 -1690	Roman law in the 1937 Civil Law sections 841-1400
938	1072
941	1075
954, 955	1077
957	1079
958	1080
990	1089
996	1093
997, 998	1094
999, 1000	1095
1002	1096
1007, 1008	1098
1093	1133
1094	1134
1097	1135
1098	1136
1099	1137
1100	1138
1101	1139
1102	1140
1104	1142
1107	1145
1108	1146
1109	1147
1110	1148
1123	1159
1147	1163
1148	1164
1183	1174
1184	1175
1185	1176
1186	1177
1187	1178
1188	1179
1189	1180
1190	1181
1191	1182

Roman law in the 1864 compilation of Local Civil Codes (Part III) sections 529 -1690	Roman law in the 1937 Civil Law sections 841-1400
1199	1190
1200	1191
1208	1195
1211	1198
1212	1199
1213, 1214	1200
1215, 1216	1201
1217	1201
1218	1203
1219	1204
1221	1206
1228	1211
1230	1212
1232	1214
1233	1215
1235	1217
1237	1218
1241	1222
1242	1223
1243	1224
1247	1227
1254	1232
1267	1238
1269	1240
1273	1242
1276	1243
1278	1245
1279	1246
1280	1247
1281	1248
1283	1249
1285	1250
1289	1253
1290	1254
1291	1255
1293	1257

Roman law in the 1864 compilation of Local Civil Codes (Part III) sections 529 -1690	Roman law in the 1937 Civil Law sections 841-1400
1295	1258
1296	1259
1337	1281
1343	1286
1344	1287
1345	1288
1353, 1354, 1355	1292
1356	1293
1357	1294
1358	1295
1358 note 1	1296
1358 note 2	1297
1359	1298
1360	1299
1372	1302
1385	1305
1386, 1387	1306
1403	1735
1404	1736
1412	1307
1415	1310
1416	1311
1417, 1418, 1419	1312
1424	1313, 1359
1425	1359
1433	1360
1440	1318
1456	1330
1458	1331
1459	1332
1462	1334
1466	1336
1467	1338
1487	1353
1495	1362
1499, 1500	1366

VI. CONCLUSION

The restoration of the State of the Republic of Latvia (from the occupation of the USSR) began with the Declaration «On the Restoration of the Independence of the Republic of Latvia», adopted on May 04, 1990 and the Constitutional Law «On the State Status of the Republic of Latvia», adopted on August 21, 1991, followed by international recognition of the restoration of the Republic of Latvia, founded on November 18, 1918.

The legal force of the Latvian Civil Code of 1937 was renewed *de jure* by the Law of 14 January 1992 «On the Civil Law of the Republic of Latvia of 1937», while stipulating that the time and procedure for the entry into force of certain parts of the Civil Law will be determined by special laws. By September 1, 1993, the entire force of the 1937 Latvian Civil Law was restored *de facto* to the full extent with the necessary amendments urgently required by the consequences of the violently enforced socialist legal system of 50 years of occupation (denationalization of Soviet nationalized property, land reform, etc.).

The return of Latvia and its rapid incorporation into the Western or Romanesque-Germanic family of law after the traumatic half-century of Soviet, Russified, primitive, demoralized distortion was fostered by the high degree of perfection in which the Latvian Civil Code of 1937 had been developed.

I will make little mistake if I say that by high degree of perfection here I mean the great amount of Roman law adopted in the Latvian Civil Code of 1937 (especially in the Property Law and Obligations Law sections, around 70%-80% of the entire Latvian Civil Law), which demonstrated that the Latvian legal system as part of the Western or Roman-Germanic family of law has the same historical origin derived from common terminology, methods, concepts, principles and values.

The distinctive features of each national legal system within the context of Western law are emphasized in relation to the history of the nation in question.

There is no doubt that the historical influence of Roman law was largely dependent on the predominant position of the Roman Empire in the ancient world and the prestige of the Eternal City over many centuries. [16] They are reflected both in canonical and commercial law, basically forming a Western or Roman-Germanic system of law.

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[16] YNTEMA E. Hessel «Roman Law and Its Influence on Western Civilization». // Cornell Law Quarterly, vol. XXXV, 1949, p. 77.

Occasionally, modern Roman legal classics compare Roman legal texts with the concept of a legal supermarket, where lawyers of different ages have found everything they need for their time [17].

The unique nature of Roman law may be explained by:

1) the considerable amount of time accumulating experience. For centuries, Roman law been reproduced, recreated, sifted in practice and selected until they have become international or peoples' rights;

2) the cosmopolitan vision of the world among Roman lawyers. They were the first to begin to study the problems of justice in detail, and the experience of the cosmopolitan empire gave their work originality and freshness, and freedom from theoretical prejudice and national limitations;

3) Roman law up to the 18th century (when the constitutional and administrative branches of law were separated) was synonymous with jurisprudence. If we look at the formal characteristics of jurisprudence, of Roman origin were its: terminology; conceptual structure; the very idea, form and technique of codification; the composition of factual samples; and the legislative style in general [18];

4) Roman law continues to be universal European law - *ius commune*, to which the second wave of national codification in the 20th century (especially in Germany and Switzerland) has given the law its form. Roman law as *ius commune*, or European general law, deserves special attention today with regard to European Union legislation and the harmonization of national law under European Union law [19].

[17] Stein P. *Roman Law in European History.* // Cambridge: the University Press, 1999, p. 3.

[18] Pringsheim F. «The Character of Justian's Legislation» // Law Quarterly Review, vol. LVI (1940), p. 231.

[19] Хаусманингер Г. «О современном значении римского права».// Советское государство и право. 1991, № 5, с. 98.