

Static and Dynamic Aspects of the Roman Family

Abstract:

The thesis deals with Roman family law, the core of the research being the Roman family in the Republican era and the beginning of the Principate. However, the archaic rules of regal period on one hand, and of the period of Dominate or even of the times of Justinian on the other, can also be included to present the overall picture of the development of a certain institution.

Three main research goals are outlined in the introduction of the work to be reached throughout the following three chapters. The first goal is to define the term of the Roman family; the second is to connect theory and practice, i.e. so-called law in books and law in action. Therefore, we shall first analyze the legal rules and then compare these theoretical findings with their practical application. The practice shall be ascertained mainly from the non-legal sources of literal or epigraphic character. The third goal is to utilize an interdisciplinary approach, i.e. to use the outcomes, methods, and procedures from the research fields other than legal sciences to deepen our knowledge of the Roman family.

The first chapter (Family in Ancient Rome) focuses on the Roman family from different points of view. The polysemous terms *familia* and *domus* are analyzed. *Familia* signifies either the property, or the different group of persons, depending on the context in which the term is used. In the meaning of group of persons, its significance may be also the *familia proprio iure*. This family group consists of persons connected by agnatic tie created with the power that a *pater familias* exercises over them.

Next part deals with the different types of kinship – agnatic and cognatic. Later, the characteristic features of agnatic family are laid down. The *familia proprio iure* is based on the power of one person, on the monogamous and exogamous marriage, and to a great extent governed by its private religious cult. It may be labeled as patriarchal, patrilinear, patrilocal, exclusive in the sense that one person can only belong to one family, and autonomous regarding its connection to the state.

The following text in this chapter is dedicated to the historical development of the Roman family from prehistoric times, including analysis of the link between the family and kin, and of the origin of the power of the *pater familias*.

The last part defines the static and dynamic aspects of the Roman family. On one hand, the family lasts if the *pater familias* exercises his power over its members. This power works

as a stabilizing element to maintain the family as a compact unit and can be therefore denoted as static aspect of the family. On the other hand, the family rarely keeps its form unchanged. The change in the structure of the family caused by inclusion or exclusion of a member by the legal act of the father of the family can be called the dynamic aspect.

The second chapter (*Pater familias* and Family Bonds) addresses the role of the father of the family. *Pater familias* acts as a connecting link between his family (subordinated persons) and the society – he both rules inside, over the family, and represents it towards the outside world. The scope of his competencies and responsibilities results from such a double position.

The first part of this chapter analyzes the responsibility of the father both for the continuity of the family (i.e. the maintenance of private religious cult, ensuring continuation of the family from the personal and the property point of view), and for the legal acts of subordinate members of the family and delicts caused by them, as well.

The description of the father's power, particularly the *patria potestas*, follows. The components of the power are identified, the *ius vitae necisque* (the power of life and death) being the most important of them. Non-legal ancient literature provides us the examples of killing of sons and daughters. However, only the minimum of cases regards the situations when such a killing is connected neither with the punishment of criminal acts of sons against the state imposed by fathers acting on the basis of their public authority, or with the loss of chastity by daughters.

The last part deals with the real-life bonds between parents and children and aspects that determine them. It examines important life milestones such as the childbirth, death of a member of the family etc. and their impact on the family. The attention is also paid to the great importance given by Romans to the mutual maintenance of *pietas* in the relationships between family members.

The research in the field of historical sociology and demography with the aid of the computer micro simulation provided highly interesting outcomes regarding the average life expectancy of the Romans and the age of enclosure of marriage and so on. From this set of data, we can deduce that the power of the father over children had not been lasting for a long time, since almost one third of the children lost their father before the puberty. Finally, we closed the second chapter with the statement that both the competencies and responsibilities of the *pater familias*, and the mutual relationship of parents and children can be described as well-balanced, therefore in one word symmetrical.

The third chapter (Changes in the Family: Law in Books and Law in Action on the Example of Adrogation of Publius Clodius Pulcher) focuses on one of the dynamic legal

institutions, i.e. *adrogatio* – the adoption of a person *sui iuris*. At first, we studied the legal rules, later the application of them onto the real-life situation of Publius Clodius Pulcher living in the 1st century BC. On the background of the efforts of Clodius to move from the patrician to plebeian rank, we are witnesses of the procedure of the *transitio ad plebem* (institution probably close to the *adrogatio*) and adrogation itself. This episode shows us *inter alia* the possible conflict between the world of theory and the real-life influenced by politics.