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LAW INSTITUTIONS IN ROMAN DACIA

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Abstract: *From the symbiosis of the indigenous-Dacia system of law and the Roman one, with its divisions "ius civilae","ius naturae" and "ius gentium" new institutions became crystallized, specific to both public and private law, which, along with other factors, have defined the important changes undergone by the structure of society in the Carpathian - Danube - Pontic space during the Roman empire occupation. By valorizing the practical sense of the Romans through principles, institutions and legal constructions with a high degree of abstraction and perfection, but also by integrating elements of the legal thinking of the indigenous Geto-Dacians expressed through regulations and local habits, a new system of law was created, one which was influenced by the specific factors of law, thus defining new institutions and regulations of public and private law.*

Key words: *moral person, college, universitatis personarum, selling contract, empti instrumentum probationis*

Dacia's transformation into a Roman province between 105 e.n. and 275 e.n. would bring about significant changes in regard to the legal system of the Geto-Dacians, who under the influence of "*ius civilae*" and "*ius gentium*" adopted some consecrated legal institutions which had resulted from their evolution of the legislative techniques from the classical age.

The Roman system of law, along with the legal regulations regarding people, would also regulate the so-called "moral people", who - like normal people - would hold rights and obligations and would have legal capacities. As motivation for this endeavor, the Romans considered valorizing their practical spirit, thus concluding that they must regulate "certain legal institutions in order to achieve higher goals than those of a community or a small group of people" (Cătuneanu, 1926, p.146). Their participation in the legal life of the community was influenced by the very structure of their being, as it was limited to patrimonial acts.

The essence of the moral person, as a legal construction, would not be explained by the Roman legal advisers of the classical age. However, they understood that such a similarity between normal people and moral people can be achieved from a legal point of view, as this similarity pertains to the person - *personae vice fungitur*.

The Romans made a clear distinction between moral people of public law - mainly the Roman state - the republic "*populus romanus*" - which had a distinctive patrimony formed of "*ager publicus*" and entered contract through its magistrates; subject of public law were also the colonies, the counties and the villages (*pagi*), moral subject of private law with or without personal involvement - "*universitates personarum*", or *corpora-*

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collegiums - or those based on a patrimony with a durable destination forming the so-called "*universitas rerum*" or "*piae causae*" (Girard, 1931, p.235). It is certain that, regardless of the name given to moral people, their existence would be distinctive and independent from the people which were part of it.

Moral people known in Dacia during this time were urban communities, such as "colonies" and "counties; subjects of public law were "*collegiums*" formed as a result of special laws regulating this mater, namely "*Lex Iulia de collegiis*". This law stated that the freely consented association between at least three people - *tres faciunt collegium* - would create a new subject of law with legal capacity, thus being different from the "societas", an association created based on a simple contract which would form an association without legal capacity.

Creating collegiums as subjects of private law would require previous consent from the Roman senate and, during a subsequent time, it needed favorable notice from the Roman emperor, as a result of the increase of his role in society. In this context, the quality of subject of law of such an association would not be granted provided there was an agreement from a person, regardless of the form it had, but through notice from the central institution of state power.

Until the age of Caesar, such a person would be formed by the freely expressed consent of its members, based on the statute of the collegium; after that, the principle of transfer was introduced and special or general authorization from the Senate and later on, from the emperor, would be needed; the reason for these measures was the fact that during the final times of the republic, such associations would be formed in order to pursue political interest.

However, there were exceptions, such as those which pursued religious purposes. Since the date when the authorization was provided, the collegiums would acquire legal capacity, thus being able to enter any contractual relations and holding all the rights and obligations resulted from legal acts seen "*lato sensu*".

Thus, a fiction was created, one according to which a moral association was a copy of reality and not a material reality (Buffelan, 2009, p.333).

Thus, the conceptual basis for any person was created, based on which some called this an abstraction, a „*fictio iuris*" which allowed it to participate in the civil circuit. Nowadays, it is unanimously acknowledged by specialty doctrine that a legal person is a judicial entity and not an organic (material) one (Piperea, 2012, p.88).

In discussing moral people - as legal companies had been designated in the classical age - the well-known Roman legal adviser Gaius stated that, from a patrimonial point of view, moral people could own distinctive goods from those of its members and had the right to sell those goods (Academy, 1985, p.104).

However, moral people had common legal will, distinctive of those of the members which formed it and could conclude acts which resulted in private rights and obligations (Ulpian, D3,4,7,1). It could stand trial as a plaintiff or defendant, by being represented by an "actor" or "syndicus".

Considering the significance of forming moral people with a religious purpose, especially after Christianity appeared, these people were acknowledged the right to receive legates and the capacity to inherit (Paul, D43,p.5, p.20).

From the interpretation of historical sources we can see there were a variety of situations which led to the formation of these institutions in Roman Dacia.

Thus, we can identify that based on the association of several people, the common trait was that they all had the same skill, or the same ethnicity, the same religion, as those associations had a philanthropic nature by mutually aiding its members.

Thus, they could pursue a patrimonial purpose or a spiritual one. An important role was played by "collegiums", in which the members, through their own capital, formed a distinctive patrimony and aimed to achieve the purpose which they had set in the forming papers of the association, as provided by the central authorities of the Roman state (first the Senate, than the emperor).

The provisions regarding the organization and functioning of these subjects of law would be regulated by „*Lex Iulia de collegiis*" which stated that in order to from a collegium, the founding members would have to freely consent to do so and the leadership of the newly formed person would be provided by a council of decurions which appointed a magistrate, similar to the present time president and a co magistrate (the vice president of the collegium). The state required the president to deposit a certain amount of money as a guarantee, in order to ensure a good administration of the college's funds.

The hierarchy stated that they were followed by decurions "principales" and the regular members who would all be a part of the ordinary meetings called according to the statute and the extraordinary ones, called whenever necessary.

In order for all these to function correctly, the patrimony of this association contained buildings where the headquarters were located and, in addition to their name, they also had distinctive markings and flags.

Their statute established the causes which led to the ceasing of their activity; among these we can mention: if their purpose was achieved or it became (physically or legally) impossible to achieve that goal, when their activity was opposed to the slave related state order, as a result of the decision of its founding members or if the last member perished (*sed universitas ad unum redit: magis admittitur posse eum convenire et conveniri: cum jus omnium in unum reciderit et stet nomen universitatis)* (Digestele, 3,4,7). *Universitatis personarum*, or the corporations, in case they were dissolved, stated in their founding papers that their patrimony would be liquidated by division among its members.

If the founding papers made no mention of this situation, the patrimony would have been equally divided between the members of the collegiums. If there were no living members, after all debts had been paid, the patrimony of the collegium would be transferred to the state as "*bonum vacans*".

Among the collegiums which functioned in Roman Dacia, the discovered inscriptions mentioned - the Collegium of Centenaries, namely the tailors and sewers in Apulum, the Collegium of Dendrophares in the same city, the Collegium of blacksmiths of Sarmisegetusa, Apulum and Drobeta, the Collegium of ship makers of Apulum and Axiopolis, the Collegium of merchants of Apulum, the Collegium of the gold workers of Rosia Montana (Giurăscu, 1975, p.122).

There were organized collegiums, which were founded taking into account the origin of the members - such as the Collegium of Asians, with members from Asia, functioning in Napoca; the Collegium of the Galates – with members coming from the farthest part of Asia, functioning in Germisara and Napoca; the Collegium of those coming from the city of Prasmona of Dalmatia, functioning in Apulum. There were also collegiums who adored the same divinity - as the Collegium of Isida, with associates who worshiped the

Egyptian goddess Isis in Potaisa; the Collegium of Jupiter Cernenus, with adorers of this god, functioning in Alburnus Maior.

At the same time, all the colonies and counties from Roman Dacia were collegiums of those who worshiped the emperor.

The existence of these collegiums is mentioned in the epigraph texts discovered in Transylvania between 1786-1855 in Rosia Montana (Alburnus Maior), known as the triptychs or the wax tablets (Ciulei, 1983, p.21).

One of these tablets notes a case of dissolution of mortuary collegiums, also providing important information about how the collegium was organized and functioning. The tablet refers to the note, dated February, 9th, 167 e.n., issued by the president of the Collegium of Jupiter Cernenus, namely Artidimidorus Apolloni and his two quaestors Valerius Niconis şi Offas Mentofilli, by which they present the following situation - of the initial 54 members which existed in the collegium at the beginning, only 17 are left; Julius Juli, the co-magistrate was never present after having been elected; the president was given back the amount of money he presented as guarantee of the lawful administration of the association's funds (*et cautionem suam in quo eius cauerat, recipisset*).

It is also shown that there were no more meetings of the members of these collegiums, that members did not provide any amounts of money to the patrimony of these collegiums for the funerals, as established in the founding papers. As a result, the heirs did not receive the help they were entitled to.

This is no longer possible, as the association no longer exists. By summarizing the above mentioned provisions, the dissolution of this moral person occurred as a result of the decrease of the number of founding members who were needed in order for the collegium to function properly and as a result of the impossibility of achieving the purpose of the association, as established in the founding papers.

Another equally important document was that referring to the organization of banquets in celebration of certain events, such as the 1st of May. Thus, we are provided with information regarding the collection of money for this matter, as well as the expenses of the collegiums. By analyzing this document we can see the association had an exact situation of all the money which had been paid to and by the association, thus ensuring the financial administration of the association. The document states that the amounts of money would be charged during the month of April by stating their source. All this money would be spent the day before the banquet, according to the mutual decision of the members. All these decisions were made with a majority of votes.

Within the Roman Empire, the attitude of the state towards the functioning of these collegiums would be different. Thus, in the old age, "the Law of the twelve tablets" stated the full freedom of the right to association. However, in the classical cage, during the reign of Augustus, the possibility of private law associations would be limited as a result of a restrictive law, namely "*Lex Julia de Collegiis*". Based on political reasons, this law stated that any association required authorization from the Senate or, later on, from the emperor, as his authority increased within the Roman state, whose political regime was the empire.

By analyzing the content of this law, we can see that authorization was provided only after thorough checks (founding papers, request for authorization). The essential condition was that of an existing patrimony (Hanga, 1978, p.138). The concept of legal personality acquired by the collective subject of law would be perfected from both a

theoretical and practical point of view. Thus, we observe that, during the 2nd century, the legal adviser Cervidius Scaevola, when referencing this subject, acknowledged a common will for all private law subjects, distinctive of that of the members of the association. Thus, the minority had to follow the opinion of the majority.

Also, he underlined the fact that, unlike people, associations, even if some of their members had disappeared, could continue their activity, thus emphasizing the idea of the collective subject of law with all its specificities. As a specific trait of Roman Dacia, under the influence of „*ius gentium*" and as a result of the interference of this system with the indigenous Geto-Dacian system of law, some derogations were made from the regulations of "*ius civilae*", a system of law which was extremely rigid and formal. Although the generally accepted idea was that of the unification of the association, the concept of plurality always existed, meaning several people who formed an association.

As a particularity, a series of collegiums from Roman Dacia would be organized in "decks" and the inscriptions which were discovered in other provinces of the Roman Empire mentioned a division in centuriae (Peretz, 1926, p.272). Under these conditions, the members of these collegiums would appoint a person who would bear the flag, called "*uexillifer*".

All these elements lead to the reasoning according to which a good part of these collegiums would fulfill duties in regard to ensuring the stability of the Dacian- Roman province. It also represented an important factor of spreading the Roman civilization and culture in the area, especially in regard to implementing the law and the rightful order of the Roman state, thus becoming an important element with the help of which the indigenous Geto-Dacian population would be Romanized.

The Roman domination in Roman Dacia would determine the introduction of the Roman system of law, which regulated legal relations along with unwritten local law to the extent to which it didn't come into conflict with the provisions of "*ius civilae*".

This trait is also found in the matter of obligations, especially in regard to the sale contract who was significantly changed, given that, during this time, the transfer was made from natural economy, when the exchange of merchandize was rather scarce, to the exchange economy, resulting in the intensification of all commercial operations. In this context, all obligations and especially contractual ones were governed by laws which belonged to civil law "*ius civilae*", "*ius gentium*", and local customs, a specific which left a mark on the form, the elements and the effects of the sale contract - "empti".We can see that a series of principles, much like the regulations of Roman law would be changed, as they derived from their original purpose, thus acquiring new functions and purposes.

This phenomenon is explained by the fact that Roman law regulations, in close connection with the production and circulation of merchandise, although integrated by the indigenous under different aspects, could not completely replace the old legal customs of the Geto-Dacians or the legal regulations of pilgrims with whom the Romans entered into sale contracts.

Thus, it is noticed that the local legal system would influence the enforcement of "*ius civilae*" especially in regard to the derogatory regulations from the principle of formalism regarding this legal operations, as well as by the introduction and generalization of the principle of the good faith of the parties of a sale contract.

Enforcing Roman law in the Dacia province is illustrated especially in the matter of obligations of the sale contract as regulated in the wax tablets, also known as the triptychs of Transylvania. The triptychs or the wax tablets of Transylvania are a part of the letters

which were discovered near the gold mines in Alburnus Maior (Rosia Montana), in vicus pirostorum, between 1786 and 1855 where they seem to have been hidden for fear of the Marcoman attacks (167 e.n.); each tablet was formed of three little fir tablets, tied together. The outside of the first and the third tablet were not written, as the documentary text was written twice inside the tablets as follows – the first text (*scriptura interior*) started on the second page and ended on the third page; the fourth page was divided in two by using the seals of witnesses and sometimes the parties; on the left side of the seals, the content of the paper was written again, continuing on the fifth page (*scriptura exterior*); on the right side, the name of the parties were written and those of the witnesses.

A line between the seals was used to bind together the first two tablets, so these two couldn't be untied. The person who wanted to read the content would have to read the text written on pages four and five. In case there was any litigation, the seals were broken, as well as the line between the seals, thus allowing for the content to be read on pages two and three, often used as proof. For further security, a copy of these documents was often filed in the public archive. 25 such tablets were discovered, of which 14 are partly or completely readable. 4 of these are in regard to sale contracts, which prove the important significance of the sale contract within the civil circuit of that time.

The opinion expressed by specialty doctrine belonging to those who have studied both the content and the form of these contracts as found in the 4 triptychs, is that they only served as proof - "*instrumentum probationis*", which was the exact purpose for which they had been drafted. By researching the form of documents, the elements and the effects they had, as well as the legal condition of the parties, we came to the conclusion that they were not in complete agreement with the requirements of civil Roman law, as they have a specific appearance, likely to provide them with a unique identity, which made most experts state that these are true documents of Dacian – Roman origin .

The four acts by which property rights were transferred referred to the sale of slaves or parts of a house. This is an important clue in regard to the frequency of such acts, a fact which was acknowledged by other sources, such as the archaeological or literary ones.

By analyzing them from a chronological perspective, taking into account the date of the will agreement between the seller and the buyer, the tablets provide the following information – the first tablet references the transfer of a 6 year old female slave called Passia from the property of Dasius of Verzo to that of Maximus of Bato.

Those who have interpreted and translated the text have different opinions regarding the way in which the seller owned the slave. Thus, in Mommsen, referencing the slave Passia, called Sportllaria in the text, believes she was given to Dasius as a result of a previous contract through which he had bought several slaves and the one who was the subject of the present contract had been given as a „bonus" for the sealed deal. The Researcher Egon Weiss had a different opinion, stating that this slave was found by the seller, after having been abandoned by her parents. However, this is not legally relevant, as the transfer of property was achieved through a sale contract. As it is known, during those times, this was the legal form by which the operation of selling was achieved – the sale of things whose economic value was thought by the Romans to be superior to those things which were not subject of the sale contract - "*nec mancipii*", as shown by Gaius.

Given this situation, at the time the Law of the 12 tablets was published, these show that the Romans were a people of farmers and the economy had a natural character. Pieces of land, slaves and cattle were considered „*res mancipii*", while debts, money or works of

art were considered „*nec mancipii*". This vision was about to change radically over time, as production intensified and the exchange in economy would increase during the republic and the imperial time.

The sale contract required specific formal and content conditions. It could be concluded between the mancipant – the seller and the accipiens – the buyer; the property would only be transferred in the presence of five witnesses, Roman citizens, and "libripens", (the one who would use a weighing scale to weigh the price); the presence of this person and the weighing scale was still mandatory in the third century i.e.n. when coin was in use, because the sale contract was a solemn act and represented, in the minds of old Romans, a way of creating „powerful property". In front of the witnesses, accipiens would say a solemn formula such as - "*Hunc ego hominem ex iure quiritium meum esse aio isque mihi emptus pretio .... hoc aere aeneaque libra*", (I state that this slave is mine according to Quirillian law and I demand he be bought with the price of ....using this copper weighing scale).

In order to protect the buyer from any hidden vices, the seller was obliged through a statement (fide promissio) to return the doubled price to the seller, (quanti ea puella empto est, tantam pecuniam et alterum tantum dori).

The second contract is dated March 16th, 142 and was concluded between Bellicus of Alexander as seller and Dasius Breucus as buyer. The object of the sale was the young male slave named Apalaustus. The seller declared the slave had no hidden vices, such as illness. Thus he promised, through a statement - *fide promissio* – to return a double amount of money to the buyer. As a person who guaranteed the obligations assumed by the seller - *id fide sua esse iussit* - is Vibius Longus.

On May 6th, 159, according to another tablet, a sale contract was concluded between Vaturius Valens as seller and Andueia of Bato as buyer. The object of the sale contract was a half of a house. The seller was obliged through a statement- *fide promissio* – that, in case the buyer was evicted, he would pay him back an amount of money which was equal to twice the damage the buyer suffered- *tantum pecuniam*.

The fourth contract of the Alburnus Maior wax tablets is dated October 4th, 160 and contains the transfer of property over the female slave Theodate from the property of Claudius Philetus as seller to Claudius Iulianus as buyer. The buyer agreed to pay 420 dinars for this slave. Through a statement, the seller declared that he would pay back the double amount of money in case of hidden vices. As a guarantor of these obligations, as "*secundus auctor*", Alexander of Antipater signed the contract, in Greek, along with the witnesses.

As we can see here, when the contract was signed, along with the Romans, pilgrims also participated; as the sale contract was a solemn act concluded exclusively between Roman citizens, it is only normal that a series of questions arise in regard to the effects of such an act. Thus, the sale contract can't cause any legal effect according to the extremely rigid provisions of "*ius civilae*", since pilgrims couldn't make use of this form of transferring property rights, as it was exclusively reserved for Roman citizens.

This is mostly explained by the fact that in Roman Dacia, in regard to concluding legal acts, „original forms" were used, which attempted to copy „the consecrated forms" of "*ius civilae*".

Thus, those who drafted these contracts copied and completed the forms which were used in current practice. As a result, there are a series of inadvertencies between the phrasing of the form and those which result from the specific situation of those contracts.

For example, although only half of the house was being sold, the forms mentioned the entire house; similarly, when the slave was sold, the expression which was used was "*partemque quom ex eo*", knowing that "eo" meant male slaves and not female slaves.

It is a known fact that in the „*ius civilae*" regulated by the Law of the 12th tablets, a formal and rigid system of law, with solemn formulas and ritual gestures, the simple change of the gender of a noun used in a formula would "de plano" cause the holder to not be able to exercise his right.

By analyzing the content of these wax tablets, we notice that in order to sell a good or a slave during this time, the consensual contract was required, as a solemn act of civil law, especially if the transfer of property was achieved between Roman citizens. Taking over the provisions of civil law by the pilgrims is explained by the fact that the contract was used to transfer half of a building, which would not have been valid even if both parties were of Roman citizenship in which case the transfer was achieved through the so-called "*traditio simbolica*".

The sale contract was used even if one of the parties was not a pilgrim because this was the Roman's way of showing that the „act is in agreement with Roman laws".

However, the pilgrims were aware that such sale contracts could not cause legal effects, thus protecting themselves from any unwanted situations through statements made when concluding the contract, statements which would have protected them against any hidden vices of the good. Thus, they used the form of the statement- "*fide promissio*" – which they were allowed to use. It is a known fact that the obligation to guarantee, whether for eviction or vices, pertains to the consensual sale with all its consequences.

We could also see that the amounts of money mentioned for eviction or hidden vices would be different, whether double the price or a sum of money which would be the equivalent of the damage caused to the buyer. The obligations of the seller could be guaranteed, through "*fideiussio*" by a gerent. This operation was accessible to pilgrims in the age when these contracts were signed.

By analyzing the above mentioned situations, we see that the clauses regarding the guarantees abided by the regulations of "*edili curuli*" as the seller was obliged to transfer property through "*vacua possesio*", namely the undisturbed possession of that good.

Given the fact that responsibility for vices had a series of disadvantages in the system of "*ius civilae*", disadvantages which were rather frequent in practice, as commercial operations occurred in markets and allowed for the participation of pilgrims, who were excluded from sale contracts, as well as due to the speed with which goods were transferred from a patrimony to the other, which did not allow enough time to notice potential vices, the magistrates which overseed commercial operations in markets, drafted two edictae - "*mancipiis vendundis*", regarding the sale of slaves and "*de iumentis vendundis*", regarding the sale of animals, thus creating new regulations which were much more efficient in regard to responsibility for vices.

These edictae provided the buyer with two special actions, namely "*actio redhibitoria*" and "*actio quanti minoris*". The first would allow the buyer to dissolute the contract (dissolve the contract) when the good had certain defects and there was no special statement for vices.

As „*actio redhibitoria*" provided the buyer with the right to choose whether to keep the good with vices or to demand that the contract be dissolved, a new mechanism was created with the purpose of a special action called "*quanti minoris*" – meaning more for less.

Actio quanti minoris allowed the buyer to obtain the amount of money which was the difference between the money he had paid and the amount he would have paid had he been aware of the vices of the good.

Thus, the buyer would pay a smaller price, but would still be the owner of the good. The edictae of these magistrates, the institution of objective civil liability, as liability for vices was attained regardless of whether the seller was of good faith or not, obliged the seller to return another good or the difference of money as stated above.

These provisions would only apply to those commercial operations which were performed in markets, as in all other situations, the good faith seller was not liable for vices.

We see that in case of contracts mentioned in the triptychs, the seller's liability was attained regardless of whether he was of good or bad faith; this represents a specificity of the sale contract of Roman Dacia, knowing that in the age of Justinian (527-565 e.n.) the system, as created by magistrates would be generalized. Thus, the seller was held for vices regardless of the place where the sale occurred.

By analyzing the four sale contracts, we can conclude that some statements of these acts have common elements, even identical with those of Roman law, whereas some are in complete contradiction with its demands.

In regard to the form of these acts, we note that these were signed not only by witnesses, but also by the parties and sometimes, the gerents. It is a known fact that in the Roman system of law, objective acts would only be signed by the witnesses, whereas the subjective ones were signed by the parties.

Thus, a new form was chosen, as the acts were signed by both the parties and the witnesses, a fact which states the existence of a new Dacian – Roman system of law which made the transition from the objective form to the subjective one. Although the form is sometimes different from the one regulated by Roman law, the effects are identical.

According to classical Roman law, the sale contract was a simple convention and generated an obligation for the seller to turn over the good and to guarantee for eviction and for vices; the buyer had to pay the price as agreed by both parties.

In order to make a sale in the Roman province of Dacia, several parts of a contract were needed – a declaration of buying, a clause regarding the price, distinctive clauses regarding the guarantee for vices and eviction and a declaration from the gerent.

As a result, if in Roman law all the effects of sale came from the simple agreement of the parties in regard to the object and price of the sale, in Dacian – Roman law, a special clause was needed in order to cause each effect.

On the other hand, we notice that the legal operation of sale was achieved by two distinctive legal acts, the sale contract specific to "*ius civilae*" and the consensual contract of sale, as an act specific to "*ius gentium*".

We agree with the doctrinarian opinion according to which the use of two distinctive acts for concluding a sale contract was justified by the fact that the parties wished to have more security in regard to the lawfulness of the legal operation; also, the two systems of law collided, as the Roman and the indigenous Dacian – Roman one each had its own specificities.

We can also state that the sale contract along with the convention of parties ensured the transition to the consensual sale contract which would transfer property.

By analyzing the clauses of these acts in a unified vision, we can state that Roman law institutions acquired an original aspect, directly influenced by the factors which configured civil law, specific to each geographical area, as well as the age when they manifested.

The wax tablets solidify the process of unification of the two systems of law, the Roman one and the indigenous one, in a much wider background, both in regard to civil law institutions and in regard to the legal attitude of Roman Dacia.

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